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PERSONAL TAX

78(1)

MEDICAL EXPENSES - TUITION, TRAVEL

In a March 12, 2007 *External Technical Interpretation*, the Canada Revenue Agency (CRA) notes that:

1. Tuition and Residential Costs

Where, due to a *physical or mental handicap*, an individual is *certified* to *require specialized care* or care and training at a *school or institution*, the cost of such care and training may be an eligible *medical expense*.

2. Travel Expenses

An individual may claim *transportation* and *travel expenses* as *medical expenses* if substantially *equivalent medical services* were *not available* in the locality where the individual resides.

In addition, costs related to a person who *accompanies* the individual may qualify as medical expenses where the individual has been *certified* by a *medical practitioner* to be incapable of travelling without the assistance of an attendant.

MEDICAL EXPENSES - DRUGS

In a January 15, 2007 *External Technical Interpretation*, the CRA notes that certain *drugs, medicaments or other prepara-*

tions prescribed by a medical practitioner or dentist and *recorded by a pharmacist* are medical expenses.

MOVING EXPENSES

In a February 16, 2007 *Tax Court* of Canada case, the Court permitted most of the *moving expenses* including \$3,500 for *storage and transportation* of household effects, \$350 for *travel*, \$50 for *meals*, \$96 for *accommodation*, \$16,200 for *real estate commissions*, \$451 and \$1,276 for *legal services*, and \$2,534 for *land transfer tax*.

TRANSIT PASS CREDIT (TPC)

Taxpayers may claim a *TPC* for passes for buses, commuter trains, local ferries, streetcars, and subways on behalf of *family members* including spouses and children under age 19.

The Transit Pass must be for at least a *month's* duration and should contain *information* such as the *period* for which the pass is valid, the *transit authority* that issued the pass, the *amount paid* for the pass, and the identity of *the rider*.

In a December, 2006 *CRA Interpretation*, CRA confirmed that the *TPC* would *not be available* for *daily or weekly* passes.

ON-LINE TUITION FEES

In a November 10, 2006 *Tax Court* of Canada case, the taxpayer was enrolled in an *on-line Master of Science* postgraduate

IN THIS ISSUE

PERSONAL TAX
EMPLOYMENT INCOME
BUSINESS/PROPERTY INCOME
OWNER-MANAGER
REMUNERATION
2007 FEDERAL BUDGET
ESTATE PLANNING
GST
WEB TIPS
DID YOU KNOW...

degree at the University of Liverpool in *England*. The tuition fees were \$16,278. The Program was taken *exclusively over the Internet* while the taxpayer was physically in Canada.

Taxpayer Wins!

The Court permitted a *tax credit* for the on-line tuition fees.

FITNESS TAX CREDIT

Effective *January 1, 2007*, parents who enroll children under the age of



Tax Tips & Traps

16 in organized sports will be eligible for a **Fitness Tax Credit**. Eligible programs must include at least *thirty minutes* of physical activity for kids under ten and an *hour* for those ten and over. The program must last a minimum of *one session a week* for *eight weeks*, except for camps where kids get a full week of exercise.

Qualifying *costs* could also include *membership fees* at facilities and community centres, fees charged for teams or programs *at schools* that are managed either by the school or a third party, *camps* with a physical activity theme, and fees for *training or coaching* courses, as long as they meet the *physical activity requirement*.

EMPLOYMENT INCOME

78(2)

FITNESS CLUB MEMBERSHIPS

In a February 19, 2007 *External Technical Interpretation*, CRA notes that generally the payment or reimbursement of *club dues* or *membership fees* by an employer results in a *taxable benefit* to the employee. However, if it is primarily to the *employer's advantage* for an employee to be a member of a club, the employee will *not* have a *taxable benefit*.

In general terms, CRA do *not consider* a situation to be primarily *advantageous* to the *employer* where the employee's membership in a *fitness facility* is part of an *employee-wellness program* designed to provide indirect benefits to the employer, such as the employee being healthier and better able to perform his/her duties..

TRADESPEROPLE'S TOOL EXPENSES

The 2006 Federal Budget provides for a *deduction* for *eligible tools* acquired by an *employed tradesperson* on or after *May 2, 2006* in excess of \$1,000 to be deductible up to a *maximum of \$500*. To qualify, the employer must certify that the em-

ployee is required to acquire the tools. Also, this does *not* include *used tools* and *electronic communication devices* or processing equipment.

MEAL REIMBURSEMENT

In a January 16, 2007 *External Technical Interpretation*, CRA notes that an employer may pay a *tax-free allowance* for *travel expenses* (including meals) to an employee who is travelling *away from the municipality* where the employment ordinarily occurs. This also applies to *reimbursements*.

EMPLOYMENT VS. INDEPENDENT CONTRACTOR

In a February 6, 2007 *Federal Court of Appeal* case, 11 *drywallers*



were found to be *employees*, not independent contractors. The Court noted that there was *no evidence* as to the independent contractor *intention* or *status*.

In a September 15, 2005 *Tax Court* of Canada case, the Court found that twenty-seven workers were found to be *employees* not independent contractors. The workers were engaged to complete *credit card application forms*.

There are *significant extra costs*, such as Canada Pension Plan and Employment Insurance, that the payor must now pay.

BUSINESS/PROPERTY INCOME

78(3)

PRIVATE HEALTH SERVICES PLAN (PHSP)

In a February 15, 2007 *External Technical Interpretation*, CRA notes that *business proprietors* and *partners* may deduct premiums payable under a *PHSP* in-

spect of the individual and family members living with the individual, within certain *dollar limits*.

APPRENTICESHIP JOB CREATION TAX CREDIT

The 2006 Federal Budget proposes an *Apprenticeship Job Creation Tax Credit* equal to 10% of eligible salaries and wages payable in respect of *employment after* May 1, 2006. The maximum credit is based on \$2,000 per year for each "eligible apprentice".

An "*eligible apprentice*" is working in a prescribed trade in the first two years of the apprenticeship contract and the contract must be *registered* under an apprenticeship program including the 45 Red Seal Trades outlined in www.red-seal.ca.

TAX WITHHOLDING ON TIPS

In a February, 2007 *External Technical Interpretation*, CRA notes that *withholding* of tax on *gratuities* is dependent on the level of *employer control* over their distribution. An employer is considered to *have control* over the tips where the *employer* is able to *direct* how the *tips will be paid*.

This could be done through a policy where the tips are a mandatory service charge added to the clients' bills or pursuant to a sharing arrangement set out in an employment contract that outlines how the tips will be divided. Also, tips that are *included* in the employer's *business income* are also considered to be under the *employer's control*.

Credit card tips directed at a *server* where the *tip* amount is *not* included as *business income* of the employer, or subject to a sharing arrangement, would *not* be considered to be under the *control* of the employer and would *not* be subject to *payroll withholding*.

NEW DIVIDEND RULES

In a December 20, 2006 *Government Re-*

Tax Tips & Traps

lease, CRA made the following comments with respect to designation of "eligible dividends":

Notification of Shareholders

1. For 2007 and subsequent taxation years, for *public corporations*, acceptable methods of making a *designation* include posting a notice on the *corporation's website*, in corporate quarterly or annual *reports* or shareholder *publications*.

Also, if a public corporation issues a *press release* announcing a declaration of a dividend, a statement in the press release indicating that the dividend is an "eligible dividend" will be acceptable.

2. For 2007 and subsequent taxation years, the *notification* requirements for *all other corporations* must be met each time a dividend is paid. Examples of notification could include identifying "eligible dividends" through *letters to shareholders* and *dividend cheque stubs* or, where *all shareholders are Directors* of a corporation, a notification in the *Minutes*.

Notification of a designation must be given to *all shareholders* who receive a dividend, including those outside the country. A dividend received by a *non-resident* shareholder *cannot qualify* as an "eligible dividend".

CONSTRUCTION REPORTING

The Income Tax Act requires *construction contractors* to report payments to *subcontractors* in the course of "construction activities" (along with the subcontractor's Business Number or Social Insurance Number) on *Form T5018* on either a calendar or fiscal period basis within six months after the end of the reporting pe-



riod. Failure to file Form T5018 could result in a *penalty*.

Payments of less than \$500 per year per subcontractor do not have to be reported.

"Construction activities" include the erection, excavation, installation, alteration, modification, repair, improvement, demolition, destruction, dismantling or removal of all, or any part, of a building, structure, surface or sub-surface construction, or any similar property if the person's *business income* for that reporting period is derived *primarily* from those *activities*. See CRA *Guide T4027* for details.

OWNER-MANAGER REMUNERATION

78(4)

2007 INDIVIDUAL PENSION PLANS

An *Individual Pension Plan* (IPP) is a pension obligation between a sponsoring company and its employee(s). It can be offered *selectively* (i.e. to owner-managers) and *retroactively*. The retroactive aspect allows a large *tax-deductible deposit* representing *past service* going back to potentially 1991.



With this large first year deposit and the regular annual deposits, one can achieve a much *larger tax sheltered retirement account* than available in an RRSP program alone.

An IPP is *most advantageous* for a person who is *age 50+* and has been taking *regular salaries* out of his/her corporation.

2007 FEDERAL BUDGET

78(5)

On March 19, 2007, the Honourable *Jim Flaherty*, Minister of Finance, presented

his second Budget to the House of Commons.

Some of the *tax proposals* include:

A. PERSONAL INCOME TAX

1. Registered Disability Savings Plan (RDSP)



An *RDSP*, with a Canada Disability Savings Grant (*CDSG*) and a Canada Disability Savings Bond (*CDSB*), is proposed for 2008.

Eligibility

Any person eligible for the *disability tax credit* (DTC), or their parent or legal representative, will be eligible to *establish an RDSP*.

Contributions

Contributions to an *RDSP* are limited to a lifetime maximum of *\$200,000* in respect of the beneficiary, with *no annual limit*. There will be no restriction on who can contribute. Contributions will be permitted until the end of the year in which the beneficiary attains *59 years of age*.

Canada Disability Savings Grants (CDSGs)

RDSP contributions will qualify for *CDSGs* at matching rates of 100%, 200% or 300%, depending on family net income and the amount contributed.

There will be a *lifetime limit* of *\$70,000* on CDSGs. An RDSP will be eligible to receive CDSGs until the end of the year in which the beneficiary attains *49 years of age*.

Canada Disability Savings Bonds (CDSBs)

CDSBs of up to *\$1,000* will be paid *annually* to the RDSPs of low and modest-income beneficiaries and families.

Tax Tips & Traps

There will be a *lifetime limit* of **\$20,000**. An RDSP will be eligible to receive CDSBs until the end of the year in which the beneficiary attains **49 years of age**.

2. Private Foundations

Budget 2007 proposes to *eliminate* the taxation of *capital gains* on donations of *publicly-listed securities* to *private foundations*.

This applies to gifts made on or after **March 19, 2007**.

3. Registered Education Savings Plans (RESP)

The **\$4,000** annual RESP *contribution* limit will be *eliminated* and the *lifetime* RESP contribution limit will be increased to **\$50,000** from **\$42,000**.

The maximum annual RESP contribution qualifying for the **20 % CESG** will be increased to **\$2,500** from **\$2,000**. The **\$7,200** lifetime CESG limit will be unaffected by this change.

These changes apply to contributions made *after 2006*.

4. Elementary and Secondary School Scholarships

Budget 2007 proposes to *fully exempt* *scholarships and bursaries* provided to attend *elementary and secondary schools* commencing in 2007.

5. New Child Tax Credit

Budget 2007 proposes to introduce a new **\$2,000 non-refundable child tax credit** for parents for each child under the age of 18 years at the end of a taxation year. The tax credit will be calculated at the lowest personal income tax rate for the taxation year (i.e. **15.5 %** in 2007). This will take effect in 2007.

6. Lifetime Capital Gains Exemption (LCGE)

Budget 2007 proposes to *increase* the

\$500,000 LCGE (qualified small business corporation shares and qualified farm and fishing property) up to **\$750,000**. This applies to dispositions on or after **March 19, 2007**.

7. Meal Expenses of Truck Drivers

Budget 2007 proposes to increase the deductible portion of the cost of food and beverages consumed by *long-haul truck drivers* during eligible periods of travel (away for at least 24 continuous hours and 160 kilometres from the residential or business location) *over five years*.

8. Phased Retirement

To provide more flexibility to employers to offer *phased in retirement programs*, and to increase the reward to older workers from full-time work, Budget 2007 proposes to allow an employee to *receive pension benefits* from a defined benefit RPP and simultaneously accrue further benefits for work performed with the same employer after *full or partial retirement*.

9. Age Limit for Maturing RPPs, RRSPs and DPSPs

Budget 2007 proposes to increase, for the **2007** and subsequent calendar years, the *conversion age* for these plans to **71 years of age** from 69 years of age.

B. BUSINESS INCOME TAX

1. Temporary Incentive for Manufacturing and Processing Machinery and Equipment

Budget 2007 proposes to *temporarily increase* the *Capital Cost Allowance rate* for *manufacturing and processing* machinery and equipment to a **50% straight-line rate**.

This applies to equipment acquired on or after **March 19, 2007** and *before 2009*.

2. International Taxation

(i) Canada-U.S. Tax Treaty: Elimination of Withholding Tax on Interest

An *exemption* from *withholding tax* on both arm's length and non-arm's length *interest* is to be implemented in the *Canada-U.S. Tax Treaty*.

This applies to interest paid on or after the date on which the withholding tax exemption in the proposed *Canada-U.S. Tax Treaty* comes into effect.

(ii) International Tax Fairness Initiative

Budget 2007 proposes to *restrict* the deductibility of *interest paid* on debt used to invest in foreign affiliates.

3. Investment Tax Credit for Child Care Spaces

Budget 2007 proposes to provide eligible taxpayers with a **25 % non-refundable investment tax credit** on eligible expenditures, to a maximum credit of **\$10,000** per child care space created.

4. Remittance and Filing Thresholds

Budget 2007 proposes to *ease* and *broaden* certain *tax instalment requirements*.

C. SALES AND EXCISE TAX MEASURES

Rebate/Green Levy - Vehicles

Introduces a vehicle efficiency incentive *rebate* of up to **\$2,000** for highly *fuel-efficient vehicles* (6.5 litres or less/100 kms - see www.tc.gc.ca) and a new *Green Levy* on *fuel-inefficient vehicles* (13 litres or more/100 kms) of up to **\$4,000**.

The *rebate* applies to eligible new vehicle *purchases or leases* after **March 19, 2007**. The *Green Levy* will apply to new vehicles delivered or imported after **March 19, 2007**.

Tax Tips & Traps

ESTATE PLANNING

78(6)

RRSP - FRAUDULENT SCHEME

In an April 2, 2007 *Tax Court* of Canada case, the taxpayer contended that he was the *victim of a scheme* by which he was *defrauded* out of his \$53,300 of RRSP funds and that he should not be required to include any amount in his income.

Taxpayer Loses

The Court noted that even though it is difficult not to be *sympathetic* with the taxpayer, this *cannot have a bearing* on the tax consequences that flow from the transactions.

CHARITABLE DONATION

In a February 14, 2007 *CRA Release*, CRA notes that a *gift* for tax purposes also *includes a gift in kind*, which is a gift of property other than cash.

A Registered Charity that accepts a *gift in kind* can issue a *donation receipt* for a charitable donation tax credit. The receipt should be for "*fair market value*".

ELIGIBLE PENSION INCOME

The October 31, 2006 *Department of Finance Release* announced that persons eligible for the \$2,000 *pension income credit* will be able to *transfer* up to 50% of this income to a resident spouse/common-law partner in 2007 and subsequent years.

For individuals *aged 65* before the end of the year, "*pension income*" includes *lifetime annuity* payments from a superannuation or pension plan, an *annuity* from a Deferred Profit Sharing Plan, or a Registered Retirement Savings Plan, a "*payment*" from a *Registered Retirement Income Fund* or the *income portion* of a *general annuity contract*.

For individuals *under 65 years of age* a "qualified pension income" includes *life-*

time annuity payments under a *superannuation or pension plan*. It also includes other "pension income" amounts received as a result of the *death* of the individual's spouse or common-law partner.

Before doing this transfer on the 2007 *Personal Tax Return*, it is important to consider *other tax implications* such as the loss of *low income credits* that may otherwise be available to the recipient spouse.

CHARITABLE DONATION SCHEMES

In a February 9, 2006 *Federal Court of Appeal* case, the Federal Court upheld the Tax Court decision that *denied* the Appellant's *charitable donation credits* claimed because the donations were not truly for the amount appearing on the receipts. Also, *gross negligence penalties* were *upheld* by the Federal Court of Appeal.



GST

78(7)

RESIDENTIAL RENTAL PROPERTY REBATE

In August, 2006, CRA introduced 18-page *Guide RC4231* which discusses the GST/HST *New Residential Rental Property Rebate*.



This *Rebate* is up to 36% of GST/HST on newly constructed, substantially renovated, or converted *residential rental accommodation* used for *long-term* rental.

VACATION PROPERTIES

In a February 26, 2007 *Release (GI-025)*, CRA explains how the GST/HST applies

in situations where an *individual* purchases, uses or sells *vacation property*.

NEW HOUSING REBATE

In February, 2007, CRA released 20-page *Guide RC4028 (GST/HST New Housing Rebate)* which provides information for persons who build or buy a *new* or substantially *renovated house*, including a condominium unit and a mobile home, or buy a share of the capital stock of a cooperative housing corporation.

WEB TIPS

78(8)

1-MINUTE STRESS RELIEVERS

In order to *break stress*, try one of these *minute long* diversions.



www.killsometimc.com - play a *game* or watch a funny video clip (try gold miner)
www.youtube.com - check out a *video clip* (try searching for "alternative uses for your laptop")

www.classmates.com - see what your old *classmates* are up to.

www.soduko.org - try a *soduko* game.

www.cnn.com - see *what's new* in the world

Google your *name*.

Buy/send someone a *flower*. (Google "Flower shops Canada")

PHONESPELL.COM

Do you have a phone *number that is hard for people to remember*? If so, *check out* www.phonespell.com. This website takes phone numbers varying in length from 7 to 10 digits, and *creates a list of the possible words and word combinations* that can be made based on the alphabetic value of each number. For example, if your phone number is 465-3669, the online tool would return word combinations such as "GO JENNY", "HOLE NO 9", and "GOLF

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NOW”.

DID YOU KNOW...

78(9)

**CHARITIES PARTNERSHIP AND
OUTREACH PROGRAM**

In *Guide RC4411*, CRA discusses the *Charities Partnership and Outreach Program* which provides *funding* to registered *charities* and *non-profit organizations* to develop and deliver *compliance-related education and training* to regis-

tered charities.

For example, conferences, workshops, training sessions, research or technical studies, development and dissemination of information, web-based training, education products, and information services are *examples* of projects that may qualify.

**NON-PROFIT ORGANIZATION
(NPO) - RENTAL INCOME**

In a March 2, 2007

*External Technical
Interpretation*, CRA

notes that where an
NPO acquires a

property that is considerably in *excess of
what* is needed in the foreseeable future,
the *rental income* on the excess may im-
pair the NPO status.



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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