IT 2481 - Income tax : travelling expenses of an employee moving to a new locality of employment

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TAXATION RULING NO. IT 2481

INCOME TAX : TRAVELLING EXPENSES OF AN EMPLOYEE MOVING TO A NEW LOCALITY OF EMPLOYMENT

F.O.I. EMBARGO: May be released

REF N.O. REF: 86/10034-7 DATE OF EFFECT: Immediate

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1183881	EMPLOYEE - TRANSFER IN LOCALITY OF EMPLOYMENT TRAVELLING EXPENSES REMOVAL EXPENSES	51(1)

OTHER RULINGS ON TOPIC : IT 2173, 2199, 2406

PREAMBLE This ruling is issued in consequence of a decision of the Federal Court of Australia reported as FC of T v Noume 88 ATC 4217; 19 ATR 970 in which Spender J dismissed the Commissioner's appeal from a decision of the Administrative Appeals Tribunal reported as Case T92 86 ATC 1143; AAT Case 9 (1986) 18 ATR 3043.

2. The issue before the Tribunal and on which the Commissioner sought to appeal to the Federal Court concerned a claim by a school teacher for the cost of motor vehicle and accommodation expenses incurred in moving from one town to another to take up a new posting.

FACTS 3. The hearing before the Tribunal (Mr K.L. Beddoe Senior Member) proceeded on the basis of a statement of agreed facts. The taxpayer, a primary school teacher, travelled from Dimbulah in North Queensland to Brisbane in January 1982 in order to take up a new posting at a Brisbane school. Although it might not have emerged clearly from the agreed facts, it is the Commissioner's understanding that the taxpayer moved residence in order to take up the duties of her new position and that the taxpayer's claims for deductions related to costs of transferring her possessions and herself from one place of residence to another place of residence. In undertaking the journey the taxpayer incurred expenses in the use of a car and paid for one night's accommodation in Mackay. The taxpayer claimed these expenses as deductions under subsection 51(1) of the Income Tax Assessment Act.

4. The Tribunal inferred from the statement of agreed facts that the applicant had voluntarily applied for the transfer. It also inferred that the transfer did not change the taxpayer's conditions of employment generally or her salary in particular.

DECISION

5. The Tribunal found that the taxpayer was travelling on transfer in her existing employment and the principle to be applied in considering the deductibility of an employee's travelling expenses was that enunciated by Lord Wilberforce in Taylor v Provan (1975) AC 194 at p.215 where he said :

> "... To do any job, it is necessary to get there: but it is settled law that expenses of travelling to work cannot be deducted against the emoluments of the employment. It is only if the job requires a man to travel that his expenses of that travel can be deducted, i.e., if he is travelling on his work, as distinct from travelling to his work. The most obvious category of jobs of this kind is that of itinerant jobs, such as a commercial traveller. It is as a variant upon this that the concept of two places of work has been introduced: if a man has to travel from one place of work to another place of work, he may deduct the travelling expenses of this travel, because he is travelling on his work, but not those of travelling from either place of work to his home or vice versa. But for this doctrine to apply, he must be required by the nature of the job itself to do the work of the job in two places: the mere fact that he may choose to do part of it in a place separate from that where the job is objectively located is not enough."

6. In the Tribunal's opinion this principle applied regardless of the frequency of such travel and in the circumstances of the case the taxpayer was entitled to the cost of the expenses of travelling from Dimbulah to Brisbane under subsection 51(1) of the Act.

7. On appeal from the decision of the Tribunal the Federal Court, Spender J., held that the Commissioner failed to identify a question of law in his notice of appeal. Consequently subsection 44(1) of the Administrative Appeals Tribunal Act precluded the Federal Court from reviewing the decision of the Tribunal. Spender J. did express the view (obiter) that it seemed that the taxpayer was obliged in the circumstances to travel at her own cost between two places of employment and that he would have been inclined to reach the same conclusion as the Tribunal.

RULING

8. The Commissioner accepts that the Federal Court was correct in deciding that there was no question of law in terms of subsection 44(1) of the AAT Act in the Tribunal's decision to enable an appeal to be lodged. However, with respect, the Commissioner does not accept that the Tribunal's decision was correct in the circumstances of this case.

9. Where a taxpayer, like the taxpayer in this case, voluntarily transfers employment at his or her request from one locality to a new locality and incurs expenditure in moving from one place of residence to a new place of residence to take up the duties of the new position that expenditure is not incurred, in the Commissioner's view, in gaining or producing assessable income and is not deductible under subsection 51(1) of the Act.

The taxpayer is not travelling on his or her work (c.f. Taylor v Provan [1973] A.C. 194 per Lord Wilberforce at p.215) but is travelling to his or her work. Nor is the taxpayer travelling between two places of employment.

10. No change to office policy is considered necessary.

COMMISSIONER OF TAXATION
23 June 1988