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PERSONAL TAX

86(1)

HUMAN RIGHTS CODE AWARD

In a 2008 Advance Income Tax Ruling, CRA noted that amounts paid by an employer to an employee pursuant to an arbitration award for breach of the employee's rights under the Human Rights Code are not taxable.

MEDICAL EXPENSES - NURSING HOME

In a January 16, 2009 External Technical Interpretation, CRA notes that care in a "nursing home" normally qualifies as a medical expense.

If a facility does not qualify as a "nursing home", amounts paid to the facility that relate to remuneration for tenant care or supervision also qualify as a medical expense. The receipt should differentiate between attendant care or supervision and non-eligible costs, such as lodging costs.

Since the term "nursing home" is not defined in the Income Tax Act, CRA relies on its ordinary meaning. Generally, this is an establishment that provides full-time maintenance or nursing care for persons (for example, the aged or chronically ill) who are unable to care for themselves.

MEDICAL EXPENSES - TRAVEL

In a February 2, 2009 External Technical Interpretation, CRA notes that an individual may claim transportation and travel as medical expenses provided:

- (i) substantially equivalent medical services were not available in the individual's locality,
- (ii) a reasonably direct travelling route was taken by the individual, and
- (iii) the individual travelled to the particular place to obtain medical services and it is reasonable to have travelled to that place for medical services.

In another Technical Interpretation, CRA notes that if the patient has been certified by a medical practitioner as being incapable of travelling alone, the meals and accommodations of an accompanying person will qualify as medical expenses.

MOVING EXPENSES - NO TIME RESTRICTION

The definitions of "moving expenses" and "eligible relocation" in the Income Tax Act do not refer to a time restriction.

For example, in a June 25, 2004 Tax Court of Canada case, the taxpayer incurred moving expenses in 1997 but, did not have any income at the new work

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location until 1999.

Taxpayer wins!

The Court concluded that moving expenses may be deducted in the year of the move, or any subsequent year (in this case 1999), to the extent that the taxpayer has employment or business income at the new work location. Also, the Court noted that the phrase "the new work location" is to be interpreted with flexibility.

Also, in a February 4, 2005 Tax Court of Canada case, the taxpayer's employer relocated from Nanaimo to Courtenay, British Columbia in 1996. The taxpayer commuted to Courtenay from his Nanaimo home for seven years. In

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November, 2003 the taxpayer sold his home and relocated to a home closer to Courtenay.

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 the Nanaimo property.

MOVING EXPENSES

In a February 19, 2009 Tax Court of Canada case, the taxpayer was employed on a part-time basis in the Oshawa hospital on the seventh floor. She was offered a new full-time position in the hospital on the sixth floor. Therefore, she moved from her old residence, which was 62 kilometers from the hospital, to a new residence which was only a few kilometers from the hospital.

Taxpayer Wins!

The Court noted that the move was related to a change in work status from part-time to full-time and from the seventh to the sixth floor, even though the location was the same. The requirements for moving expenses were technically met.

EMPLOYMENT INCOME

86(2)

PARKING PASSES

In a December 18, 2008 Tax Court of Canada case, the Court concluded that the parking pass provided to Mr. S by Telus Corporation was a taxable benefit because it was not given primarily for business reasons. Mr. S did not use the vehicle to any great extent for business purposes. It was simply used to travel to and from work.

However, Mr. J was found not to have a taxable benefit on his Telus parking pass

because he needed the vehicle in the course of his duties.

On February 4, 2009, CRA introduced an interactive questionnaire to help employers determine whether the parking they provide to employees is considered a taxable benefit. To access the questionnaire, go to www.cra.gc.ca/payroll/index.html and select "P" from the drop-down menu for "parking".

SPECIAL WORKSITE

In a November 3, 2008 External Technical Interpretation, CRA notes that the Income Tax Act excludes from income an allowance for board and lodging at a "special worksite".

CRA notes that a "special worksite" may be any place in the world, including a large metropolitan city such as Toronto, New York, or New Delhi, where the duties are of a temporary nature and the employee has a principal residence at another location to which the employee could not reasonably return daily.

Also, in a December 9, 2008 External Technical Interpretation, CRA notes that free or subsidized transportation between the employee's principal place of residence and the special worksite is non-taxable.

EMPLOYER-PAID SOCIAL EVENTS

In a January 14, 2009 External Technical Interpretation, CRA notes that it will generally not assess a taxable benefit to an employee for attending an employer-provided social event which is generally available to all employees at an employer's particular place of business. This could mean a branch or division depending on the circumstances. However, the cost per employee must be reasonable - not more than \$100 per person.

REASONABLE AUTOMOBILE ALLOWANCES

In a February 23, 2009 Internal Technical Interpretation, CRA notes that a per kilometre reasonable allowance received by an employee for the use of his/her personal motor vehicle in connection with employment duties may be excluded from employment income.

BUSINESS/PROPERTY INCOME

86(3)

SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT (SR&ED)

Some new SR&ED developments include:

December 30, 2008 - Some new releases in CRA's SR&ED Small Business Action Plan include Guides RC4467, 4472, T4088 and a CD-ROM.

The SR&ED home page on the CRA website (www.cra.gc.ca) provides an overview of the filing requirements, a section for potential and first-time claimants, a web version of a new SR&ED Claim Form T661 and a sample of a completed Claim Form and a "Complete Claim Checklist".

Also, an online eligibility self-assessment tool has been released.

SOURCE DOCUMENTS FOR DEPRECIABLE ASSETS

Documentation relating to long-term transactions such as investments and other capital and depreciable property should be maintained until six years after the year in which such a transaction could enter into any calculation for income tax purposes.

With respect to depreciable assets and eligible capital property, it is important

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that the source documents be kept because capital cost allowance ("CCA") and eligible capital expenditures ("ECE") are claimed continuously on the asset.

We understand that CRA has disallowed CCA and ECE where the client cannot produce the invoices for assets purchased many years prior.

Also see CRA Guide RC4409 - Keeping Records.

OWNER-MANAGER REMUNERATION

86(4)

DUE CARE AND DILIGENCE

In a June 13, 2008 Tax Court of Canada case, the taxpayer/director was held not to be liable for the unremitted GST on the basis that he exercised due care and diligence because he had lost de facto control when the company was put in the hands of the National Bank. The Court believed the Appellant when he said that even if he had required that the GST owing be paid, the Bank would not have honoured the cheque.

Also, in a July 11, 2008 Tax Court of Canada case, the taxpayer/director was found not to be liable for the unremitted GST as he was effectively removed from the normal operations of a director as a result of the refinancing.

UNPAID WAGES

An article in Law Times noted that directors of two bankrupt Ontario construction companies were liable for more than \$40,000 for unpaid wages and benefits in an Ontario Labour Relations Board decision.

2009 FEDERAL BUDGET

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On January 27, 2009 the Honourable Jim Flaherty, Minister of Finance, presented his fourth budget to the House of Commons.

Some 2009 Budget proposals include:

1. Home Renovation Tax Credit ("HRTC")

Individuals will be able to claim a 15% non-refundable tax credit.

The HRTC will apply to expenditures made after January 27, 2009 and before February 1, 2010 in excess of \$1,000, but not more than \$10,000, resulting in a maximum federal credit of \$1,350 (\$9,000 x 15%). The HRTC will not be reduced by any other tax credits or grants.

Family members will be subject to a single limit based on their pooled expenditures.

Two or more families that share ownership of an eligible dwelling will each be eligible for their own credit.

In general, a housing unit is considered to be eligible if it is an individual's principal residence.

Expenditures will qualify for the HRTC if they are incurred in relation to a renovation or alteration of an eligible dwelling (including land that forms part of the eligible dwelling).

Expenditures not eligible for the credit include routine repairs and maintenance, appliances and audio-visual electronics, and financing costs associated with a renovation.

Some examples of eligible expenditures include renovating a kitchen, bathroom or basement; new carpet or hardwood floors; building an addition, deck or fence; a new furnace or water heater; a

new or resurfaced driveway; and painting of the interior or exterior of a house.

2. Home Buyers Plan ("HBP")

The HBP-RRSP withdrawal limit will be increased to \$25,000 from \$20,000 after January 27, 2009.

3. First-Time Home Buyers' Tax Credit

A new non-refundable tax credit based on \$5,000 (@15% = \$750) will be available for first-time homebuyers who acquire a qualifying home after January 27, 2009.

An individual will be considered a first-time home buyer if neither the individual nor the individual's spouse or common-law partner owned and lived in another home in the calendar year of the home purchase or in any of the four preceding calendar years.

4. Small Business Limit

The annual amount of active business income eligible for the reduced tax rate – generally referred to as the "small business limit" – will be increased as of January 1, 2009 to \$500,000 from \$400,000.

5. Computers: Accelerated CCA

In general, eligible computers acquired after March 18, 2007, are included in Class 50 and are eligible for a 55% declining-balance CCA rate.

Budget 2009 proposes a temporary 100% CCA rate for eligible computers and software, currently described in Class 50, acquired after January 27, 2009 and before February 2011. This includes general-purpose electronic data processing equipment with some exceptions.

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Eligible computers and systems software must not have been used, or acquired for use for any purpose, before it was acquired by the taxpayer for use in Canada.

6. Wage Earner Protection Program ("WEPP")

The Budget proposes to extend the WEPP to cover unpaid severance and termination pay to eligible workers of bankrupt employers after January 27, 2009 to a maximum of four weeks of insurable earnings (currently \$3,254).

ESTATE PLANNING

86(6)

CHARITIES - HELPFUL HINTS

In the CRA Registered Charities Newsletter (No. 31 - Winter 2008), CRA provided helpful hints including:

- if a charity made an error on Form T3010, it should complete Form T1240, Registered Charity Adjustment Request;
- a charity should advise the Charities Directorate of CRA by letter of changes to directors, trustees or other authorized representatives; and
- ways in which charities may avoid delays in CRA's processing of their Form T3010.

REGISTERED DISABILITY SAVINGS PLAN ("RDSP")

See CRA Guide 4460 for details and examples on the RDSP including:

1. An RDSP is a long-term savings plan intended to help parents and others save for the long-term financial security of a person who is eligible for the Disability Tax Credit.
2. Contributions to an RDSP are not

tax deductible and are non-taxable when withdrawn and can be made until the end of the year in which the beneficiary turns 59 years of age.

3. Canada Disability Savings Grants (maximum \$70,000) and Bonds (maximum \$20,000) are available.
4. A person may be a beneficiary of an RDSP if eligible for the Disability Tax Credit, has a valid Social Insurance Number, is a resident of Canada, and is under the age of 60.
5. There is no annual limit on amounts that can be contributed to an RDSP, however, the overall lifetime limit is \$200,000.
6. If any of the following triggering events occur, all Grants and Bonds paid into the Plan during the preceding ten years must be repaid:
 - (i) the RDSP is terminated,
 - (ii) the Plan is deregistered,
 - (iii) a payment is made from the RDSP,
 - (iv) the beneficiary ceases to be eligible for the disability amount, or
 - (v) the beneficiary dies.
7. The RDSP must be terminated if the beneficiary no longer has a severe and prolonged impairment or dies.

CREDITOR PROOFING

"Creditor protection" is a common term used in estate planning. Are there ways to creditor protect one's assets?

A recent decision of the Supreme Court of British Columbia appears to call into question the ability of a person to creditor protect their assets in certain circumstances.

A corporation owned approximately \$19 million of assets on September 30, 2005, the day it became a general partner of a high-risk car leasing partnership.

The corporation was advised by legal counsel to remove its \$19 million of assets for creditor protection purposes.

Approximately one month later, the corporation entered into a series of transactions for the purpose of creditor protection. A series of transactions were implemented whereby the corporation declared and paid a \$19 million dividend to another corporation. The result was a conveyance of the \$19 million of assets to the other corporation.

19 months later, in May 2007, the corporation filed for bankruptcy with \$20 million of debts. These debts were a result of losses incurred from the car leasing business.

The court found that the creditors could access the \$19 million.

What can you take from this case? You may wish to think twice before attempting to creditor protect assets from future creditors by simply conveying assets to shareholders by way of a dividend.

Note that the case is apparently under appeal and is scheduled to be heard in the fall of 2009.

Legal advice is needed.

CLEARANCE CERTIFICATE

In a March 3, 2009 CRA Release, CRA notes that a legal representative can be held liable for tax amounts that the deceased person owes unless a Clearance Certificate is obtained before distributing property.

The legal representative may make a Clearance Certificate request on Form TX19.

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GST/HST

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CHARITIES

CRA Guide RC4082 provides GST/HST information for charities.

NON-PROFIT ORGANIZATIONS

CRA Guide RC4081 provides GST/HST Information for Non-Profit Organizations.

RESIDENTIAL CARE FACILITY

CRA Guide GI-050 explains the new election that can be filed using Form GST119 as it relates to builder-operators of residential care facilities.

NEW RESIDENTIAL RENTAL PROPERTY REBATE

CRA Guide RC4231 provides information on claiming the GST/HST New Residential Rental Property Rebate.

The Guide provides information for landlords of new residential rental

properties on the rebate and how to complete the forms.

2009 FEDERAL BUDGET, DIRECT SELLERS

On January 27, 2009, the Federal Budget proposed measures to simplify the operation of GST/HST for persons in the direct selling industry (i.e., network sellers) who sell their products directly to consumers through a network of commissioned-based sales representatives. These proposed measures will apply in respect of fiscal years that begin on or after January 1, 2010.

DID YOU KNOW...

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RECORDS OF IMPORTERS

Canada Border Services Agency Memorandum D17-1-21 provides information concerning the records that must be maintained by importers. The Release discusses imaged and microfilm records, electronic data process records, and having records available for inspection and delivery.

IMPORTATION OF VEHICLES

Memorandum D19-12-1 provides information on the importation of a vehicle.

ECO ENERGY RETROFIT PROGRAM

Effective January 1, 2008, you may be able to retrofit a home and qualify for a grant (including mobile homes on a foundation and low-rise multi-unit residential buildings ("MURBs").

For details, do a Google search for "Eco Energy".

BANKRUPTCY, INSOLVENCY, FINANCIAL DIFFICULTY

A financially distressed corporation may issue "distress preferred shares" in exchange for existing debt such that the payments on the shares are in the form of dividends, which are not deductible to the payor and are not taxable to the financial institution.

Therefore, the interest rate is exchanged for a lower non-taxable/deductible dividend rate.

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