

PERSONAL TAX

70(1)

MEDICAL EXPENSES

In an October 21, 2004 *CRA Document*, CRA notes that an amount paid in respect of a “*medical service*” provided by a licensed *medical practitioner* qualifies as a medical expense. This includes a *weight-loss program* offered for therapeutic or rehabilitative reasons.

Also, a *medical expense* includes care at a school, institution or other place when a qualified person certifies that the patient, by reason of a physical or mental impairment, requires the equipment, facilities or personnel specially provided by that place.

In a February 10, 2005 *Tax Court* of Canada case, the Court permitted *medical expenses* for the *costs* at a *Kelowna retirement home* (Hawthorn Park) of \$21,270, \$20,912, and \$28,055 for the years 2001, 2002 and 2003.

MOVING EXPENSES

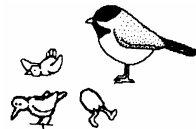
In a November 26, 2004 *Tax Court* of Canada case, *moving expenses* were *permitted* when the taxpayer moved from London, Ontario to Mississauga, Ontario including packaging materials, temporary lodging, real estate commissions, legal fees, taxes paid for registration of title on new residence, title insurance fees, conveyance closing, mortgage registration and transfer fee, Hudac enrollment fee, hydro

and water meter, and household travel expenses.

In a February 4, 2005 *Tax Court* of Canada case, even though the move occurred *seven years* after the change of employment location, the *Court permitted the moving expense* on the basis that the delay in moving was caused by business problems and a lien registered against a Nanaimo property.

CAMP FEES - CHILD CARE EXPENSES

In a December 7, 2004 *External Technical Interpretation*, CRA note that a sports camp



for *young children* which is not of an ongoing nature and has a sufficient degree of child care may be *eligible* as a *child care expense* even though the program is enriched by sporting activities.

The *key* is whether the Camp is providing a sufficient degree of *child care services* or, whether a portion of the Camp fees were really for *training/education*.

EMPLOYMENT INCOME

70(2)

WELLNESS PROGRAMS

It was noted in “*The Business Executive*” that 83% of U.S. companies and 40% of

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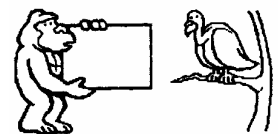
Canadian companies have *wellness programs* in place for their employees.

In an independent evaluation of its wellness program over a ten-year period, *Canada Life* reported a return of *\$6.85* for each *dollar spent*. These findings are based on aspects such as reduced employee turnover, decreased medical claims and greater productivity.

The article notes that worldwide wellness programs produce a return of between *\$1.95* to *\$3.75* per employee for each dollar invested.

FLEX BENEFIT PLANS

In a November, 2004 *Advance In-*



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come Tax Ruling, the company provides its *employees* with a *flexible benefit plan* on which an employee *may choose* from a menu of benefits such as medical and dental insurance, disability insurance, and group life insurance.

The company now proposes to introduce a *Health Care Expense Account* (HCEA) for its employees.

CRA Ruled that the allocation of credits to the HCEA will *not* be considered taxable *employment income*.

CRITICAL ILLNESS GROUP INSURANCE

In a January 14, 2005 *External Technical Interpretation*, CRA notes that a *Critical Illness (CI) Group Insurance Policy* does *not* constitute a *taxable benefit*. Also, payment of a *lump-sum benefit* under the Policy in the event of a critical illness *may not be a taxable benefit*.

In a February 10, 2005 *External Technical Interpretation*, CRA notes that where a contract of employment is *renegotiated* to *decrease the salary* with *corresponding additional Private Health Service Plan premiums* to be paid by the employer, these premiums would probably *not* be *taxable* employment income if the contract of employment is *renegotiated* after the expiry of the former employment contract.

EMPLOYER-PROVIDED PARKING

In a November 26, 2004 *External Technical Interpretation*, CRA notes that there is *no taxable employment benefit* when an employer provides *free parking* if the employee is *regularly required* to use the vehicle to carry out the *duties of employment*.

EMPLOYER-PROVIDED SCHOLARSHIP PROGRAM FOR EMPLOYEES' DEPENDANTS

In a December 1, 2004 *External Technical Interpretation*, CRA notes that where an employer has a *scholarship program* for *dependants of employees, and former employees*, the amounts paid will be *scholarship* income to the *student* (not

income to the employee) if the program meets objective *criteria*.

Editor's Comment

Generally the *first \$3,000* of *scholarship income* is *tax free*.

GIFTS AND AWARDS

In a March 10, 2005 *Fact Sheet*, CRA reminds employers that they may make up to two *non-taxable gifts* and two *non-taxable awards* to an employee but the total cost of the *gifts* or the *awards* cannot be over *\$500 per employee* (including all taxes) per year.

Caution!

Specific tests must be *met*.

BUSINESS/PROPERTY INCOME

70(3)

SHARE SALES

In a June 25, 2004 *Tax Court* of Canada case, the taxpayer had *losses of \$45,356* on *security transactions*. The Court permitted the *full business loss* treatment and noted that the business losses were claimed on share sales in *three technology and computer companies*. The taxpayer was *seeking growth*, not dividends, in the share investments.

The taxpayer also did report "*capital losses*" (only one-half deductible and only against capital gains) totalling \$7,267 on other *less speculative shares* such as Bell Canada.

SALARIES TO CHILDREN

In a February 11, 2005 *Tax Court* of Canada



case, the taxpayer deducted from his *business* income *salaries* to two of his *children* in 1999 of \$7,600 and in 2000 to his five children totalling \$34,800.

Because the taxpayer's *bookkeeping was deficient* and, certain of the *letters* from the children with respect to the hours

worked and the hourly rates were *not signed* and, two of the children *did not testify* and, there was some doubt as to whether the *full amounts* were *actually paid*, the Court reduced the deductions by one-half. The children were ages 16, 16, 18, 20 and 21 and were allegedly paid at the rates of \$10 to \$15 per hour worked.

LIFE INSURANCE COMMISSIONS

In a February 24, 2005 *Tax Court* of Canada case, Mr. M was *employed* by London Life Insurance in 1998 when he *allocated* \$30,000 of *commissions to his corporation* on the basis that the corporation earned this commission income.

Taxpayer Loses!

The commissions were taxed on the *individual's return* because there was *no proof that the corporation* had taken over the contracts with London Life prior to 1999.

CAPITAL GAINS

70(4)

CAPITAL GAIN DEFERRAL

Where an *individual* sells *shares* of a *qualified small business corporation* and uses the proceeds to invest in *Treasury* shares of another qualified small business corporation there *may be a deferral* of the capital gain.

However, there are many *technicalities* that must be met.

BUSINESS INVESTMENT LOSS

In a January 7, 2005 *Tax Court* of Canada case, the taxpayer had *losses* when she *loaned funds* to her husband's corporation on a *non-interest bearing* basis and *guaranteed* the debts of her husband's corporation for no consideration.

Bad News - Loans

The *loans* by Mrs. E to her husband's corporation were *not* eligible for capital loss treatment be-



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cause they were not incurred to earn income. They were *non-interest bearing* and, she *did not own* any *shares* in the corporation.

Good News - Personal Guarantees

The \$40,245 that Mrs. E *paid* for the company's obligations under her *personal guarantee* was 50% deductible as a "*business investment loss*".



2005 FEDERAL BUDGET

70(5)

On February 23, 2005, the Honourable *Ralph Goodale* presented his *2005 Budget* to the House of Commons.

Some of the *proposals* include:

Qualified RRSP Investments

Add to the list of *qualified investments*, investment-grade gold and silver bullion coins and bars, and certificates on such investments purchased on or after February 23, 2005.

Foreign Property Rule

The 30% *limit of foreign property* that may be held by pension funds and other deferred income plans is proposed to be *eliminated*.

Canada Deposit Insurance Corporation Coverage

To be increased from \$60,000 to *\$100,000*.

Medical Expense Tax Credit

There will be *added to the list* of eligible expenses amounts paid for certain phototherapy equipment, oxygen concentrators, deaf-blind intervening services, reading services, drugs and medical devices obtained under Health Canada's Special Access Programme, and certain *medical marihuana*.

Adoption Expense Tax Credit

An individual will be entitled



to deduct in computing tax payable 16% of the *lesser of \$10,000* (indexed after 2005) and *amounts paid* in respect of *eligible adoption* expenses.

Agricultural Cooperatives

Introduces a *tax deferral* for eligible *shares* issued *after 2005* in respect of *patronage dividends* paid by an agricultural cooperative corporation *until* the cooperative shares are *disposed*.

International Tax Enforcement

CRA proposes to invest \$30 million annually in *enhanced CRA audit and collection* activities with respect to *cross-border and international* transactions.

ESTATE PLANNING

70(6)

REWARD POINTS

It is possible to *donate retail reward points to a charity* and receive a *charitable donation tax credit*. Some companies that encourage such donations include Hudson's Bay Company, Shoppers Drug Mart Corp., Royal Bank of Canada (RBC) and Petro-Canada.

Also, Royal Bank of Canada Visa cardholders can *donate points to Hope Air* - a registered charitable organization.

Editor's Comments

Total *donations* in excess of \$200 trigger a personal income tax credit at *top marginal rates*.

DONATION RECEIPTS

In a January 18, 2005 *Release*, CRA notes that registered charities now have to include the *website address* of *CRA* (www.cra.gc.ca/charities) on *donation receipts* as of January 1, 2005.

However, CRA will honour receipts that do not contain the new information and will not penalize for *not including* this new information *in 2005*.

Editor's Comments

Donors should *check the validity* of ques-

tionable organizations by referring to www.cra.gc.ca/charities and clicking on "list of Canadian Registered Charities".

NON-PROFIT ORGANIZATIONS (NPO) - RENTAL INCOME

In a November 25, 2004 *External Technical Interpretation*, CRA notes that where a *NPO* rents out its *excessive space*, this *may jeopardize its non-profit status*.

CANADA PENSION PLAN

The November 23, 2004 issue of the *Globe and Mail* notes that there is an estimated *underpayment of CPP*



benefits in the *\$1 billion range*. About 90% of the errors were blamed on *improperly completed applications* such as incomplete disclosure about the *Child Rearing Dropout Provision* and other *dropout* provisions.

Also, the report notes that many seniors are not aware that CPP benefits may be *split* after *separation or divorce*, or be split between spouses who have *reached age 60*.

DEATH

Where Mr. A dies his *RRSP is terminated* at that time. However, if he did have *RRSP contribution room*, the legal representative can make a contribution to the *surviving spouse's RRSP* in the *year of death*, or within *sixty days* after the year-end, and claim a *deduction* on the husband's *final tax return*.

LEAVING CANADA

It is usually best *not to cash in your RRSP* before giving up Canadian residence. If the amounts are withdrawn *after leaving Canada*, they will only be subject to a 25% withholding tax, or 15% if received on a *periodic basis* in certain Treaty countries.

Also, it may be important to *crystallize the cost base* of RRSP assets before leaving Canada as the cost base can be taken out

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tax-free in the *United States*.

Also, it is possible to defer the reporting of income in the *RRSP* in the *United States* by electing with the *IRS*.

FARMING

70(7)

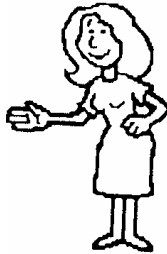
CANADIAN AGRICULTURAL INCOME STABILIZATION PROGRAM (CAIS)

Cattle

One problem with CAIS is the way it *values cattle*. For example, a bred cow worth \$1,200 on January 1, 2005 may only be worth, say, \$800 at December 31, 2005. Because CAIS uses a *one-price system*, based on the *end-of-the-year price*, it will value that cow at \$800 for the entire year.

Ideas to Help Minimize the Stress of CAIS

Farmers should *keep records* of information needed by CAIS but not readily available after the fact. For example, the number of *calves born*, number of *animals died*, amount of *production* during the year like hay/straw bales produced by field, bushels of crop produced by field, an *inventory* count at yearend, and details of any *barter transactions* (i.e. a hay crop is baled and the custom operator receives a share of the bales as payment). The *other information* needed for the CAIS program is found in *sales and purchase* invoices (i.e. crops sold and seed purchased, feed bought and sold, cattle bought and sold).



SEASONAL AGRICULTURAL WORKERS

In February, 2005, CRA released *Guide RC4004* which discusses how *seasonal agricultural workers* are taxed, employer withholdings, and related matters.

JOINT OWNERSHIP

In a February 9, 2005 *External Technical*

Interpretation, CRA notes that where *farmland* is put into *joint ownership*, there will *not* be a disposition if there is *no change* in the *beneficial ownership* of the property.

However, if the beneficial ownership *does change*, there will be a *disposition* for tax purposes.

MARRIAGE BREAKDOWN

70(8)

CHILD SUPPORT

In a December 16, 2004 *Federal Court of Appeal* case, Ms. K was entitled to receive *child support payments* under a *1991 Minutes of Settlement*. However, a portion of the amounts were *not paid*. Therefore, on *September 24, 1997* the Ontario Court issued a *Judgment* providing for the payment of child support on the same terms and conditions as the *1991 Minutes of Settlement*. Ms. K took the position that this was a *post-April, 1997 Judgment* and, therefore, receipts were *non-taxable*.

Taxpayer Loses

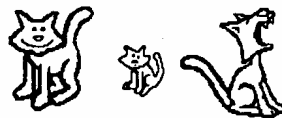
The *1997 Judgment* did *not alter* this obligation. It simply made collection procedures simpler for Ms. K. Therefore, the receipts were *taxable*.

SPOUSAL SUPPORT

The *Federal Department of Justice* has released *Spousal Support Guidelines* which provide *formulas* suggesting a range of *spousal support* under certain circumstances. These *Guidelines* range generally between *1.5% and 2%* of the difference between the salary earned by the payor and that earned by the recipient times the number of years the couple were married. These *Guidelines* include *160 pages of detail*.

RETROACTIVE PAYMENTS

An *Alberta Court of Appeal* unanimous Ruling held



that when the income of a person paying *child support* goes up, the obligation to pay higher support for the children would generally *commence at that time*. Therefore, a child support payor could *owe substantial amounts* for retroactive child support if the payor's income has increased since the original settlement date.

Other Appeal Courts, such as Ontario and British Columbia, have been moving in the same direction but this Alberta Decision is the *clearest and most comprehensive* to date.

LEGAL FEES

Recipient

In a February 2, 2005 *External Technical Interpretation*, CRA confirms that legal fees to *obtain support amounts* may be deducted on an *accrual basis*.

Payer

In a January 14, 2005 *Tax Court* of Canada case the Court *disallowed the deduction* and noted that expenses incurred by the *payer of support* are *not deductible*.

GST

70(9)

TRAVEL ALLOWANCES AND REIMBURSEMENTS

The Excise Tax Act provides *input tax credits/rebates* in respect of non-taxable *travel allowances and reimbursements* paid to employees.



CONSIGNED GOODS

In November, 2004, CRA introduced *Guide GI-009* which explains the application of GST/HST to goods sold on a *consignment basis*.

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WEB TIPS

70(10)

WEB SEARCH ENGINE

Dogpile.com

If you are looking for an *alternative search engine* to use, try *dogpile.com*. This engine also contains the feature of a *short list of similar "search word" suggestions*.

DESKTOP SEARCH ENGINE

Blinkx.com

A desktop search engine is a tool that *searches your computer* for files.

Blinkx.com offers a *free* search tool that *instantaneously* returns results without even having to hit the enter key.

The first advantage of this search engine over others is that you can *quickly sort your results based on file type*.

The second advantage is that this program does *not have the same bias towards Microsoft products* that the Google search engine does.

RADIO ON THE NET

If you work in an environment that allows for sounds or music, consider using your computer to *connect to a radio station via the Internet*.



<http://radio-locator.com>

This website provides *links to radio stations* across the globe.

DID YOU KNOW...

70(11)

DUE DILIGENCE DEFENSE

In an October 6, 2004 *Tax Court* of Canada case, Mr. F was one of three *directors* who was assessed with *personal liability* for unpaid GST (\$38,000) and source deductions (\$92,000). The Court noted that to successfully use the *due diligence defense*, the director usually must take *active steps* to ensure that a corporation makes its remittances. An *outside director* will *not* be held to the *same standard* as an inside director. Also, a director's *background and experience* in business will be given great weight in determining whether the director has met due diligence.



Taxpayer Wins!

The Court accepted the *due diligence defense* and noted that:

1. Mr. F was born in Italy, came to Canada at the age of thirteen, had education limited to *grade 3* in Italy and eight months in Canada, had limited reading and writing skills and spent most of his working life as a *carpen-*

ter.

2. Mr. F *rarely went into the head office* in Toronto.
3. Mr. F took *no active steps* to ensure the corporation made its remittances because he was involved in the *out-of-town field work* and relied on the financial director to make remittances. Mr. F did not have the experience, ability or know-how to do anything else.

The Court noted that, "He could no more remit deductions than most of us could *split the atom*".

Taxpayer Loses!

In another Tax Court case, the financial director, Mr. D, was found to be *personally liable* for the unremitted source deductions and GST as he was involved in the *financial administration* of the corporation.

COMPARISON OF INDUSTRY STANDARDS

CRA may *target a company* for an audit if their financial information (for example, cost of goods sold) varies significantly from *industry norms*.

For more information on industry norms see
<http://strategis.ic.gc.ca/epic/internet/pp-pp.nsf/en/home>.

The preceding information is for educational purposes only. As it is impossible to include all situations, circumstances and exceptions in a commentary such as this, a further review should be done. Every effort has been made to ensure the accuracy of the information contained in this commentary. However, because of the nature of the subject, no person or firm involved in the distribution or preparation of this commentary accepts any liability for its contents or use.

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