



Tax Tips & Traps

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Personal Tax

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.cra-adrc.gc.ca/tax/individuals/topics/celiac-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.

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”.



(Continued on page 2)



Members of the Certified General Accountants Association of British Columbia.

Personal Tax cont'd

Son's Diabetes

In a September 11, 2003 Tax Court of 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.

Business and Property Income

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 dry walling 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.



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.



Employment Income

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/yrs/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.

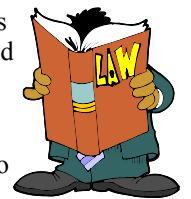
For more information see http://www.hrdc-drhc.gc.ca/ae-ei/menu/faq_compassionate_care_individuals.shtml.

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

Farming

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.

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

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.

March 23, 2004 Federal Budget

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

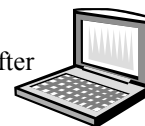
Small Business Deduction Limit

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 fines 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:

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

Office Space for Lease

As of July 31, 2004 the office currently occupied by McNeill & Co. at 303-1268 Fifth Avenue will be available for lease. We are offering to sub-lease the office space for 25 months at below market rate for \$1,500 per month including common area costs.

The office is over 2200 sq ft and Includes:

- Alarm system—burglar & fire
- Reception counter
- Computer network cabling
- Conference room with sink
- Blinds & new carpet

Features of the office building include:

- Elevator for easy access
- Convenient downtown location, close to all government buildings, banks, & courthouse
- New heating/air-conditioning unit
- Well maintained & secure

For more information, please contact Dan McNeill at 563-7812 or Sid Doucette at Doucette Realty at 562-2121

Web Tips

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:

- allowing you to compare two funds side by side,
- assess fees on the mutual funds you already hold, and
- 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

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.

International

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:

1. 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.
2. The “withholding certificate” exemption applies where the 10% withholding tax exceeds the tax that would otherwise be payable on the gain.

GST

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 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

Did You Know cont’d

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.





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Announcement

Terlesky Braithwaite Janzen (TBJ) and McNeill & Co. wish to announce the joining of the two firms effective **August 1, 2004**. McNeill & Co. will be moving to the TBJ offices at 300 -180 Victoria Street at the end of July. The new firm will operate under the name of Terlesky Braithwaite Janzen (TBJ).

Our combined resources bring together over 25 years of experience in providing quality professional service. With a commitment to superior client service and high ethical and professional standards, the combined efforts of our two firms will result in a maximum benefit to you, our valued clients. The combined staff of the two firms will be able to meet all of your accounting needs now and into the future.

**We're on the web:
www.tbjcgga.com
www.mcneillcgga.com**



McNeill & Co
CERTIFIED GENERAL ACCOUNTANTS

is proud to join forces with ...



We are a team of dedicated professionals accounting for your future.

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