IT 2416 - Income tax : allowable deductions : levy imposed by professional associations

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TAXATION RULING NO. IT 2416

INCOME TAX : ALLOWABLE DEDUCTIONS : LEVY IMPOSED BY PROFESSIONAL ASSOCIATIONS

F.O.I. EMBARGO: May be released

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1211061	LEVY - COMPULSORY OR VOLUNTARY PROFESSIONAL ASSOCIATIONS - LEVY SUBSCRIPTIONS	51(1) 73

OTHER RULINGS ON TOPIC: IT 82, IT 296, IT 298, IT 299, IT 327, IT 2016, IT 2062, IT 2104, IT 2184

PREAMBLE This Office was recently asked whether an income tax deduction would be allowable for a levy included as part of a member's subscription to a professional association where the levy is to be used to provide finance to construct a building to house the association's headquarters.

2. Three methods of collecting the levy were suggested:-

(a) individual members elect to pay an amount they choose;

(b) the association fix the amount of the levy; or

(c) a levy be imposed under a 'buy-a-brick' scheme where members were requested to 'buy a brick' worth varying amounts.

3. As indicated in earlier Taxation Rulings, where a levy is paid by a member to a business, trade or professional association or to a trade union, it is necessary to have regard to the purpose for which the payment is made in order to determine whether it satisfies the terms of sub-section 51(1). The fact that a levy may be imposed either compulsorily or voluntarily is not necessarily decisive of the issue. What is important is the connection between the purpose for payment of the levy and the activities by which the assessable income of a member is derived.

4. Following a decision of Taxation Board of Review No.2 reported as Case B68 70 ATC 326, : 16 CTBR(NS) 84 Case 14 it was accepted by this Office that periodical subscriptions to most business, trade or professional associations and trade unions

would qualify for income tax deduction under sub-section 51(1). The reason for this is that the activities of the associations and unions are clearly linked to the activities by which the assessable income of members is derived. The matter is dealt with in Taxation Ruling No. IT 327.

RULING 5. Where a special levy is made and the purpose for which it is made is clearly linked to the activities by which the assessable income is derived in the sense explained in Taxation Ruling No. IT 327, the levy will qualify for deduction under sub-section 51(1). The question which arises in this particular case is whether, because the cost of the building represents expenditure of a capital nature to the association, the levy is to be regarded as capital expenditure in the hands of members and, consequently, specifically precluded from deduction under sub-section 51(1).

6. While it may be true that a person can incur capital expenditure on the land of another person, it is not considered that a levy paid to enable a professional association or trade union to acquire or construct new premises to conduct their activities to refurbish existing premises or to acquire plant and equipment partakes of the nature of capital expenditure. Other than obtaining the advantage that the association or trade union is better able to carry on its activities, the payment of the levy does not add to the profit yielding structure of a member or result in any advantage of an enduring nature to the member.

7. Where members of business, trade or professional associations or of a trade union are entitled to income tax deductions under sub-section 51(1) for periodical subscriptions to the associations or unions, any levy or additional subscription paid to provide finance for the sorts of expenditures referred to in the preceding paragraph will also be allowable as an income tax deduction.

COMMISSIONER OF TAXATION
25 June 1987