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PERSONAL TAX

66(1)

A. MEDICAL EXPENSES

RENOVATIONS

In a December 5, 2003 *Canada Revenue Agency (CRA) Technical Interpretation* CRA notes that *medical expenses* include *renovations or alterations* to a dwelling of an individual who lacks normal physical development or has a severe and prolonged mobility *impairment* to enable the individual to *gain access* to, or to be *mobile or functional within*, the dwelling.

In this example, the renovation costs were to the *bathroom* including installing a *special bathtub* to facilitate unassisted baths/showers.

CELIAC DISEASE

CRA note in their website (www.cca-adrc.gc.ca/tax/individuals/topics/ceeliac-e.html) that individuals who suffer from *celiac disease* (gluten intolerance) may claim the *incremental cost* of purchasing gluten-free (GF) products as a *medical expense* for the 2003 and subsequent tax years.

INSTITUTIONAL COSTS

In a January 6, 2004 *Technical Interpretation*, CRA permits a medical expense for amounts paid for the care and/or training, of a patient at a *school, institution or*

other place where the patient has been *certified* to be a person who, because of a *physical or mental impairment*, requires the *equipment, facilities or personnel* specifically provided by that place.

RETIREMENT HOMES

In a February 11, 2004 *Tax Court* of Canada case, the Court permitted a *full medical expense* for payments made to a *retirement home*, which was not a nursing home, of \$17,775 and \$18,680 respectively.



SPECIAL SCHOOLS

In a July 8, 2003 *Tax Court* of Canada case, the taxpayer paid *tuition fees* and *room and board* to the Robert Land Academy for his two *attention deficit* children and successfully claimed a *medical expense credit* of \$42,662.

B. DISABILITY TAX CREDIT (DTC)

HEADACHES

In a December 30, 2003 *Tax Court* of Canada case, the taxpayer was permitted a *DTC* on the basis that her *severe headaches* affected her ability to "*perceive, think and remember*". Ms. N noted that "I have my headaches all the time".

SON'S DIABETES

In a September 11, 2003 *Tax Court* of

IN THIS ISSUE

PERSONAL TAX

EMPLOYMENT INCOME

BUSINESS/PROPERTY INCOME

MARCH 23, 2004 FEDERAL BUDGET

FARMING

ESTATE PLANNING

INTERNATIONAL

GST

WEB TIPS

DID YOU KNOW...

Canada case, the taxpayer was permitted a *DTC* for his six year old *son*, who suffered from *Type 1 Insulin Dependent Diabetes*.

EPILEPSY

In a December 12, 2003 *Tax Court* of Canada case, the taxpayer received a *DTC* because of *her uncontrolled epilepsy* that required the presence of another person at her side at all times.

ASPERGER SYNDROME

In an April 30, 2003 *Tax Court* of Canada case, the Court found that the taxpayer is eligible for the *DTC* as the Asperger Syndrome resulted in an *inordinate amount of time* to carry on the activities of daily living.

Tax Tips & Traps

EMPLOYMENT INCOME

66(2)

DIRECTOR LIABILITY

In a November 3, 2003 *Tax Court* of Canada case, the issue was whether the taxpayer as the **sole director and shareholder** of a



corporation had **effectively resigned** within the prescribed **two year time limit** to avoid certain director liabilities. The Court noted that even though the director **did not follow** strictly the formalities of the Companies Act of British Columbia in resigning, he had **in fact resigned** through his signed resignation.

Editor's Comment

It is important to follow the **specific requirements** of the relevant **Business Company Acts** when resigning as a director to reduce these contentious issues.

EMPLOYMENT INSURANCE

The Human Resources and Development Corporation (**HRDC**) website (www.hrdc-drhc.gc.ca/ae-ei/yr/4.0_e.shtml) provides information on **Employment Insurance (EI)** issues such as:

1. How to create, submit and print **Records of Employment (ROE)** over the **Internet**.
2. An **EI work-sharing program** as an alternative to layoffs for businesses facing temporary work slowdowns.
3. An employer program to **top-up** an employee's **EI benefits** while they are **temporarily** out of work.
4. An employer program to top-up **EI maternity, parental and compassionate** care benefits.
5. A **work force reduction plan** for companies that are restructuring to remain competitive.
6. A program to reduce EI premiums for

employers who provide **private disability coverage** to employees.

COMPASSIONATE CARE EI BENEFITS

Effective January 4, 2004, the **Employment Insurance (EI)** program will include payments for **compassionate care benefits**.

To **qualify**, you have to be away from work temporarily to provide **care or support** to a **family member** who is **gravely ill** with a significant risk of **death within 26 weeks**.

A **medical certificate** is needed.

For more information see http://www.hrdc-drhc.gc.ca/ae-ei/menu/faq_compassionate_care_individuals.shtml.

LEGAL FEES

In a February 24, 2004 *Tax Court* of Canada case, the taxpayer, a **police officer**, was charged with **dangerous driving** while off duty. He was removed from patrol duty pending the resolution of the case. The taxpayer paid **\$10,000 in legal fees** as a conviction could seriously affect his employment as a police officer.

Taxpayer Wins!

The Court **permitted a deduction** for the legal fees. The Income Tax Act permits a deduction for legal expenses to collect or establish a **right to salary or wages owed to the taxpayer**.

EMPLOYER-PAID HEALTH CLUB MEMBERSHIP

In a February 26, 2004 *Technical Interpretation*, CRA notes that generally, the payment or reimbursement of **club dues or membership fees** by an employer for an employee results in a **taxable benefit** to the employee. However, if it is clearly to the **employer's advantage** for an employee to be a member of a club, the employee will **not** be considered to have received a **taxable benefit**.

PRIVATE HEALTH SERVICE PLAN

In a 2003 *Advance Income Tax Ruling*, CRA accepted a situation where the employer established a **Health Spending Account (HSA)** whereby **senior executives** submit medical expense receipts to the corporation for **reimbursement**. The reimbursements were set at a maximum. If the expenses exceeded that maximum there was a **one-year carry-forward**.

CRA Ruled that the reimbursement would be **deductible** and **not a taxable benefit** to the employee.

BUSINESS/PROPERTY INCOME

66(3)

INDEPENDENT CONTRACTOR VS. EMPLOYEE

In a February 4, 2004 *Ontario Superior Court of Justice* case the issue was whether **drywall residential piece workers** who worked on projects of the Appellant were **employees** or **independent contractors** for **Employer Health Tax Act** purposes.

The Court found that they were **independent contractors**, not employees, and noted that:

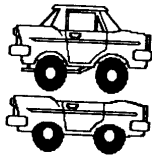
1. The workers do **not** perform contracts **exclusively** for the Appellant.
2. The workers are **not** required to do the work **personally** - they may employ their own workers to perform the work.
3. The workers provide their **own tools**, other than the drywall board.
4. The work is **not subject** to continuing **supervision**. It is simply checked at the end of the job by the Appellant. If the job is not done properly it must be redone at the worker's own cost.
5. The worker is hired to do the drywalling by **linear foot or square foot**, at a price for so many feet. Therefore, the test relating to **"the chance of profit or risk of loss"** applies.

Tax Tips & Traps

Editor's Comment

For more information and guidelines see *CRA's Guide RC4110*.

AUTOMOBILE EXPENSE DEDUCTION LIMITS



The limit on the deduction of automobile *tax-exempt travel allowances* paid by an employer to an employee for the 2004 year will be **42 cents** per kilometre for the first 5,000 kilometres and **36 cents** for each additional kilometre. For the Yukon, Northwest Territories and Nunavut, the tax-exempt allowance will rise to 46 cents and 40 cents respectively.

The employer may also claim a *GST Input Tax Credit* (ITC) based on 7/107 of the deductible allowance (15/115 of the allowance in provinces participating in the HST system).

Also, it is important that where a reasonable *per kilometre* cost for the automobile exceeds these amounts, perhaps because of a *low number* of kilometres or an *expensive automobile* required to be used in the employment, this could be paid to the employee *without a taxable benefit*. However, the ITC and the income tax deduction would be limited to the **42¢/36¢** amounts.

MARCH 23, 2004 FEDERAL BUDGET

66(4)

Some interesting *tax proposals* in the March 23, 2004 *Federal Budget* include:

SMALL BUSINESS DEDUCTION LIMIT

The 2003 Federal Budget implemented a phased increase in the corporate *small business limit*, from \$250,000 in 2004 to

\$275,000 in 2005 and \$300,000 in 2006 and subsequent years.

Budget 2004 proposes that the increase to \$300,000 be accelerated by one year. Therefore, the *small business limit* will be **\$300,000 in 2005** and subsequent years.

COMPUTER EQUIPMENT

Budget 2004 proposes to increase the *Capital Cost Allowance* (CCA) rate for *computer equipment* acquired after March 22, 2004, to **45%** from the current 30%.

FINES AND PENALTIES

Recent jurisprudence held that *deductibility* generally extends to *finances and penalties* incurred in the course of *earning income*, unless the offense was so egregious or repulsive that the fine or penalty could not reasonably be considered to have had an income-earning purpose.

Budget 2004 proposes to *deny the deductibility* of any *fine or penalty* imposed after March 22, 2004 by a *statutory authority*.

TAXPAYER-REQUESTED ADJUSTMENTS

Currently an individual or testamentary trust may request an adjustment to a tax return under the *Fairness*



Provisions of the Income Tax Act back to 1985.

Budget 2004 proposes that for applications made *after 2004*, adjustments will be limited to taxation years that end in any of the *ten preceding calendar years*. Therefore, taxpayers may only request adjustments back to 1985 until December 31, 2004.

CANADA LEARNING BOND

Budget 2004 introduces a new *Canada Learning Bond (CLB)* for children born on or after January 1, 2004 and, only if the child's family is entitled to the *National Child Benefit* (NCB) supplement. This is

available until the child turns **15 years of age**.

An initial CLB of **\$500** will be provided for the *first year*. Subsequent CLBs will be for **\$100 per year**.

CHARITIES

Canada's **80,000 registered charities** will have *new rules* including:

- (i) a \$500 fine for failing to file financial reports on time, with escalating penalties for repeat offences.
- (ii) Charities that are not following the rules could be suspended from issuing income tax receipts for a year and/or barred from accepting donations.

FARMING

66(5)

CAIS

The *Canadian Agricultural Income Stabilization (CAIS)* program has information at its website www.agr.gc.ca/puttingcanadafirst and at the main *CAIS* phone line at **1-866-367-8506**.

The *CAIS program* is available for 2003 and subsequent years. The program offers producer protection for up to 60% of their negative margins as long as certain conditions are met.

NISA WIND DOWN

As the *CAIS* program is *replacing NISA*, farmers have the *option* of withdrawing their *NISA Funds 1 and 2* in *full* or withdrawing the balances over *five years* beginning *March, 2005*. Money is *withdrawn equally* from Fund 1 (tax free) and Fund 2 (taxable) until one or both accounts are depleted.

All *NISA* funds must be paid out by **March 31, 2009**.

See the *NISA* website (www.agr.gc.ca/nisa) for details:

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RETIRING ALLOWANCE

In a 2003 *Advance Income Tax Ruling*, CRA agreed that a farmer may pay a **retiring allowance** to a spouse/employee eligible for a **rollover to an RRSP**. This Ruling included a few years in which the person was an employee but, **not paid a salary**.



Editor's Comment

The **eligible rollover** amounts are **\$3,500 per year** employed prior to **1989** and, **\$2,000 per year** employed from **1989 to 1995**.

QUALIFIED FARM PROPERTY

In a March 11, 2004 *Technical Interpretation*, CRA notes that where a taxpayer made a **1994 election** for farmland to take advantage of the **capital gain exemption**, that farmland is deemed to have been **disposed of and reacquired**.

Therefore, it is subject to the more restrictive tests regarding **qualified farm property** for property acquired after **June 17, 1987**. In this case, the farmer will have to meet **gross revenue tests** to qualify for the **capital gain exemption** on **qualified farm property**.

ESTATE PLANNING

66(6)

ROLLOVER OF RRSP TO FINANCIALLY DEPENDENT CHILD

In a March 19, 2004 *Technical Interpretation*, CRA notes that when an **annuitant** under an RRSP **dies**, the RRSP is generally required to be included in the **annuitant's income**. However, this may be included in a child or grandchild's income where the RRSP is paid, as a consequence of the death of the annuitant, for a **child or**



grandchild who was, immediately before death, **financially dependent** on the annuitant for support.

Where an amount **is paid** from an RRSP directly **to the Estate** of the deceased annuitant, and a **financially dependent** child or grandchild **is a beneficiary** of the deceased's Estate, the **beneficiary and the Estate** may file a **joint election** on **all** or a **portion** of the RRSP payment.

Editor's Comment

If the child is dependent by reason of a **physical or mental infirmity**, a transfer to an RRSP, RRIF, or an eligible annuity for the child is available.

If the child is **under 18**, a transfer **to an annuity** for the child, to age 18, is possible.

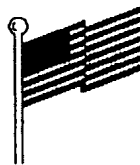
INTERNATIONAL

66(7)

SOCIAL SECURITY BETWEEN CANADA AND THE UNITED STATES

An **Agreement on Social Security** between **Canada** and the **United States** came into force on **August 1, 1984**.

The Agreement **helps** persons to **qualify** for **old age** and **disability benefits** from Canada and the United States if you contributed to both the Canada Pension Plan (CPP) and the pension program of the United States or, if you lived in Canada and the United States.



The Human Resources Development Corporation (**HRDC**) has a website (www.hrdc.gc.ca/isp/pub/info_sheets/usa-info_e.shtml) which notes that **the United States** will also consider periods of contribution to the **Canada Pension Plan** as periods of contribution under the pension program of the **United States**.

U.S. REAL ESTATE SALES

The United States generally levies a **withholding tax of 10%** on the selling price

when **U.S. real estate** is sold by a non-U.S. person. The two main **exemptions** to the **withholding tax** are:

- (i) The **"use as a residence"** exemption applies if the selling price does not exceed **\$300,000** and the buyer intends to **reside at the property** at least 50% of the time. To qualify the buyer must sign an Affidavit.
- (ii) The **"withholding certificate"** exemption applies where the 10% withholding tax exceeds the tax that would otherwise be payable on the gain.

DIRECTOR FEES PAID TO A NON-RESIDENT

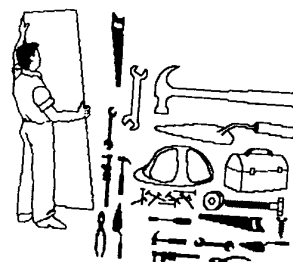
CRA's 2003 *Employer's Guide to Payroll Deductions* now states that corporations must **withhold tax** on a **director fee** paid to a non-resident based on **graduated rates** effective **January 1, 2004**. Previously, a 15% withholding tax on directors' fees paid to non-residents was applied.

GST

66(8)

GST NEW HOUSING REBATE

An individual may apply for the **GST New Housing Rebate** within **two years** of **substantial**



completion of a new house. In a November 10, 2003 *Tax Court* of Canada case, the Court noted that there must be a common-sense approach in determining what constitutes "substantial completion". In this case, CCRA took the position that "substantial completion" occurred on August 18, 1998, the date the inspection report **Certificate** indicated that the complex was partially completed for **residential occupancy**.

However, the **Certificate** was **dated early**

Tax Tips & Traps

because of *pressure* by the taxpayers to *move into* the house because of a *terminal cancer* condition of the *spouse*.

Taxpayer Wins!

The Court agreed with the taxpayer's *later date* for "*substantial completion*".

INPUT TAX CREDITS

CRA requires a taxpayer to *retain proper invoices* with *GST registration numbers* to qualify for an *input tax credit* claim for the GST paid.

However, in a December 17, 2003 *Tax Court* of Canada case, the Court noted that where the *documentation is lost* the Court *may permit* the *input tax credit* if, on a balance of probabilities, the Court is satisfied that the expenditures and eligible GST were incurred.

Editor's Comment

However, to avoid arguments and costly discussions with CRA, *not losing appropriate documentation is important*.

WEB TIPS

66(9)

COMMERCIAL PROPERTIES AND BUSINESSES FOR SALE

www.cls.ca

If you wish to *expand, relocate or purchase another business*, this website is a great starting place.

Owned and operated by The Canadian Real Estate Association (*CREA*), this website *lists thousands of commercial properties and businesses for sale or lease* across Canada.

MUTUAL FUND FEE CALCULATOR

www.investorED.ca

Do you know how different *mutual fund fees and costs* affect the bottom line of your investment?

This calculator does several things such as:

- (i) allowing you to compare two funds side by side,
- (ii) assess fees on the mutual funds you already hold, and
- (iii) see how fees vary or accumulate over time.

The website that hosts this calculator was *established by the Ontario Securities Commission* to educate investors in an *unbiased manner* about different financial instruments.

BUSINESS DEVELOPMENT AND MAINTENANCE

www.toolkit.cch.com

Although intended for business in the United States, this website hosts 100's of pages of *valuable data for Canadian companies*. If you wish to *start a new business* or make *changes* in your current operations, this website may help.

The information on this site ranges from an analysis on the items needed to start a business:

- to getting financing,
- to marketing your products,
- to managing your assets and facilities,
- to managing your employees and contractors,
- to protecting your assets, and
- then finally to exiting strategies.

DID YOU KNOW...

66(10)

PHARMACIST

In a December 2, 2003 *Technical Interpretation*, CRA note that a *pharmacist* qualifies as a *medical practitioner*. This Ruling may help pharmacists *expand the range of services* that they offer.

One drugstore chain sends *pharmacists* directly to *patients' homes* to answer questions about prescription drugs.



Tax Tips & Traps

AUDITING CHARITIES

CRA released eight-page *Guide T4118* which discusses *why* CRA audits a charity, *what triggers* an audit, *how* an audit is conducted, and *points to remember* about an audit.



This is *important reading* for most charities.

REGISTERED CHARITIES NEWSLETTER NO. 18

This newsletter may be viewed at

www.cra.gc.ca/tax/charities and discusses items such as *information sessions* on charities in 2004 can be found at www.cra.gc.ca/tax/charities/roadshow/.

For more charity information contact the Charities Directorate at **1-800-267-2384** or see the website www.cra.gc.ca/tax/charities.

TAXATION OF NON-PROFIT ORGANIZATIONS' (NPO'S) INCOME FROM PROPERTY

In an April 1, 2004 *Technical Interpretation*, CRA notes that it generally provides an *exemption* from tax for a *club, society*

or association that is organized exclusively for social welfare, civic improvement, pleasure or recreation, or any other purpose *except profit*. However, where the "*main purpose*" of an association is to provide *dining, recreational or sporting facilities* to its members, CRA taxes *property income* and certain *capital gains* in excess of **\$2,000**.

This could apply, for example, in the *rental of building space* that is in *excess* of an association's normal requirements.

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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