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PERSONAL TAX

85(1)

DISABILITY TAX CREDIT TRANSFER

If a disabled person does not need to claim the Disability Tax Credit (DTC) to reduce his/her tax payable to nil, the unutilized portion may be transferred to a spouse or common-law partner or to another supporting person. Another supporting person may claim the DTC for a parent, grandparent, child, grandchild, brother, sister, aunt, uncle, nephew or niece of the individual.

We understand that “*support*” could include assistance with the *basic necessities of living* such as food, clothing or shelter. Also, the credit may be transferred to a *supporting relative even* if the dependent person *is not living with* the supporting relative.

EDUCATION TAX CREDIT - UNIVERSITY OUTSIDE CANADA

In an August 28, 2008 *External Technical Interpretation*, CRA notes that a fee to attend an *educational institution* located *outside Canada* qualifies for the *tuition credit* if it is recognized by an accrediting body (that is nationally accepted in *that country*) as being an educational institution which *confers degrees*, at least at the bachelor or equivalent level.

MEDICAL EXPENSES - TRAVEL

In an October 23, 2008



External

Technical Interpretation, CRA notes that amounts paid by an individual to a “*medical practitioner*” or to a “*public or licensed private hospital*” to obtain medical services qualify as medical expenses.

Qualifying medical expenses can be in respect of amounts paid to persons, or for services received, either *within or outside of Canada*.

Transportation and Travel Expenses

An individual is entitled to claim *transportation and travel expenses* if he/she travels not less than 80 kilometres and, substantially *equivalent medical services* were *not available* in the individual’s locality.

Editor’s Comment

In a March 27, 2008 *Tax Court* of Canada case, the Tax Court found that amounts paid to an *alternative medical provider* such as an acupuncturist in Ontario, may be eligible medical expenses even though the acupuncturist was *not regulated* under the provincial medical association at that time.

This *decision* has now *been overturned* in the Federal Court of Appeal.

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CANADA CHILD TAX BENEFIT (CCTB)

It is often difficult to determine who is the “*eligible individual*” for purposes of receiving the CCTB in *marriage breakdown* situations.

In an October 21, 2008 *Tax Court* of Canada case, the Court concluded that the “*eligible individual*” (the person who *primarily fulfills* the responsibility for the *care and upbringing* of the child) was, in this case, *two-thirds* of the year the *father* and *one-third*, the *mother*.

In a February 26, 2008 *Tax Court* of Canada case, the Court determined that the *father* was the “*eligible individual*” because the child spend *12 out of each 14 days* with the father.

In two other *Tax Court* of Canada cases the *mother* was successful in overturning CRA’s rejection and qualifying for the *CCTB*.



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EMPLOYMENT INCOME

85(2)

EMPLOYEE TRAINING

CRA's Income Tax Technical News (ITTN) No. 13 provides that when training is taken by an employee primarily for the benefit of the employer, there is no taxable benefit, whether or not this employer-paid training leads to a degree, diploma or certificate. Accordingly, costs are deductible to the employer and not a taxable benefit to the employee.

This was also discussed in an August 29, 2007 *Internal Technical Interpretation* where CRA noted that *employer-paid training costs* for the *son/employee* of the sole shareholder to upgrade his employer-related skills would normally be *deductible* to the employer and *not a taxable benefit* to the son assuming the criteria in *ITTN No. 13* is met.

SCHOLARSHIPS

In two March 7, 2008 *Tax Court* of Canada cases, the taxpayers were *successful* in *overturning* CRA's *employment income* reassessment. In both cases, the taxpayers were employees of Dow Chemical Canada and their children received scholarships of \$3,000 under the Company Scholarship Program. CRA included these amounts as employment income in the parent's hands.

Taxpayer Wins!

CRA's *appeal* to the *Federal Court of Appeal* on December 9, 2008 has been *dismissed* by the Court.

EMPLOYEE VS. INDEPENDENT CONTRACTOR

In three *Federal Court of Appeal* cases, the Federal Court confirmed the Tax Court decision that in *all three cases* the *workers* were *employees* of the payor, not independent contractors, and the payor was required to remit Employment Insurance and Canada Pension Plan. Also, the work-

ers were not allowed to deduct business expenses.

The *first case* consisted of *130 health care workers* who were placed by the Appellant in a number of health care facilities for short-term work. The *second case* was a worker for a family corporation. The *third case* was simply a worker being treated as an employee of the payor.

BUSINESS/PROPERTY INCOME

85(3)

TRAVEL EXPENSES

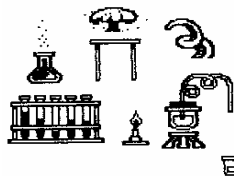
In a September 30, 2008 *Tax Court* of Canada case, the taxpayers owned a *rental property in Florida* in which they made *several trips* to meet with the *condo association* to review the *interview process* for renting the property, to *repair and paint* the property, to *inspect* the property and to *purchase minor items* for the property. The taxpayer deducted the *motor vehicle expenses* to travel to Florida. CRA disallowed these expenses on the basis that the property was *managed* by an *independent company* and the travel and motor vehicle expenses were of a *personal nature*.

Taxpayer Wins!

The *Court accepted* the taxpayers' evidence that the trips did *not* have a *personal component*. Therefore, the travel expenses were allowed. The travel expenses were supported by a *log* which recorded 14,596 kilometres for the trips in 2001 and 10,927 kilometres for the trips in 2002.

SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT (SR&ED)

In a November 17, 2008 *Release*, CRA discussed the SR&ED *Eligibility Self-*



Assessment Tool to earn *income tax credits*.

CRA note that the *Eligibility Self-Assessment Tool* is a web-based tool consisting of a series of questions that address the SR&ED eligibility requirements.

CRA also has a *CD-Rom*, brochure and leaflet to explain the SR&ED Program.

For more information see www.cra.gc.ca/sred/index.html.

DIRECTOR LIABILITY

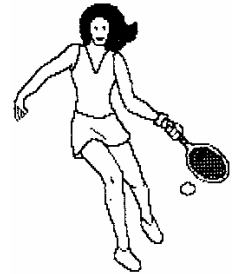
85(4)

DIRECTOR LIABILITY - ADMINISTRATOR OF NON-PROFIT ORGANIZATION

In a June 2, 2008 *Tax Court* of Canada case, *CRA assessed* the taxpayer in her capacity as *director* of the *non-profit organization* for *unremitted GST*.

Taxpayer Wins!

The Court found that she exercised the *degree of care, diligence and skill* that a *reasonably prudent* person would have exercised under these circumstances. She therefore was *exempt* for the personal liability on the *unremitted GST*.



The Court noted that she was *23 years old* with *no business experience* and *no post-secondary education* when she became a *director* of the organization because of her *interest* in the *organization's objectives*. She was assigned the role of *secretary* but was *limited to preparing the Minutes*. She *did not sign cheques*.

The Court found that the Appellant has *discharged* her *burden of proof* on the balance of probabilities, and that she has



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shown that she *acted* with *reasonable care, prudence and diligence* given the circumstances of this case.

FARMING

85(5)

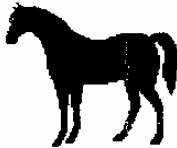
RESTRICTED FARM LOSSES - TAXPAYER WINS

In an August 29, 2008 *Tax Court* of Canada case, the taxpayer is a *dentist* who also carried on an *emu farming business* and a business of *breeding Arabian horses*. These businesses had *substantial losses* which were *deducted* against the *dental income* for the years 1999 and 2000.

CRA reduced the losses of \$382,852 and \$202,475 respectively to \$8,750 for each year on the basis of the *Restricted Farm Loss* rules in the Income Tax Act.

Taxpayer Wins!

The Court noted that the Appellant's profitable *dental business* was *supporting* his unprofitable *farming businesses* and the Appellant had substantial *capital committed* and *time spent*. It is *not a precondition* that the *two sources* be *connected*. The *farm's profitability*, both *actual and potential*, must be considered.



The *retroactive payment* under this Order totalled *\$90,000* and was paid in *April, 2004*. The Appellant also commenced to pay \$3,600 per month to his former spouse effective the first day of January, 2004.

CRA *disallowed* the *\$90,000 arrears* payment but allowed the monthly payments in 2004.

Taxpayer Wins!

The Court determined that the *\$90,000 arrears payment* was *deductible*. The payment of the *\$90,000* was *exactly equivalent* to the *arrears*.



PRIOR PAYMENTS

Spousal support payments made *prior* to a *Written Separation Agreement* will *not be deductible* unless the Agreement specifically provides for this. For example, in one case, even though the lawyers exchanged correspondence, they did not reach a final agreement in time and the *prior year payments* were *not deductible*.

RRSP DIVISION OF MATRIMONIAL PROPERTY

In an October 16, 2008 *External Technical Interpretation*, CRA notes that the Income Tax Act permits a direct *transfer of an amount* from an *individual's RRSP* to an *RRSP* of which his/her *former spouse* is the annuitant, where the payor and recipient are *living separate and apart*. The payment or transfer must be made under a *Decree, Order or Judgment* of a competent tribunal or under a *Written Separation Agreement*, and the transfer or payment relates to the *division of property* in settlement of rights arising on the breakdown of a marriage.

ESTATE PLANNING

85(7)

STRUCTURED SETTLEMENT

In a 2008 *Advance Income Tax Ruling*, an individual (Plaintiff) was injured and commenced an action for damages against various Defendants. In an out of Court settlement, the *casualty insurer* of the Defendants will *assign their rights* to an *assignment*

company who will purchase a single premium annuity



contract with a life insurance company to provide the proposed periodic payments to be received under a *structured settlement* arrangement by the Plaintiff.

The assignment company will direct the life insurance company to pay the *periodic payments* under an *annuity contract* to the *Plaintiff* or the Plaintiff's Estate. Such payments will *not be taxable* in the hands of the *Plaintiff*.

CANADA PENSION PLAN (CPP) - THE CHILD REARING DROPOUT (CRDO) PROVISION

This *CRDO* provision relates to periods of time when a CPP Applicant's *earnings from work* were *low or zero* because he/she was raising children *under the age of seven*. The years for this period of time can be *eliminated* from the Applicant's contributory period.

In general, to qualify, the Applicant must have been receiving Family Allowances or been entitled to the Canada Child Tax Benefit. The person must have been the *primary caregiver* of the child.

MARRIAGE BREAKDOWN

85(6)

ARREARS PAYMENT

In an August 22, 2008 *Tax Court* of Canada case, the taxpayer was *ordered* by the *Ontario Superior Court* on December 11, 2003 to pay interim spousal support to the former spouse of \$3,600 per month *retroactive to November 16, 2001*.



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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.

