

TAX TIPS & TRAPS

SEPTEMBER 2007

PERSONAL TAX

MEDICAL EXPENSES - TUTORING SERVICES

In a May 15, 2007 Tax Court of Canada case, the taxpayer's two sons suffered from learning disabilities and were home-schooled through a program provided by the North Island Distance Education School (NIDES). In addition, a private tutor was hired to facilitate and supplement the distance learning and special needs education packages and provide supervision required because of the children's disabilities.

The Canada Revenue Agency (CRA) disallowed the medical expense for the tutoring costs of \$52,840.

Taxpayer Wins!

The Court found that these tutoring services were eligible medical expenses. The Court noted that this provision should be interpreted compassionately in favour of the taxpayer.

MEDICAL EXPENSE - DEPENDANT PARENT

In a May 7, 2007 External Technical Interpretation, CRA notes that a taxpayer may claim a medical expense incurred in respect of a dependant parent.

CRA notes that it is possible for someone to be dependent on more than one person. Accordingly, it is possible that more than one person may claim a portion of an allowable credit.

MEDICAL EXPENSE - TRAVEL INSURANCE

In a June 7, 2007 External Technical Interpretation, CRA notes that the cost to acquire certain medical travel insurance policies can qualify as a medical expense if paid as a premium, contribution or other consideration to a Private Health Services Plan.

TUITION FEE TAX CREDIT - DISTANCE LEARNING

In a May 9, 2007 Technical Interpretation, CRA notes that a student enrolled at a university outside Canada and taking courses over the Internet may be able to claim a tuition tax credit for the tuition fees provided that the student is able to demonstrate that their attendance via the Internet constituted "full-time attendance".

CHILDREN'S FITNESS TAX CREDIT

In a June 11, 2007 Technical Interpretation, CRA notes that for children's camp fees to qualify for the fitness tax credit in 2007, the camp must have a five-day duration with more than 50% of the program time devoted to physical activity - up to a maximum of \$500.

EMPLOYMENT INCOME

OVERTIME MEAL ALLOWANCE

In a May 15, 2007 External Technical Interpretation, CRA notes that it has an administrative policy that an overtime meal allowance will not be taxable if:

- the employee works three or more hours of overtime after his/her scheduled hours of

IN THIS ISSUE
<p>PERSONAL TAX</p> <p>EMPLOYMENT INCOME</p> <p>BUSINESS/PROPERTY INCOME</p> <p>OWNER-MANAGER REMUNERATION</p> <p>INTERNATIONAL ESTATE PLANNING</p> <p>GST</p> <p>WEB TIPS</p>

work;

- the overtime is infrequent and occasional (less than three times a week); and
- in the case of an allowance, the employee purchases a meal during or immediately following the overtime period.

PROFESSIONAL MEMBERSHIP DUES

In a June 11, 2007 External Technical Interpretation, CRA notes that the payment of professional membership fees by an employer on behalf of employees is not a taxable benefit if the employer is the primary beneficiary. When the professional association is related to an employee's duties, and membership is a requirement of employment, the employer is likely the primary beneficiary. However, even when membership is not a condition of employment, the question

of primary beneficiary must still be resolved.

EMPLOYEE OR SELF-EMPLOYED - RC4110

New CRA Guide RC4110 includes information on determining employer/employee versus independent contractor status. This is important because of the significant trend for employers to engage independent contractors, as opposed to employees, to save on payroll costs such as Employment Insurance (EI), Canada Pension Plan (CPP), and vacation pay. Recipients initially may be in favour of this status to avoid source deductions and to access deductions available to self-employed people but, this may change if they are laid off and they wish to claim EI.

Problems

There is significant down-side to a business that engages independent contractors who are subsequently determined by CRA to be employees. CRA may assess the payor for CPP and EI causing significant financial hardship to the business. Also, certain expenses of the recipient may be disallowed. Therefore, it is essential to ensure that the relationship meets these CRA Guidelines.

BUSINESS/PROPERTY INCOME

CONDOMINIUM RENTAL LOSSES

In a March 2, 2007 Tax Court of Canada case, the taxpayer incurred rental losses on a luxury condominium property in Whistler, British Columbia of \$16,247, \$37,156 and \$27,177 in the years 2001, 2002 and 2003.

Taxpayer Loses

The Court disallowed a deduction for the losses and noted that:

- The taxpayer and his family had significant personal use of the condominium for recreational purposes. Therefore, the taxpayer must show a commercial manner for it to be considered a source of income.

- There was little evidence respecting the ability to show a profit.

The property was purchased for \$1.3 million and financed with a \$900,000 mortgage. The Appellant recognized that he would have had to reduce the interest expense to make a profit but, had been unable to do so.

No analysis was done by the Appellant with respect to the property's potential to earn a profit other than a "back-of-the-envelope kind of thing".

OWNER-MANAGER REMUNERATION

DIRECTOR LIABILITY

Where a corporation fails to remit payroll deductions or GST/HST, the directors are jointly and severally liable to pay that amount and, interest and penalties related thereto.

However, a director is not liable if he/she exercises the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

Also, no action to recover any amounts payable by a director may be made by CRA more than two years after the director last ceased to be a director of the corporation.

In a January 19, 2007 Tax Court of Canada case, Mr. C was one of five directors in a corporation which had not remitted payroll deductions. He was assessed with personal liability for the unremitted deductions.

In a May 23, 2007 Tax Court of Canada case, the taxpayer was one of two directors in a housing development corporation. The taxpayer, Mr. H, was responsible for the operations side of the business. The other director, Mr. O, was responsible for the financial dealings.

The corporation did not make its GST/HST remittances and CRA assessed Mr. H personally for the unremitted amounts.

Taxpayer Wins!

The Court noted that given Mr. H's involvement in the company had nothing to

do with the financial aspects of the operation, Mr. H did all that could be expected of him with respect to ensuring the GST/HST was paid.

INTERNATIONAL

U.S. ESTATE TAX ON U.S. PROPERTY

A Canadian citizen/resident who dies is subject to U.S. Estate Tax on U.S. situs assets, subject to a tax credit of \$13,000 which applies on \$60,000 of U.S. situs assets. Also, a prorated exemption is calculated by multiplying \$2 million by the Canadian person's U.S. situs assets divided by the value of the worldwide assets.

In addition, a marital exemption is allowed equal to this prorated exemption.

ENGAGED IN A TRADE OR BUSINESS IN THE U.S.

Canadian businesses engaged in a trade or business in the U.S. must file a U.S. Federal Income Tax Return. If it is uncertain whether you are engaged in a U.S. business it may be advisable to file a "protective" U.S. Income Return showing zero tax liability on business income. If you are engaged in a U.S. business but you do not have a "permanent establishment" in the U.S. there may be no U.S. Federal Income Tax liability but you still must file a U.S. Income Tax Return to take advantage of this Tax Treaty claim.

ESTATE PLANNING

BELL CANADA ENTERPRISES INC. (BCE) - SHARE SALE

Under the proposed buyout of BCE shares by the private-equity group lead by the Ontario Teachers' Pension Plan, expected in 2008, there will be substantial capital gains for most BCE shareholders who held the shares for a period of time, assuming they have not been held in registered plans such as RRSPs or RRIFs.

Options

- Consider donating the BCE shares to a charity prior to the

sale and obtain a donation receipt for the fair market value of the shares and not have to report the capital gain.

- Sell the BCE shares in 2007 and sell other securities which have a loss to offset against the capital gain.
- Use capital losses carried forward from prior years to offset the capital gains.
- Do nothing and pay tax on the capital gain.

JOINT OWNERSHIP

In a May 3, 2007 Supreme Court of Canada case, a father had a joint bank account with his daughter when he died. Certain bequests were left to the daughter, her husband and her children. The residue was to be divided equally between the daughter and her husband. The Will did not mention the joint bank account.

The daughter redeemed and kept the balance in the joint accounts on the basis of a right of survivorship. The daughter later divorced her husband and the husband claimed that he was entitled to part of the joint bank account on the basis that it was meant to be part of the residue of the estate.

Daughter Wins

The Court dismissed the husband's appeal but noted that the onus is on the transferee (the daughter) to demonstrate that a gift was intended. It falls on the party challenging the transfer (husband) to rebut the presumption of the gift. In this case, the evidence clearly demonstrated the intention on the part of the father that the balance left in the joint accounts was to go to the daughter alone on his death through survivorship.

Since it is common nowadays for aging parents to transfer assets into joint accounts with their adult children to have

that child assist them in managing their financial affairs, it will fall to the surviving joint account holder to prove that the transferor intended to gift the right of survivorship to whatever assets are left in the account to the survivor. The evidence may include the wording used in the bank documents, the control and use of the funds in the account, the granting of a Power of Attorney and the tax treatment of the joint accounts.

Caution

This is a tricky area. Specialized legal advice is needed.

GST

NEW HOUSING REBATE

In a March 24, 2005 Tax Court of Canada case, the taxpayer claimed a new housing rebate for a renovation of a condominium. CRA disallowed the rebate on the basis that it was not "a substantial renovation".

Taxpayer Wins!

The Court found that it was a substantial renovation and noted that:

- The two bedrooms became one large room, the bathroom was modified, the room divisions were moved, and the kitchen was redone.
- All the walls required touch-ups because of a water leak, the bathroom on the mezzanine was redone, the electrical fixtures were replaced by recessed lighting, and the heaters or electric baseboards were changed.

IMPORTED GOODS

For information on claiming an Input Tax Credit for GST on imported goods see CRA Guide [P-125R](#), June 1, 2007.

SMALL SUPPLIERS

"Small suppliers" are not required to reg-

ister for GST, but may wish to voluntarily do so in order to claim input tax credits.

A person is a "small supplier" if taxable supplies in the four preceding calendar quarters do not exceed \$30,000. The \$30,000 includes revenue from associated persons. For example, a person is associated with a corporation if the corporation is controlled by the person.

This means that if Mr. A owns 51% of the shares of Company A and Company A has taxable supplies of over \$30,000, Mr. A must register even if he has only \$1 of taxable supplies because he and an associated corporation has more than \$30,000 of taxable supplies.

WEB TIPS

[EVITE.COM](#)

This tool is perfect for both inviting and receiving organized responses when coordinating events. One starts off by selecting the type of event being planned from the drop-down list on the home page. From there you fill out pertinent information including items such as date, time, location, and email addresses of invitees.

Once completed, an email is sent to all invitees. Invitees can then click on the invitation received and select whether they will attend or not and may also send additional comments. The inviter will then have access to a running list of all responses and additional comments.

DID YOU KNOW...

INDIVIDUAL PENSION PLANS

Under certain circumstances, Individual Pension Plans for owner-managers of corporations may offer significant increases in tax deferred retirement assets, rather than simply utilizing the RRSP option