

IT 323 - Education expenses - swimming lessons

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TAXATION RULING NO. IT 323

EDUCATION EXPENSES - SWIMMING LESSONS

F.O.I. EMBARGO: May be released

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FACTS In an oral decision, Taxation Board of Review No.2 has upheld the disallowance of a deduction claimed by a taxpayer under section 82J for expenditure said to have been "necessarily incurred" in connection with the full-time education of his children.

2. The taxpayer had claimed a deduction under section 82J of the cost of private swimming lessons for his children. He gave evidence during the hearing to the effect that swimming was a compulsory activity at the primary school which the children attended unless exemption was sought by the parents.

RULING 3. In rejecting the taxpayer's claim, the Chairman said:-

"Whether or not a parent decides to have a child taught swimming is a matter of personal choice. The fact that the child can swim, can take part in swimming activities at school does not establish a clear enough or close enough nexus between the swimming lessons and the school activity to describe the expenses as 'necessarily incurred for or in connection with the full-time education of the child'."

4. The Chairman had expressed some doubt on more than one occasion during the hearing as to the correctness of the allowance of deductions under section 82J for the cost of music lessons and an educational tour to Cairns. He said he found it "somewhat difficult to see a clear line of distinction between the expenditure on the swimming lessons which were disallowed and expenditure on the music lessons which were allowed".

5. So far as the cost of music lessons is concerned, the Chairman's views are not supported. There should be no departure from the official view as expressed in the Addendum to CITCM 698, attached to CITCM 820. In the Addendum it is made clear that, as music and art are subjects generally recognised as part of school curricula and as examination subjects, claims for fees paid for tuition in these subjects outside the school or college at which the child is receiving full-time education

are allowable, whether or not these subjects have been selected by the student for his examination.

6. Claims for fees paid on behalf of a student in respect of tuition undertaken outside the school or college in subjects not generally recognised as part of a normal educational curriculum, for example, swimming and those other subjects specifically mentioned in paragraph 5 of the Addendum, should continue to be disallowed. The criterion, of course, is that music is an academic and examination subject; swimming is not.

7. The basis for this distinction is the recognition that section 82J does not require that expenditure be incurred on the full-time education of the child - it is sufficient if it is "in connection with" it. It must also be kept in mind that the words "necessarily incurred" do not imply that only inescapable expenditure may be deducted - it is sufficient if it is the kind of expenditure which a prudent parent would consider it reasonable to incur in connection with the child's schooling.

8. Questions of degree are therefore involved. It is accepted that section 82J applies not only to direct school expenses but also to private tuition undertaken to assist a child in his academic studies at the school at which he is receiving full-time education. It is also accepted that the section extends to reasonably necessary expenditure on the equipment needed for official school sporting activities. However, when a child is given private tuition to assist him in performing better in school sports, this has reached a second stage of remoteness from the full-time education and it is not accepted as being necessarily incurred within the meaning of section 82J.

9. There is, of course, a further reason for denying a deduction for swimming lessons. In practice, the taxpayer cannot readily demonstrate that the purpose of the expenditure was to assist the children in their full-time education rather than to enable them to pursue their private recreation more effectively.

10. With regard to educational tours, however, great care should be taken before claims in this regard are allowed in future. The official view remains the same as set out in paragraph 6 of the abovementioned Addendum, where it is stated:-

"Similar considerations apply in respect of the costs associated with pupils undertaking conducted tours of national projects and other places of general educational interest. Unless it is shown to be part of the student's course that such tours be undertaken, for example, for practical or field work in botany, geology, etc, the relevant expenses should be disallowed."