

IT 254 - Sole parent rebate for part of year that a divorced or separated parent has access to child

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TAXATION RULING NO. IT 254

SOLE PARENT REBATE FOR PART OF YEAR THAT A DIVORCED OR
SEPARATED PARENT HAS ACCESS TO CHILD

F.O.I. EMBARGO: May be released

REF

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SOLE PARENT REBATE
DIVORCED OR SEPARATED
PARENT
PART YEAR REBATE

159K(2)

OTHER RULINGS ON TOPIC:

IT 253

FACTS

1. Consideration has been given to the question whether a part year sole parent rebate under section 159K(2) may be allowed to a divorced or separated parent who has, under a court order or otherwise, significant periodic access to a child during a year in circumstances where the other parent might have custody of the child.

RULING

2. Where one parent has the sole care of a child for an unbroken period, for example three consecutive months of the year of income, it is clear that the sole care period would constitute part of the year for the purposes of the sub-section and that, other conditions being satisfied, a proportionate rebate would be allowable. Where a parent has significant periodic access to a child during a year it is considered that the total period of access in the year would similarly constitute part of the year for the purposes of the sub-section.

3. Provided the other requirements of the sub-section are fulfilled, this decision will mean that each parent may be allowed a part year sole parent rebate, if claimed, calculated by reference to the total number of days the parent had the sole care of the child during the year of income. In many instances it is likely that only one parent will claim the part year rebate because other factors will affect the entitlement of the other parent.

4. This decision applies only where there is significant periodic access, for example two or three days per week. It is not to apply where the access is of an insignificant nature. In the latter circumstances it is likely that the custodian parent would claim the full rebate. It is considered that the fact that the other parent has limited access does not disentitle the custodian parent to the full rebate.

5. In determining whether the other requirements of the

sub-section are fulfilled it will be necessary to decide whether the parent had the sole care of the child in the period of access. In IT 253 it was stated that the expression 'sole care' referred to the full and unshared responsibility for the physical care and upbringing of the child. That meaning was given in circumstances where one parent was so mentally incapacitated that he or she was unable to share in the care of the child.

6. In the circumstances to which this ruling applies, however, it is possible for a situation to arise where one parent has custody while the other parent has the care of a child. In such a situation it could not be said that the parent who has the care of the child has the unshared responsibility for the child's upbringing. At the same time, however, the parent who has the care of the child may have sole care of the child in as much as he or she is obliged to provide for the needs of the child during the period of care. In cases of this nature the test of sole care will be satisfied if the parent provides for all the child's needs during the period in which the child is in that parent's care and does not receive any assistance from any other person or organisation.

COMMISSIONER OF TAXATION