

IT 2453 - Income tax: spouse rebate



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TAXATION RULING NO. IT 2453

INCOME TAX SPOUSE REBATE

F.O.I. EMBARGO: May be released

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REFERENCE NO: SUBJECT REFS: LEGISLAT. REFS:

	CONCESSIONAL REBATES	159 J
I 1010224	SPOUSE REBATE	
	SEPARATE NET INCOME	

OTHER RULINGS ON TOPIC IT 255, IT 2114, IT 2391

PREAMBLE

The purpose of this ruling is to restate the official policy in relation to the application of the provisions of sub-sections (3), (4) and (5) of section 159J dealing with concessional rebates for dependants.

LEGISLATION

2. Sub-sections 159J(3), 159J(4) and 159J(5) provide, inter alia, for the allowance of a rebate for a dependant where the taxpayer contributes to the maintenance of the dependant during the year of income and either-

(i) the contribution was made during part only of the year of income; or

(ii) the person was a dependant for part only of the year.

3. Sub-section 159J(3) provides for a proportion of the relevant maximum rebate to be allowed in these circumstances. Sub-section 159J(4) provides for the amount of the rebate otherwise allowable to be reduced by \$1 for every \$4 by which the separate net income derived by the dependant in the year of income exceeds \$282. Sub-section 159J(5) provides, in effect, that if the taxpayer and a person specified in column 2 of the table in sub-section 159J(2) reside together for the whole or part of a year of income that person is deemed, unless the contrary is shown, to be a dependant for the whole or that part of the year. Consequently, irrespective of separate net income, there is a rebuttable presumption that the taxpayer contributed to the maintenance of that person for the whole or that part of the year during which the two of them resided together.

CASES INTERPRETING THE LEGISLATION

4. It is apparent that section 159J, so far as it relates to part-year rebates, is open to two different interpretations.

One view is that adopted by the former Taxation Board of Review No.2 in Case L15 79 ATC 82; 23 CTBR (N.S.) Case 19, where it was held, on a strict interpretation of the provision, that sub-section (4) requires that separate net income derived by a dependant during the whole of a year of income be taken into consideration in determining the reduction of the rebate otherwise allowable, regardless of whether the taxpayer contributes to the maintenance of the dependant during the whole or only part of the year of income.

5. This approach was followed in a recent decision of the Administrative Appeals Tribunal, reported as Case U155, 87 ATC 904; Case 104, 18 ATR 3739. Although the taxpayer in that case was found to have rebutted the presumption raised by sub-section 159J(5), the Tribunal considered he was not entitled to any rebate when regard was had to the assessable income derived by his wife for the whole year of income.

6. The alternative interpretation, which was advanced by the taxpayer in Case L15 is that "dependant" as it appears in sub-section (4) should be interpreted as meaning a person factually dependant, that is, one towards whose maintenance somebody else contributes, and that circumstances or events which occur outside the period when the dependancy relationship subsists are of no relevance. In other words, the word "dependant" should be interpreted as indicating not only a descriptive status but also a temporal status. The effect of this construction is that income derived by a dependant outside the period of dependancy should not be taken into consideration in calculating the reduction of the rebate.

7. As the decision of the Tribunal in Case U155 again raises the different interpretations, the opportunity is taken to state the official view on the matter.

RULING 8. Section 159J is part of the concessional rebate scheme and the intention of Parliament was to compensate a taxpayer who maintains a dependant. At page 35 of the Explanatory Memorandum to the Income Tax Assessment Bill (No.2) 1975 covering these provisions, it is stated in relation to sub-section (4) that-

"For the purposes of the separate net income test, any income derived by the dependant outside the period in which the test for dependancy is satisfied (or a period that is, by sub-section (5), deemed to be a period during which the taxpayer is to be taken to have contributed to the dependant's maintenance) is disregarded".

9. Consistent with section 15AA of the Acts Interpretation Act, the Commissioner has adopted an interpretation of section 159J that reflects the intention as expressed. Accordingly, income derived by the spouse of a taxpayer before marriage will not be treated as separate net income in calculating the rebate for the period subsequent to the marriage. This is because the spouse is not a dependant until marriage. Once the spouse becomes a dependant by marriage, the separate net income thereafter derived is taken into account in calculating the spouse rebate.

The method of calculation of the rebate allowable is as follows:-

- (a) calculate, on the basis of the number of days of the year of income the spouse was a dependant, the partial rebate for the dependant spouse; and
- (b) deduct from that partial rebate \$1 for every \$4 (in excess of \$282) of separate net income derived by the dependant spouse in the period the spouse was a dependant.

10. The effect of sub-section 159J(5) was outlined in paragraph 3. In applying this provision it should not generally be accepted that a taxpayer did not contribute to the maintenance of a dependant during any period of residence with the dependant unless it can be demonstrated that the dependant was entirely self-supporting during that period; that in fact the taxpayer contributed in no way whatever to the maintenance of the dependant.

11. When dealing with future part-rebate cases the views of Board No.2 in Case L15 and the Tribunal in Case U155 should not be followed. Accordingly, where the presumption under sub-section 159J(5) is rebutted, a part year claim, subject to other requirements, should be allowed. The only cases which should then remain for determination before the Administrative Appeals Tribunal will be those where it is not considered that the taxpayer has been able to establish that the dependant was entirely self-supporting. Such cases should be dealt with on the basis that, although the approach in Cases L15 and U155 must be accorded respect, the Commissioner is constrained to adopt a purposive interpretation which he believes will give effect to the intention of Parliament. Accordingly, the Tribunal should be asked to confine itself to determining the issue under sub-section (5) and, if it finds for the taxpayer on that issue, to remit the matter to the Commissioner for reconsideration in accordance with sub-paragraph 43(1)(c)(ii) of the Administrative Appeals Tribunal Act.

COMMISSIONER OF TAXATION
17 December 1987