

IT 2243 - Income tax : sole parent rebate for taxpayer with sole care of dependant

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TAXATION RULING NO. IT 2243

INCOME TAX : SOLE PARENT REBATE FOR TAXPAYER WITH SOLE
CARE OF DEPENDANT

F.O.I. EMBARGO: May be released

REF

NOTE - THIS RULING HAS BEEN SUPERSEDED BY IT 2337

H.O. REF: 82/5938-1 Pt 4

DATE OF EFFECT:

B.O. REF:

DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:

SUBJECT REFS:

LEGISLAT. REFS:

I 1206123

REBATES : SOLE PARENT 159K
SOLE PARENT REBATES

OTHER RULINGS ON TOPIC: IT 253, IT 254

PREAMBLE

In Sharma v. Federal Commissioner of Taxation, 84 ATC 4260; 15 ATR 488; Rogers J. of the Supreme Court of New South Wales considered, among other questions, the meaning to be given to the term 'sole care' as used in section 159K of the Income Tax Assessment Act.

FACTS

2. The taxpayer, an unmarried legal academic of international renown, was an associate professor of law at an Australian University. He remitted moneys to his mother in India for the maintenance of his sister who resided with the mother in the family home. Responsibility for the maintenance of his sister fell upon the taxpayer following the death of his father.

3. Taxation Board of Review No. 1, in a decision reported as Case P99, 82 ATC 477; Case 30, 26 CTBR (NS) 223 had, by majority, confirmed the Commissioner's decision to disallow the taxpayer's claim for a sole parent rebate.

4. In the Supreme Court, Rogers J. agreed with the taxpayer's contention that "sole care" for the purposes of section 159K of the Act means sole financial responsibility. An example used by him to illustrate the point was of a taxpayer having the privilege of financially caring for an individual student of twenty-four years of age; "to say that he or she has the day-to-day care and control of such a person is, in this day and age, a contradiction in terms". His Honour allowed the taxpayer's claim and made the following remarks in support of his decision:-

- (i) "The self evident intention of the provision is to grant relief to those within the prescribed category who are involved in a financial outgoing";

- (ii) "what the legislature intended to achieve by inserting the qualification 'sole care' was to ensure that the deduction was obtained by one taxpayer only and not by a multiplicity of taxpayers each of whom may expend money on the welfare and maintenance of the dependant. In order to ensure that only the one taxpayer benefited he or she was specified as being the person who had the sole care in the sense of having the sole financial responsibility for the dependant";

- RULING 5. The decision of Rogers J. should be applied generally. Consequently, for the purposes of section 159K of the Act, a taxpayer is to be accepted as having the sole care of a specified dependant where it is established that he or she assumes and carries the sole financial responsibility of providing for the needs of that dependant. To this extent the comments in Taxation Rulings No. IT 253 and IT 254 as to the meaning of sole care are modified.
6. It is clear from the decision that the terminology of section 159K of the Act does not restrict the operation of the section to sole parents. The section applies to all persons who have the sole care of specified dependants.
7. The policy set out above will mean that a rebate in terms of section 159K of the Act may be available where, for example, a member of a family on the death of the father assumes responsibility for the general upbringing of junior members of the family. A rebate may also be available in the situation of a divorced or married couple where one has custody and the other is required to provide full maintenance. The one with custody may be seen as having the sole care of the child in the sense of having day-to-day care. However, in terms of the test formulated by Rogers J. the rebate would be available only to a party having the sole financial responsibility.
8. It should be noted that as a result of amendment of the law a sole parent rebate is not available after the 1978 income year in respect of non-resident dependants.

COMMISSIONER OF TAXATION
31 January 1986