

INLAND REVENUE BOARD OF REVIEW DECISIONS

**Case No. D35/00**

**Salaries tax** – dependent brother/sister allowance – disabled dependent allowance – eligibility – incapacitated for work – Inland Revenue Ordinance (‘IRO’), sections 30B and 31A.

Panel: Ronny Wong Fook Hum SC (chairman), Calvin Fung Chor Hang and Stephen Lau Man Lung.

Date of hearing: 27 April 2000.

Date of decision: 12 July 2000.

The taxpayer has a sister and a brother. The sister is suffering from a congenital dislocated left hip while the brother is suffering from spinal deformity and both hands deformity. Both of them were under employment. The taxpayer used to reside with them until March 1999. The taxpayer claims dependent brother/dependent sister allowance and disabled dependent allowance in respect of the sister and the brother for the year of assessment 1998/99.

**Held:**

In order to claim the allowance, the taxpayer has to satisfy two conditions i.e. she had sole or predominant care for the sister and the brother and they were both ‘incapacitated for work’ by reason of their physical disability.

The Board found the taxpayer did not have the sole or predominant care of them. They held jobs, earned remuneration and could travel to work on their own. They could take charge of themselves since the taxpayer ceased residing with them.

**Appeal dismissed.**

Yeung Siu Fai for the Commissioner of Inland Revenue.

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Taxpayer represented by her husband.

### Decision:

### Background

1. The Taxpayer has a sister Ms A and a brother Mr B.
2. Ms A was born on 19 January 1957. She is suffering from a congenital dislocated left hip. According to a medical report dated 1 March 1999, Ms A 'should not walk stairs (up or down) more than 5 flights.' For the period between 1 April 1995 to 31 March 1999, Ms A was employed as a computer operator by a management services company. Her earnings during this period are as follows :

Period	Amount earned \$	Average per month \$
1-4-1995 to 31-3-1996	91,472	7,622.66
1-4-1996 to 31-3-1997	106,400	8,866.66
1-4-1997 to 31-3-1998	113,750	9,479.16
1-4-1998 to 31-3-1999	124,831	10,402.00

3. Mr B was born on 10 April 1963. According to a medical report dated 18 February 2000, Mr B has a history of spinal deformity and both hands deformity since childhood. However the medical officer took the view that 'There was no major functional deficit and he could cope with his work and daily activity.' For the period between 1 June 1995 to 11 August 1998, Mr B was employed as a clerk in a shipping company. His earnings during this period are as follows :

Period	Amount earned \$	Average per month \$
1-6-1995 to 31-3-1996	64,883	6,488.30
1-4-1996 to 31-3-1997	105,984	8,832.00
1-4-1997 to 31-3-1998	107,027	8,918.91

4. At all material times, Ms A and Mr B received subsidies under the Government's Disability Allowance Scheme administered by the Social Welfare Department.
5. By an assignment dated 25 July 1985, the Taxpayer and Mr B purchased a unit at District C ['Property 1']. By a further assignment dated 14 November 1994, Property 1 was transferred into the joint names of Ms A and Mr B. It is the Taxpayer's case that she made all the payments for the purchase of Property 1. The Taxpayer resided with Ms A and Mr B in Property

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1 until she moved out in March 1999 to her new flat in District D. The Taxpayer maintains that she returns to Property 1 every week end to perform household chores for Ms A and Mr B.

6. The issue before us is whether the Taxpayer is entitled to claim dependent brother/dependent sister allowance and disabled dependent allowance in respect of Ms A and Mr B for the year of assessment 1998/99. The Revenue permitted such allowance for the years of assessment 1996/97 and 1997/98 but had informed the Taxpayer their wish to re-open this issue.

### **The relevant provisions in the IRO (Chapter 112)**

7. Section 30B of the IRO provides :

*‘(1) An allowance (“dependent brother or dependent sister allowance”) shall be granted under this section ...in any year of assessment if a person ... maintains an unmarried brother or unmarried sister ...in the year of assessment and the person so maintained at any time in the year of assessment was –*

*(a) under the age of 18 years;*

*(b) of or over the age of 18 years but under the age of 25 years and was receiving full time education at a university, college, school ...*

*(c) of or over the age of 18 years and was, by reason of physical or mental disability, incapacitated for work.*

*(3) For the purpose of this section –*

*(a) a brother or sister of the person ...is only treated as maintained by the person ...if, at any time during the year, the person ...had sole or predominant care of the brother or sister ...’*

8. Section 31A of the IRO provides :

*‘(1) An allowance (“disabled dependent allowance”) ...shall be granted in any year of assessment to a person in respect of every dependent of his or hers who is eligible to claim an allowance under the Government’s Disability Allowance Scheme.*

*(4) for the purposes of this section, “dependent”, in relation to a person, means -*

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*(e) a brother or sister ...for whom the person is entitled to be granted an allowance under section 30B for the year of assessment.'*

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9. The Taxpayer's husband [ ' Mr E ' ] appeared before us. Mr E accepts that the Taxpayer's entitlement to disabled dependent allowance hinges on her entitlement to dependent brother or dependent sister allowance by virtue of section 31A(e) of the IRO. Mr E further accepts that the Taxpayer has to satisfy two requirements for the purpose of the dependent brother or dependent sister allowance. First, the Taxpayer has to satisfy us that she ' had sole or predominant care ' of Ms A and Mr B. Secondly, the Taxpayer has to prove that Ms A and Mr B were both ' incapacitated for work ' by reason of their physical disability.

10. Mr E drew our attention to the meaning given to the words ' care ' and ' work ' in the Oxford Dictionary. ' Care ' was there defined to mean ' serious attention or thought; watchfulness; pains ' and ' protection; charge; responsibility. ' ' Work ' was there defined to mean ' use of bodily or mental powers with the purpose of doing or making sth ' ; ' what a person does to earn a living; employment ' and ' sth to be done, not necessarily connected with a trade or occupation, not necessarily for payment. '

11. Mr E argued that the Taxpayer had sole or predominant care of Ms A and Mr B. They shared Property 1. Mr E further argued that the word ' work ' should be construed widely and should not be confined to mean employment. He asserted that Ms A and Mr B could not work in the sense of looking after themselves.

### **Our decision**

12. We are not persuaded on the facts that the Taxpayer had ' sole or predominant care ' of Ms A and Mr B. Ms A and Mr B travelled to work on their own. They both held jobs. The levels of their remuneration indicate they were of real value to their employers. They were earning their own living. The Taxpayer ceased residing with them in March 1999. Ms A and Mr B took charge of themselves during the week. There is no evidence before us indicating that the position was any different before March 1999. Whilst we have no doubt that the Taxpayer did lend assistance in the daily activities of her brother and sister, we are however not convinced that she ' had sole or predominant care ' of both Ms A and Mr B.

13. This is sufficient for us to dispose of the present appeal. Whilst our preference is to interpret the word ' work ' as meaning ' gainful employment ' , we do not wish to reach a concluded opinion on this issue.

14. For these reasons, we dismiss the Taxpayer's appeal.

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