

# ***IT 261 - Fees paid to nursing homes - whether payments to a hospital***

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TAXATION RULING NO. IT 261

FEES PAID TO NURSING HOMES - WHETHER PAYMENTS TO A  
HOSPITAL

F.O.I. EMBARGO: May be released

REF

H.O. REF: J.345/7 P6 F195

DATE OF EFFECT:

B.O. REF:

DATE ORIG. MEMO ISSUED: 03.11.80

F.O.I. INDEX DETAIL

REFERENCE NO:

SUBJECT REFS:

LEGISLAT. REFS:

I 1070012

CONCESSIONAL REBATES

159P(4)

MEDICAL EXPENSES

NURSING HOME CARE

FACTS

Consideration has been given to whether fees paid by a taxpayer to a nursing home, either in respect of himself or herself or of a dependant inmate, represent payments to a hospital within the meaning of section 159P(4) of the Income Tax Assessment Act and thus qualify as rebatable amounts.

RULING

2. The circumstances in which a nursing home may qualify as a hospital do not readily permit the formulation of one general rule. The Income Tax Assessment Act uses general terms when it refers in section 159P(4) to payments made to public or private hospitals in respect of an illness or operation. The Shorter Oxford Dictionary gives the current meaning of the term "hospital" as an institution for the care of the sick or wounded or of those who require medical attention.

3. A home for mentally retarded children is regarded as a hospital. Further, a person who is mentally retarded is accepted as suffering from an illness. The fact that the illness may be incurable is not a debarring factor since, if this were the case, claims for payments to hospitals in respect of other more conventional illnesses which may also be incurable would also be debarred.

4. Essentially the same situation exists in relation to patients in nursing homes. They are there because they suffer from some continuing illness or infirmity for which nursing attention is required.

5. In past years consideration has been given to the allowance of a deduction, under former section 82F, for fees paid by a taxpayer to a nursing home in respect of a dependant inmate for whom Commonwealth intensive care benefits were payable. Enquiries made at the Department of Health revealed that there were two classes of benefits for persons in approved nursing homes. Ordinary nursing home care benefits were payable where the patient was in need of minimum care. Intensive home care nursing benefits were payable where the patient who, by reason of an infirmity or illness, disease, incapacity or

disability, was bedridden or virtually bedridden and was wholly or substantially dependent upon nursing care and, only then, when the nursing home was adequately fitted, furnished and staffed to provide the intensive care necessary.

6. In the circumstances, it was decided that a nursing home which was capable of providing the intensive care necessary to attract the rate of Commonwealth benefits for intensive care should be accepted as a hospital. On the other hand it was not generally accepted that a nursing home which attracted only the ordinary Commonwealth benefit was a hospital for the purposes of the Act.

7. However, on further review of the matter it has been decided that all nursing homes which are approved for the purposes of the National Health Act 1953 should be accepted as hospitals.

8. A nursing home is defined in the National Health Act as premises -

- (a) that are fitted, furnished and staffed for the purpose of providing accommodation and nursing care for patients who, by reason of infirmity or illness, disease, incapacity or disability, have a continuing need for nursing care; and
- (b) in which patients of that kind are received and lodged exclusively for the purpose of providing them with accommodation and nursing care.

The term 'nursing care' is defined to mean nursing care given by or under the supervision of a registered nurse.

9. Section 40AA of the National Health Act provides that the proprietor of a nursing home may make application to the Permanent Head of the Department of Health for approval of the premises as an approved nursing home. Section 40AB requires a person who wishes to be admitted to an approved nursing home to seek the approval of the Permanent Head. Sub-section (2) of the section requires the applicant to furnish a certificate from a medical practitioner that the applicant, by reason of infirmity or illness, disease, incapacity or disability, has a continuing need for nursing care. Where the Permanent Head is satisfied that the applicant requires such nursing care as would warrant his or her admission to a private nursing home sub-section (3) authorises him to approve the application.

10. It is clear, therefore, that a person can only be admitted to a nursing home approved under the National Health Act where he or she is suffering from some illness, etc. Payments to approved nursing homes may be generally accepted, therefore, as payments to a hospital within the meaning of section 159P(4).

COMMISSIONER OF TAXATION