

**FAMILY INCOME SUPPLEMENT****Self-employed, calculation of net profit—treatment of hire purchase payments and depreciation.**

The claimant, a self-employed taxi-driver, was purchasing his car under a hire purchase agreement. In assessing the net profit of the business the adjudication officer allowed as expenses depreciation on the vehicle calculated by the claimant's accountant at a figure approximating to 25% and the hire purchase interest but excluded the repayment of capital. This was confirmed by the social security appeal tribunal. On appeal to the Commissioner the claimant contended that the full monthly hire purchase repayments should be allowed plus first year depreciation at 75% which they stated the Inland Revenue would allow.

*Held that:*

1. the appeal by the claimants is dismissed (paragraph 1); .
2. in calculating the net profit of the business for the purposes of family income supplement the interest due in respect of a hire purchase agreement is deductible as an expense but repayment of capital is not (paragraph 7);
3. there is no provision in the family income supplement legislation requiring the computation of profits to be on a like basis to that used for tax purposes. There was no reason to reject the computation of depreciation which had been made by a professional accountant (paragraph 8).

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1. My decision is to dismiss the appeal against the decision of the social security appeal tribunal given in this matter on 22 August 1985 whereby it confirmed entitlement to family income supplement in this case for the period from 13 November 1984 to 11 November 1985 at the rate of £5.80 per week.

2. Mr. and Mrs. L. . . are a married couple with four young children. They each last worked in 1983. On 8 November 1984 Mr. L. . . became self-employed as a taxi-driver, and by a claim form for family income supplement signed the previous day but received on 12 November 1984 a claim was made for family income supplement. Down to 23 November 1984 Mr. L. . . rented a car and from 24 November 1984 onwards he used a car which he was acquiring on hire purchase, by monthly payments.

3. On 27 February 1985 accountants on behalf of Mr. L. . . produced and certified a trading account for him for the period 31 October 1984 to 29 January 1985. That account gave an excess of income over expenditure for the period of £1,333.49, and it was on the basis of that figure that the adjudication officer computed entitlement to family income supplement for the family of £5.80 per week. The decision of the adjudication officer was upheld by the social security appeal tribunal.

4. For the purpose of determining entitlement to family income supplement it is necessary to take account of the resources of a family, materially "... the normal gross income of its members, excluding, except where regulations otherwise provide the income of any child"—s.4(1) of the Family Income Supplements Act 1970. Provision is then made in regulations as to the computation of "normal gross income". The relevant provisions are those contained in regulation 2(1) and (3) of the Family Income Supplements (General) Regulations 1980 [S.I. 1980 No. 1437]. These provisions run as follows:—

"2.—(1) For the purposes of the Act, a person's normal gross income and the weekly amount thereof shall be calculated or estimated in the manner provided in paragraphs (2)–(6).

...

(3)... and in so far as a person's earnings from any gainful occupation do not comprise salary, wages or fees related to a fixed period, the net profit derived from that occupation shall be taken into account".

5. The issue in the case is as to the ascertainment of "the net profit derived" from Mr. L... 's occupation as a self-employed taxi-driver for the period in question, on the basis of which it is common ground that the computation for the purposes of family income supplement entitlement proceeds. I turn to the account produced by the accountants. It includes, materially, items for hire purchase interest from 24 November 1984 of £155.51 and of motor vehicle depreciation from the same date of £285.00. It concludes with the accountant's certificate in the following terms:—

"Prepared from the Books and Records produced to us by [Mr. L...], in conjunction with information and explanations given to us. No account is taken for Expenses such as business use of home or of the telephone, nor of subsequent known exceptional expenses of advertising etc. Not apparent within the above is the level of the monthly Hire Purchase repayments, which from 27 December, 1984, including the Interest element charged above, is a liability of £250.58".

As submitted to me on behalf of the claimant the depreciation percentage taken by the accountant was 25%, and although I have not been able precisely to reconcile the figures I proceed on that basis.

6. I asked for and have considered a copy of the hire purchase agreement entered into by Mr. L... It is dated 21 November 1984 and it shows a cash price for the car purchased of £6,875, with a deduction of an initial payment or allowance of £1,375 leaving net £5,500. There is then added a charge for "Nissancare" of £721.67 and charges for 36 months of £2,799.21 making a total "deferred balance" of £9,020.88. That balance was provided to be paid by 36 monthly instalments of £250.58 each commencing on 27.12.84. The agreement contained options to purchase in clause 11, relevantly on the payment of £10 option fee at the expiration of the period of hire.

7. I turn firstly to the point as to whether the whole of the monthly instalments under the hire purchase agreement are deductible in the ascertainment of the net profit for the period. I am quite clear that they are not, since on general principle capital payments are not deductible in computing income—see per Lord Cave L.C. in *British Insulated and Helsby Cables v. Atherton* [1926] A.C. 205 at 213. In his well-known dictum in that case Lord Cave said:—

"But when an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of the trade, I think that there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital."

This principle applies to capital payments over a period also. It is clear beyond peradventure that the monthly payments under the hire purchase agreement included an element in repayment of capital as well as an interest element. The accountant abstracted an interest element and took that into account in the account which he prepared. In my judgment that treatment was right, and there is no basis for claiming the whole of the monthly hire purchase repayments in the computation of "the net profit derived" from the claimant's occupation. My decision is in accordance with that in the decision of another Commissioner R(FIS) 8/85 where he determined there was not to be taken into account in determining the net profit of a self-employed auto electrician's business the weekly equivalent of the sum which

the period concerned had borrowed from the bank in order to acquire the necessary capital equipment to conduct his business.

8. The second point made is as to the rate of depreciation. It was argued on behalf of the claimant that in the computation of his liability to tax the Inland Revenue would allow a first year depreciation of 75%, not the 25% taken by the accountant. What the Inland Revenue may (under the relevant statutory provision) allow in the computation of profits for tax purposes is quite clearly not conclusive and there is no provision in the family income supplement legislation for the like basis to be necessarily adopted. In my judgment it is right that the depreciation be taken into account, but I see no reason why the accountant's figure should not be adopted. It is that of a professional accountant adopted after (as the certificate says) obtaining information from the claimant and his explanations and I see no adequate basis for rejecting it.

9. As to the possible further expenses of business use of home, or telephone, or advertising expenses these are immaterial, since they have either been abandoned or are unsupported by any quantification.

10. My decision is as in paragraph 1.

Commissioner's File:—CFIS 1/86

(Signed) Leonard Bromley  
Chief Commissioner

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