

Inland Revenue Department not unreasonable to pay tax refund to estranged wife

Legislation	Ombudsmen Act 1975
Agency	Inland Revenue Department
Ombudsman	Beverley Wakem
Case number(s)	W57220 (previously unpublished)
Date	2007

Inland Revenue (IRD) decision to pay complainant's tax refund to estranged wife appropriate in the circumstances

The complainant claimed that the Inland Revenue Department's (IRD) decision to pay his tax refund to his estranged wife was unreasonable. IRD had told the complainant that the payment had been made pursuant to IRD's understanding that the complainant had arranged for his wife to be a 'nominated person' with authority to act as his agent for his tax affairs.

Following inquiries made to IRD, the Ombudsman concluded that the IRD acted appropriately in this case because it relied on the information it held. The complainant had told IRD that his wife would be attending to his tax affairs while he was in prison. During the period he was serving his sentence, the couple separated. However IRD was given no instruction that the initial arrangement for his wife to sign on his behalf and handle his tax affairs, had changed. The Ombudsman noted that with hindsight, the complainant should have reviewed the issue of what authorities he had given for his wife, once the couple had separated.

The Ombudsman concluded that actions taken by the IRD in this case had been appropriate based on the information it held. Even if IRD had noted the couples' domestic situation, it would seem the IRD was entitled to process the tax returns as it did and to pay the resulting refunds as advised by the return details. The Ombudsman believed that it was therefore difficult to come to a view that IRD's actions could be said to be 'contrary to law' or that they were 'unreasonable, unjust, oppressive or improperly discriminatory'. In the circumstances, the Ombudsman concluded that she was unable to sustain the complaint.

However the Ombudsman suggested to IRD that where a verbal request is made by a taxpayer to appoint a person as an agent for their tax affairs, (as in this case), it would be reasonable for IRD to confirm the arrangement in writing. The letter could then set out the scope of the functions that the taxpayer was allowing the agent to carry on their behalf, and the extent of the taxpayer's information that the agent would be able to access. The Ombudsman considered that this would provide a robust process to ensure that people in the complainant's situation understand all implications of agreeing to assign rights to the agent.

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