

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D45/99

Salaries Tax – statutory allowance – section 27 and section 30 of the Inland Revenue Ordinance – Dependent Parent Allowance – maintains a parent – meaning of parent – meaning of adopted – section 25 of the Adoption Ordinance.

Panel: Ronny Wong Fook Hum SC (chairman), Henry Lau King Chiu and Paul Ng Kam Yuen.

Date of hearing: 7 June 1999.

Date of decision: 10 August 1999.

The taxpayer was born on 18 February 1974. The taxpayer's father is unknown and the taxpayer's mother disappeared since the taxpayer's birth. Mr and Mrs B looked after the taxpayer. By a declaration under the Oaths and Declarations Ordinance, Mrs B declared that she was the guardian of the taxpayer. The taxpayer sought to deduct from her salaries the statutory 'Dependent Parent Allowance'.

Held:

The taxpayer is not the off-spring of Mr and Mrs B. The allowance can only be available if she is the adopted child of the couple. However, no step was taken by Mr and Mrs B to adopt the taxpayer pursuant to the provisions of the Adoption Ordinance. The taxpayer was born on 18 February 1974. This precludes any attempt to invoke Chinese law and custom. Therefore the Board found that Mr and Mrs B are not within the statutory meaning of the word 'parent' for the purpose of the allowance.

Appeal dismissed.

Pak Wai Man for the Commissioner of Inland Revenue.

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Taxpayer in person.

Decision:

1. This is a sad case. It is a matter of regret that there is very little that this Board can do to assist the Taxpayer.
2. The Taxpayer was born on 18 February, 1974. Ms A is her mother. The identity of her father is unknown. Ms A disappeared since the Taxpayer's birth.
3. Mr and Mrs B looked after the Taxpayer. By a declaration dated 10 June 1985 under the Oaths and Declarations Ordinance, Mrs B declared that she was the guardian of the Taxpayer. Both Mr and Mrs B appeared before us. We have no doubt that they looked after the Taxpayer with care and affection.
4. The Taxpayer is now working as a customer service representative with Company C. She seeks to deduct from her salaries the statutory 'Dependent Parent Allowance'. We have no doubt whatsoever that the Taxpayer is faithfully discharging her moral obligations in maintaining Mr and Mrs B.
5. The sole issue before us is whether the Taxpayer is entitled to the statutory allowance.
6. Section 30(1) of the Inland Revenue Ordinance ['the IRO'] provides that the Dependent Parent Allowance shall be granted if the taxpayer in question 'maintains a parent.'
7. Section 30(4)(b) of the IRO provides that the word 'parent' in relation to a person means:
 - a. a parent of whose marriage the person is the child.
 - b. a parent by whom the person was adopted.
8. The Taxpayer is not the off-spring of Mr and Mrs B. The allowance can only be available if she is the adopted child of the couple.
9. Section 27 of the IRO provides that 'adopted' means 'adopted in any manner recognized by the laws of Hong Kong.' Section 25 of the Adoption Ordinance provides that:

'(1) After 31 December 1972, an adoption in Hong Kong may be effected only in accordance with this Ordinance.'

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(2) *Subsection (1) shall not affect in any way the status or rights of a person adopted in Hong Kong under Chinese law and custom before 1 January 1973.'*

10. No step was taken by Mr and Mrs B to adopt the Taxpayer pursuant to the provisions of the Adoption Ordinance. The Taxpayer was born on 18 February 1974. This precludes any attempt to invoke Chinese law and custom.

11. For these reasons, Mr and Mrs B are clearly not within the statutory meaning of the word 'parent' for the purpose of the allowance.

12. Both the Revenue and this Board respect and applaud the relationship between the Taxpayer and Mr and Mrs B. Our hands are tied by the Ordinance. We have to dismiss the appeal with regrets.