

IT 2337 - Income tax : sole parent rebate



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TAXATION RULING NO. IT 2337

INCOME TAX : SOLE PARENT REBATE

F.O.I. EMBARGO: May be released

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I 1209736	REBATES SOLE PARENT REBATE	159K

OTHER RULINGS ON TOPIC IT 253, IT 254, IT 2243

PREAMBLE

The purpose of this Ruling is to clarify some uncertainty which has arisen in the circumstances in which a sole parent rebate is allowable. The uncertainty has arisen over what is involved in the concept of sole care.

2. Section 159K of the Income Tax Assessment Act provides for a sole parent rebate. The rebate is allowable where a taxpayer has the sole care of a dependant, being a child under 16 or a full-time student under 25 years of age. There are two prerequisites to allowance of the rebate. Firstly, the taxpayer must have been entitled to a concessional rebate for the dependant had the concessional rebates for dependants not been withdrawn. Secondly, the taxpayer is not entitled to a concessional rebate for a daughter-housekeeper or a housekeeper.

3. The only occasion in which the operation of section 159K has been judicially considered occurred in *Sharma v. F.C. of T.*, 84 ATC 4260 : 15 ATR 488, a decision of Rogers J. in the Supreme Court of New South Wales. The taxpayer in that case was a person of Indian origin who had been a resident of Australia for some years. His family lived in India. On the death of his father the taxpayer, in accordance with Indian legal and cultural tradition, became the head of the family and responsible for the welfare in all respects of his juniors. His youngest sister was a student. He was solely responsible for the financial upkeep of his youngest sister.

4. In allowing a sole parent rebate to the taxpayer Rogers J. concluded that the term "sole care" means sole financial responsibility. His reasons for so concluding appear in the following extract from his decision:-

"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 a 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."

5. In reaching his conclusion Rogers J. declined to follow the approach taken in earlier Taxation Board of Review decisions. In Case M78, 80 ATC, 549 : 24 CTBR (NS) 53, for example, Taxation Board of Review No. 2 considered that "sole care" vests in the person who has the full and unshared responsibility for making decisions on a day-to-day basis as to the child's upbringing and welfare, whether it be the food that he eats, the clothes that he wears or the school that he attends. In the Taxation Board of Review decisions the emphasis is placed on actual responsibility rather than financial responsibility.

6. In the circumstances of the Sharma case it is considered that the decision of Rogers J. was correct. The circumstances were unusual and the evidence disclosed that Mr. Sharma was responsible in all respects for the welfare of the junior members of his family - his responsibility was not only financial.

7. There are many cases where a taxpayer who has sole financial responsibility for a child will also have the actual responsibility for the child. Actual responsibility for a child is not necessarily affected if a taxpayer does not enjoy the unbroken presence or company of the child. The fact that a child attends boarding school does not affect actual responsibility. In other situations a child may live with relatives - it is not uncommon in cases of divorce or separation. This does not necessarily detract from actual responsibility. The Sharma case is a situation in this latter category.

8. To say, however, that sole financial responsibility is the one test that determines eligibility for a sole parent rebate is not, in the view of this office, in accord with the legislative intent behind the enactment of section 159K. The proposal for a sole parent rebate was first announced in the 1975-76 Budget Speech. The then Treasurer said:-

"There will be a separate rebate of \$200, known as the Sole Parent Rebate, for parents without partners, such as widows or widowers or unmarried persons, who have the sole responsibility for maintenance of dependent children."

9. The Explanatory Memorandum to the bill which subsequently introduced section 159K into the income tax law expanded on the purpose of the section in the following way:-

"Under this section (159K) a rebate of \$200 is to be allowable in the assessment of a taxpayer who is entitled to a rebate in respect of a child under 16 years of age or a student (up to 25 years of age) and has the sole care of that child or student. The rebate will be primarily for the benefit of single, widowed or divorced parents caring for a

child without the aid of a daughter-housekeeper or housekeeper."

10. The legislative intention in relation to sole care can be gleaned from the above passage. The sole parent rebate was introduced at a time when concessional rebates were allowable for dependent children and student children. Rebates were allowable to persons who contributed to the maintenance of children and student children. Essentially the test was a financial one. A taxpayer who bore the sole financial responsibility for a child was entitled to a maximum concessional rebate. There was provision for partial rebate to be allowed where more than one person contributed to the maintenance of a child or student child.

11. In the context of the sole parent rebate the entitlement to a concessional rebate for a child is a significant matter. It means that, if sole financial responsibility is the criterion for the allowance of a sole parent rebate, two rebates, i.e. concessional and sole parent, were allowable in respect of the same circumstances. If this is the case, the requirement of sole care which exists in the sole parent rebate provisions is deprived of any effect. This cannot be so. Clearly Parliament intended that a taxpayer who was entitled to a concessional rebate for a child should also have an additional rebate where he or she had the sole care of the child. It follows that the expression "sole care" should be interpreted as meaning something other than sole financial responsibility.

12. What is contemplated in the notion of sole care emerges from the concluding sentence of the quoted passage. The rebate is intended to benefit single, etc. parents caring for children without the aid of a daughter-housekeeper or housekeeper. The intention may be re-expressed justifiably to say that the rebate is to benefit parents caring for children without the aid of the care usually given by a daughter-housekeeper or housekeeper. The sort of care that latter persons would give to children is in the nature of actual responsibility, i.e. the general looking after or caring for a child.

13. In the light of the foregoing synopsis of the legislative intention behind the enactment of section 159K it is considered that the concept of sole care expressed in the Taxation Board of Review decision referred to in paragraph 5 above is the correct approach to be followed, i.e. sole care should be construed as sole responsibility for the actual looking after, caring, upbringing, etc. of a child.

14. Two other comments need to be made in relation to section 159K. Although the extracts from the Budget Speech of 1975-76 and the subsequent Explanatory Memorandum refer to section 159K as a measure for the benefit of single, widowed or divorced parents, the allowance of a sole parent rebate is not restricted to parents. The section applies to any person who would have been entitled to a concessional rebate for a child or student child, had the concessional rebate not been withdrawn,

and who has the sole care of the child.

15. The second point that needs to be made is that a taxpayer is eligible for a sole parent rebate even though he or she may not have been entitled to the maximum concessional rebate for a child had the rebate not been withdrawn. So long as the taxpayer would have been entitled to a partial concessional rebate for a child a sole parent rebate may be allowed where the taxpayer has the sole care of a child. It is frequently the case where parents are separated or divorced that each contributes financially to the maintenance of children of the marriage. Each would have been entitled to a partial concessional rebate for the children. It is the parent who has the sole care of the children who is entitled to the sole parent rebate. In a most recent decision of Taxation Board of Review No. 1, reported as Case T45, 86 ATC 370, the Board was faced with a claim for a sole parent rebate in these very circumstances. At paragraph 11 of his reasons, the Chairman concluded:-

"In the circumstances I would find (without being entirely convinced of its correctness) that the section grants a rebate to the person who has the responsibility for the maintenance of the child and who expends money on such maintenance irrespective of its source. That way here, although both mother and father each 'expend money on the welfare and maintenance of the dependant', it is only the mother who qualifies."

16. It is in the sense expressed by the Chairman that the requirement of sole care expressed in the 1986 Form S Tax Guide is to be understood. Taxation Ruling No. IT 2243 is withdrawn.

COMMISSIONER OF TAXATION
17 July 1986

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