

[HIGH COURT OF AUSTRALIA.]

WATSON . . . . . APPELLANT;

AND

THE COMMISSIONER OF TAXATION FOR }  
WESTERN AUSTRALIA . . . . . } RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF  
WESTERN AUSTRALIA.

H. C. OF A. *Income Tax (W.A.)—Assessment—Public accountant—Business carried on*  
1930. *within State—Services rendered outside State—War-time profits—Federal assess-*  
          *ments—Commission on refunds of tax paid by client—Taxable by State—Land*  
          *and Income Tax Assessment Act 1907-1924 (W.A.) (No. 15 of 1907—No. 36 of*  
PERTH, *1924), secs. 15 (1), 30 (3).*  
Sept. 4, 11.

Gavan Duffy,  
Rich, Starke  
and Dixon JJ.

An accountant in the course of his business, which he carried on at Perth, made an arrangement with a client, who had paid a large sum for war-time profits tax, that if the accountant should obtain a remission he should retain so much of the amount remitted as exceeded a named sum. The accountant ascertained in Perth that a remission could not be obtained unless an amendment was made which had been proposed or suggested in the Federal legislation. He closed his office in Perth and went to the Eastern States where he contributed his exertions to those of others who were agitating for the amendment. The amendment was made by the Federal Parliament, and in Perth the accountant succeeded in obtaining a remission which greatly exceeded the named sum and he retained the excess.

*Held*, that the excess must be taken into account in his assessment to income tax for the State of Western Australia because it was income arising or accruing from his vocation as accountant carried on in that State within the meaning of sec. 15 (1) of the *Land and Income Tax Assessment Act 1907-1924 (W.A.)*, and was not income earned outside of Western Australia within the meaning of sec. 30 (3) of that Act.

Decision of the Supreme Court of Western Australia (Full Court): *Watson v. Commissioner of Taxation (State)*, (1929) 32 W.A.L.R. 36, affirmed.



APPEAL from the Supreme Court of Western Australia.

At all times material to this appeal the appellant, Henry Keith Watson, public accountant of Perth, was domiciled in the State of Western Australia and was carrying on business as an accountant. In 1924 the appellant was carrying on business as a public accountant at Royal Bank Chambers, St. George's Terrace, Perth, but in 1925 he closed the said office and did not carry on business in the State during the period 8th July 1925 to 13th August 1926. On the latter date the appellant recommenced business in Perth as a public accountant, and such business was and still is conducted in Perth. James Munro was assessed to taxation under the *War-time Profits Tax Assessment Act* 1917-1918, and prior to 1924 had paid large sums as and by way of tax thereunder. On 18th October 1924 the appellant wrote to Munro, then residing in England, offering to handle and investigate the Federal taxation assessments which had been made upon and paid by Munro, on certain conditions—such conditions being (1) that Munro was to be unconditionally entitled to the first £1,000 of any remission the appellant might obtain on the combined taxes in respect of the assessments for each individual year, and (2) that the appellant was to receive and retain as his commission the full amount, if any, by which the total remission of the combined taxes in respect of the assessment for each individual year exceeded the said sum of £1,000. Munro accepted the appellant's offer. On 25th March 1925 Munro despatched a power of attorney in favour of his Perth solicitor, F. R. Thomas, and the appellant jointly empowering them on his behalf to apply for refunds of overpaid taxation and to accept such refunds and to give a valid receipt for same. On 31st August 1925 Munro executed and despatched a further power of attorney in favour of F. R. Thomas and the appellant jointly. On 5th February 1925 the appellant commenced negotiations with the Deputy Federal Commissioner of Taxation at Perth with a view to obtaining a reduction by readjustments in the assessments under the *War-time Profits Tax Assessment Act* 1917-1918, issued to the said James Munro. These negotiations continued until 2nd May 1925, but the request of the appellant was not granted and he subsequently abandoned his claim for such reduction. The

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legislation regarding war-time profits tax then in force had in various cases had the result of imposing on taxpayers on active service a greater liability than they would have been under if not on active service. Munro was a taxpayer whose case was as mentioned. Representations were being made in the Eastern States to the Commonwealth Government with the object of securing an amendment of the statute to the effect that the war-time profits tax payable by taxpayers on active service should not exceed that payable if they had not been so engaged, and the appellant proceeded to Melbourne also with the object of making representations for securing such or similar amendment. The appellant remained outside the State of Western Australia during the period 8th July 1925 to 1st October 1925, and again during the period 28th January 1926 to 10th July 1926, endeavouring by special interviews and attendances and by making extensive and elaborate representations to the Federal Commissioner of Taxation, the Ministers of State of the Commonwealth and Members of the Commonwealth Parliament, to secure an amendment of the statute by removal of the anomaly in question. The first period he devoted to securing the introduction of an amendment of the Act, a section being ultimately approved and afterwards introduced into Parliament on 3rd February 1926. That section was as follows:—"4. (1) Where the profits derived during any financial year or accounting period by any individual or partnership (not being a partnership any member of which has, in respect of that year or period, received a refund of tax under sub-section 3 of section eight of the *War-time Profits Tax Assessment Act* 1917 or of that Act as subsequently amended) were, or are liable to be, assessed under the *War-time Profits Tax Assessment Act* 1917 or under that Act as subsequently amended, and that individual or any member of that partnership was, in respect of that year or period, entitled under section thirteen of the *Income Tax Assessment Act* 1915-1921 to an exemption from income tax, the Commissioner may alter or make the assessment so that there shall be deducted from those profits the amount of income tax which would have been payable by that individual or member, under the *Income Tax Assessment Act* 1915-1921, if—(a) in the case of an individual—those profits; or (b) in the case of a partnership—



the share of that member in those profits, had been the only income derived by that individual or member, during that year or period, from sources within Australia, and that income, or a part thereof, as the case may be, had not been exempt from income tax by virtue of section thirteen of that Act." The second period he devoted to securing substantial alterations in the section as originally introduced. These alterations involved recasting the section; and on 2nd June 1926, when the Bill was being considered in Committee, the recasted section was substituted for that originally introduced. The said section was included as sec. 4 of the *War-time Profits Tax Assessment Act* 1926 (which was assented to on 8th July 1926). By reason of the said section and pursuant thereto the said Munro became entitled to large refunds of taxes paid by him. The inclusion of the said sec. 4 in the said amended Act was the result of the representations made by interested persons generally, to which the appellant contributed or in which the appellant participated. Upon the *War-time Profits Tax Assessment Act* 1926 being passed by Parliament, the appellant on behalf of the said Munro applied to the Deputy Federal Commissioner of Taxation in Western Australia for the refund accruing to Munro pursuant to sec. 4 thereof. Such application was made by letter sent by the appellant from Melbourne to the Deputy Federal Commissioner of Taxation at Perth on a date subsequent to 8th July 1926. The appellant returned to Perth on 15th August 1926, and thereafter he had frequent personal conferences with the said Deputy Federal Commissioner at Perth between 13th August 1926 and 23rd September 1926 in connection with his said application and the refund to be made in pursuance thereof. Upon the passing of the *War-time Profits Tax Assessment Act* 1926 the Deputy Federal Commissioner of Taxation, as a matter of departmental practice, located all the cases in which sec. 4 was applicable and made all necessary refunds irrespective of whether the taxpayers applied for such refunds or not. On 23rd September 1926 the Deputy Federal Commissioner of Taxation made the refund which he considered due to Munro, pursuant to sec. 4 of the *War-time Profits Tax Assessment Act* 1926. The refund was received at Perth by F. R. Thomas and the appellant jointly acting under power of attorney executed by Munro on 31st August 1925.

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The amount of refund was £13,170. The commission or reward accruing to the appellant from such refund was £10,170. The appellant, contending that such refund was less than the amount properly refundable, made further representations to the Deputy Federal Commissioner of Taxation, and as a result a further refund was made on 18th March 1927. These representations commenced on 28th September 1926, and were all made in Perth, and the said refund was received in Perth by the appellant and F. R. Thomas as attorneys of the said James Munro. The further reward or commission accruing to the appellant from this further refund was £877. The appellant then furnished a report to Munro under date of 19th March 1927 upon the completion of his investigation, and the above-mentioned sums were thereupon paid to him at Perth. On 27th October 1927 the appellant furnished to the State Commissioner of Taxation a return of income arising or accruing from all sources in Western Australia during the year ended 30th June 1927. In the said return the allowable deductions exceeded the gross income by £80. On 21st March 1928 the Commissioner assessed the appellant to income tax for the financial year ending on 30th June 1928, assessing the income chargeable at £10,597 and the tax at £1,413 2s. 4d. The said income chargeable was assessed in the following manner :—

Deficiency as per return	..	..	..	..	£80	0	0
Commissions claimed by the taxpayer to have been earned outside Western Australia	..	A	£11,047	0	0		
.. .. ..	..	B	94	0	0		
			<hr/>				
			£11,141	0	0		
Expenditure incurred in earning such commission	..	..	464	0	0		
			<hr/>			£10,677	0 0
						<hr/>	
Income chargeable	..	..	..	..	£10,597	0	0
					<hr/>		
Tax	..	..	..	..	£1,413	2	4

The appellant, being dissatisfied with this assessment, duly lodged an objection (accompanied by the requisite deposit) which was disallowed by the Commissioner, and the appellant duly required the Commissioner to treat his notice of objection as an appeal and forward it to the Supreme Court of Western Australia pursuant to the provisions of sec. 47 (5) of the *Land and Income Tax Assessment Act 1907-1924* (W.A.), his grounds of objection being that “the



sum of £11,141 represents income earned outside the State of Western Australia and no tax is payable under the above-named Act in respect of the whole or any portion of such income." Both of the above-mentioned commissions were those received by the appellant in connection with the refunds made pursuant to sec. 4 of the *War-time Profits Tax Assessment Act* 1926 in the circumstances above set out, and the Commissioner had assessed the appellant in respect of such commission as income arising out of services rendered in the State of Western Australia.

The appellant appealed against this decision to the Supreme Court. The appeal was heard by *Burnside J.*, who dismissed it but reduced the assessment by the sum of £94. The Full Court of Western Australia upheld the decision of the primary Judge: *Watson v. Commissioner of Taxation (State)* (1).

From the decision of the Full Court the appellant now appealed to the High Court.

*Sir Walter James K.C.* and *Lappin*, for the appellant. The appellant closed his office in Perth and went to Melbourne, where he assisted in having the amendment made to the Act whereby he earned his commission. The commission was, therefore, earned outside Western Australia. It is a question of fact and degree. The work was actually done in Melbourne. The payments were made in Western Australia, but there had been confusion as to payment and earnings. The collection of the money was merely incidental to his work outside Western Australia. [Counsel referred to *Mount Morgan Gold Mining Co. v. Commissioner of Income Tax (Q.)* (2); *Levene v. Inland Revenue Commissioners* (3); *Commissioners of Taxation (N.S.W.) v. Meeks* (4); *Land and Income Tax Assessment Act* 1907-1924 (W.A.), secs. 15 (1) (a), (c), 30 (3), 31, 77; *D. & W. Murray Ltd. v. Federal Commissioner of Taxation* (5); *Commissioners of Taxation v. Kirk* (6).]

*J. L. Walker*, for the respondent. The material sections of the Act are sec. 15 (1) (a), sec. 30 (3). The business of the appellant was

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(1) (1929) 32 W.A.L.R. 36.

(2) (1923) 33 C.L.R. 76, at p. 109.

(3) (1928) A.C. 217.

(4) (1915) 19 C.L.R. 568.

(5) (1927) 40 C.L.R. 148.

(6) (1900) A.C. 588.



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carried on in Perth, Western Australia, where he was resident. The income accrues to the person, and the meaning of the word "earned" is intended to apply to that income which accrues to the person employed (*In re Income Tax Act* 1895 (Vict.) (1)). A similar construction can be placed on the word "earned" in sec. 30 (3). The transaction was one in the nature of a conditional promise, the appellant earned nothing. What he received actually was after the Act was passed and amended (*Carroll v. Kennedy, Bowley and Manson* (2)). As to what constitutes a profession, vocation, &c., "carried on" in Western Australia within the meaning of sec. 15 (1) (a), see *Lovell & Christmas Ltd. v. Commissioner of Taxes* (3). The essential condition occurred in Western Australia.

*Sir Walter James*, in reply. It is doubtful if a special meaning can be placed on any of the words "derived" or "earned" in sec. 30 (2), (3) or "sources" in sec. 15 (3). If there had been no amendment of the Act there would have been no refund or remission. When the Act was passed the appellant had earned his remuneration: he had brought about the condition of affairs and was then in a position to demand the refund of the money. None of the work was done in Western Australia (*Dickson v. Commissioner of Taxation* (N.S.W.) (4)).

*Cur. adv. vult.*

Sept. 11.

THE COURT delivered the following written judgment:—

In October and November 1924, in the course of his business of a public accountant, which he carried on at Perth, the appellant made an arrangement with a taxpayer, who had been assessed to war-time profits tax, by which the appellant was to "handle and investigate" the taxpayer's Federal assessments on the following conditions, namely:—(1) The taxpayer was to be unconditionally entitled to the first thousand pounds of any remission which the appellant might obtain upon the taxes in respect of the assessments in each individual year. (2) The appellant was to receive and retain

(1) (1898) 4 A.L.R. (C.N.) 37.  
(2) (1927) S.R. (Q.) 78.

(3) (1908) A.C. 46.  
(4) (1925) 36 C.L.R. 489.



as his commission the full amount, if any, by which the total remission of such taxes for each individual year exceeded the sum of one thousand pounds. During the year ended 30th June 1927 a refund was made by the Deputy Federal Commissioner at Perth of a sum amounting at least to £14,047. Of this sum the appellant received, as his commission, £11,047, the taxpayer taking £3,000 in respect of the period of three years involved. In earning this commission the appellant expended £464. The question upon this appeal is whether the sum of £11,047 less this amount is liable to income tax under the *Land and Income Tax Assessment Act* 1907-1924 of Western Australia.

The appellant contends that he is not so liable because the remission of tax by the Deputy Federal Commissioner in Western Australia would not have been made but for his activities outside Western Australia. The refund was in fact made because of the provisions of sec. 4 of the *War-time Profits Tax Assessment Act* 1926, which was assented to on 8th July 1926. The appellant maintains that by his efforts in Melbourne and elsewhere outside Western Australia, he secured, or contributed towards securing, the enactment of that provision, and that it was by these efforts therefore that he earned his commission. Sec. 15 (1) of the *Land and Income Tax Assessment Act* 1907-1924 of Western Australia provides that, subject to the provisions of the Act income tax shall be levied in respect of income arising or accruing to any person wheresoever residing from any profession, trade, employment or vocation carried on in Western Australia. The appellant continued to carry on his vocation of public accountant in Perth until 8th July 1925, when he closed his office and went to Melbourne. He returned to Perth on 1st October 1925 and remained there during the progress of a general election, and until 28th January 1926, when he again went to Melbourne, whence he returned to Perth in July or August 1926. He then resumed his business in Perth. Before leaving Melbourne he had despatched a letter to the Deputy Federal Commissioner of Taxation at Perth claiming on behalf of his client a refund under the provisions of the Act of 8th July 1926. On his arrival in Perth he interviewed the Deputy Commissioner on a number of occasions, and obtained the remission of the tax. On these facts

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the proper conclusion is that the appellant's commission did arise or accrue to him from his vocation of accountant carried on in Western Australia. In the course of that business, he arranged with the taxpayer, who became his client, for a commission to be paid by reason only of the appellant obtaining a remission of tax. He ascertained from an examination of the taxpayer's returns and assessments conducted in Perth in the course of that business that a refund was obtainable only by an amendment of the legislation, and he learnt that proposals for such amendment were on foot. When he suspended the ordinary practice of accountancy to lend his aid and support to those proposals, he was pursuing an opportunity of profit which had arisen in the course of that business. When he returned and resumed his business, he performed the very services, again in the course of that business, for which that profit was given and he there did the very thing upon which his right to commission depended. He secured and received the remission. But the conclusion that the income arose from his vocation carried on in Western Australia does not determine completely the appellant's liability. Sec. 30 (3) of the *Land and Income Tax Assessment Act* 1907-1924 of Western Australia provides that for the purpose of ascertaining the sum on which income tax is payable, directions and provisions shall be observed and carried out which include a direction that no tax shall be payable in respect of income earned outside the State of Western Australia. The appellant contends that his commission was earned outside Western Australia inasmuch as his exertions for the purpose of ensuring an amendment of the legislation were made outside Western Australia. It may be remarked that this contention attributes to sec. 30 (3) the effect of an overriding provision which prohibits the inclusion in a Western Australian assessment of any item of income which arose from activities or operations of the taxpayer any part of which extends beyond the boundaries of that State. It is difficult to suppose that, by this provision, it was intended to exempt from taxation income which would otherwise fall within sec. 15 (1) unless the activities or operations or other source from which it arose were wholly outside the State. But, however this may be, the word "earned" does not contemplate an inquiry into the whole causation by which the



derivation of income was made possible. For the purpose of taxation the place where those earnings occur which directly give rise to income must be regarded rather than the place or places where remoter causes exist. In this case the matters upon which the appellant's right to remuneration was conditioned were things done in Western Australia. The appellant earned his commission by obtaining a remission from the Commissioner, or, at all events, by performance of such acts as were necessary and effectual on his part to obtain such remission under the law in force at the time of the remission. Moreover, the agreed statement of evidentiary facts did not satisfy either of the Courts below that what the appellant did outside Western Australia was the effective cause of his obtaining the remission in the end. On the contrary, they appear to have considered that it was in truth earned not only when but because the appellant in Western Australia obtained a remission of tax on behalf of his client pursuant to an arrangement for commission which he made while in Western Australia. In this opinion we concur.

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The appeal should be dismissed with costs.

*Appeal dismissed with costs.*

Solicitors for the appellant, *Dwyer & Thomas*.

Solicitors for the respondent, *J. L. Walker*, Crown Solicitor of Western Australia.