

IT 253 - Sole parent rebate in circumstances of mental or physical incapacity or imprisonment



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TAXATION RULING NO. IT 253

SOLE PARENT REBATE IN CIRCUMSTANCES OF MENTAL OR
PHYSICAL INCAPACITY OR IMPRISONMENT

F.O.I. EMBARGO: May be released

REF

*** NOTE: THIS RULING HAS BEEN MODIFIED BY IT 2243

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I 1070406

SOLE PARENT REBATE
MENTAL OR PHYSICAL
INCAPACITY
IMPRISONMENT
SPECIAL CIRCUMSTANCES
DEFINITION - SOLE CARE

159K(3)

OTHER RULINGS ON TOPIC:

IT 254

FACTS

1. In cases where a parent has a spouse, consideration has been given to whether mental or physical incapacity or imprisonment of the partner should be accepted as special circumstances for the purpose of granting the sole parent rebate.

2. Section 159K provides, under specified conditions, for a rebate of tax where a parent has the sole care of a dependent child. However, where the parent has a spouse, the rebate is not allowable unless the Commissioner is of the opinion that, because of special circumstances, it is just to allow a rebate.

RULING

3. The term "sole care" is not defined in the Act and must be given the meaning it bears in normal usage. Sole, in this context, means exclusive. Sole care, it is considered, means full and unshared responsibility for the physical care and upbringing of the child. It does not, of course, connote full financial responsibility for the child. There are many organisations which exist to help, assist and advise single or sole parents. But the responsibility for any decision concerning the child's welfare ultimately rests upon the parent alone. Where this situation exists it is accepted that the parent has the sole care of the child for the purposes of section 159K.

4. Where a parent is so mentally incapacitated that he is unable to share in the care of his child, i.e., he has not sufficient mental capacity to make intelligent or reasonable decisions to assist in arriving at them, the remaining parent does in fact have sole care of the child. It would not be

relevant whether the incapacitated parent resides with the family or apart from them. Severe mental incapacity may, therefore, be accepted as special circumstances for the purposes of section 159K(3). However, the parent must be mentally handicapped to the extent that he would be completely incapable of taking any part in the care of a child. It will accordingly be necessary to obtain certification of his condition by a medical practitioner or authority properly qualified for such purposes and the rebate will be limited to those cases where the condition is certified to be permanent or that recovery is most unlikely. The rebate will apply as from the date the condition is established.

5. It has also been decided that, *prima facie*, special circumstances would not exist where a parent suffers from social, economic or physical disabilities, notwithstanding how severe the latter may be nor where the parent is imprisoned for a short term. However, imprisonment for a long term, e.g. in excess of twelve months, should be accepted as a special circumstance - in many respects it may be likened to the position where one spouse has deserted the other (refer Taxation Ruling IT 254).

COMMISSIONER OF TAXATION