



Tax Tips & Traps

Volume 22

February 2005

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**Enclosed is Appendix A
Your 2004 Personal
Income Tax Checklist**



Members of the Certified General Accountants Association of British Columbia.

Personal Tax

COMMON-LAW PARTNER

A “common-law partner” status must be disclosed when filing a personal income tax return. This means a person who cohabits in a conjugal relationship and has so cohabited throughout the previous twelve-month period or is the parent of a child of whom the taxpayer is a parent.

Also, persons that have been cohabiting in a conjugal relationship are deemed to continue to be in a “common-law partner” status unless they are living separate and apart for at least ninety continuous days because of a breakdown of their conjugal relationship.

Two persons living in the same house may be tempted to file on the basis that they are “single” - just roommates - to avoid losing certain benefits such as the GST credit, provincial tax credits, child tax benefit, etc.

CRA may challenge this “single status”. The taxpayers must show that they are not in a common-law relationship. Seven factors indicative of a common-law relationship are:

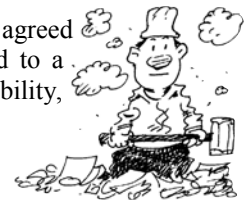
1. shared shelter,
2. sexual and personal behaviour,
3. one partner performs services on behalf of the other,
4. participation in social activities together,
5. societal perception,
6. economic support, and
7. the couple’s attitude toward any children they have together.



MEDICAL EXPENSE - RENOVATIONS

In a September 1, 2004 Tax Court of Canada case, the Court permitted a medical expense for \$10,531 on home renovations. The taxpayer’s spouse had meningitis and was confined to a wheelchair. To remain in the family home she needed 24-hour care. Therefore, the taxpayer incurred the \$10,531 to provide living accommodations for his mother-in-law so that she could provide care to his spouse. The costs also include amounts for a room on the main floor for his disabled spouse.

Also, in a September 17, 2004 External Technical Interpretation, CRA agreed that a person who had suffered a stroke and was disabled was entitled to a medical expense for certain renovations to his house to allow access, mobility, or functionality within the home.



OLD AGE SECURITY

In a September 7, 2004 External Technical Interpretation, CRA remind taxpayers that receive Old Age Security in 2004 that there will be a clawback if the net income exceeds \$59,790. OAS payments will be subject to a “withholding” on the potential clawback. For example, OAS payments in January to June, 2005 are subject to withholding based on the net income in

(Continued on page 2)

Personal Tax — continued

the 2003 Return; July to December, 2005 - based on the 2004 Return. Therefore, if the 2005 income will be less than that in 2003 and 2004, an application to have this withholding reduced could be made to CRA.

CAREGIVER CREDIT

In a July 12, 2004 Tax Court of Canada case, the taxpayer lived periodically with her elderly parents in their apartment in 2002 and, at the end of the year, one of the parents lived with her prior to entering a nursing home. The Court permitted the caregiver credit on the basis that Mrs. V was providing in-home care for her mother.

Editor's Comment

The income threshold for the elderly parent at which point the credit is reduced is \$12,921 for 2004.

Employment Income

STOCK OPTIONS

In an August 13, 2004 External Technical Interpretation, CRA note that where a corporation agrees to sell its shares to an employee, the employee generally includes in employment income a taxable benefit equal to the fair market value of the shares acquired minus the amount paid. However, where an employee pays an amount for the shares that is not less than the fair market value of the shares at the time the agreement to issue the shares is established, a deduction in computing taxable income of 50% of the benefit is permitted.

Also, there is a 50% deduction in computing taxable income, and a deferral of the employment income until the share is sold, if the employee is an arm's length employee of a Canadian-controlled private corporation and holds the shares for two years.



GARNISHMENT

An employer may be required by law to enforce a garnishment, family support, maintenance order or wage assignment.

For example, CRA may issue a Requirement to Pay Notice with respect to an employee. This Notice remains in effect until the CRA liability is paid in full or, until CRA releases the employer from the obligations.

If an employer has more than one order with respect to an employee, legal advice should be obtained as to "who gets what". In some jurisdictions the employer is permitted to deduct an administrative fee from the funds they forward to the Court. (Alberta, Manitoba, Newfoundland, Labrador, Northwest Territories, Nunavut, Ontario, Prince Edward Island, and the Yukon Territory)

Farming

CAPITAL GAIN EXEMPTION

To qualify for the \$500,000 capital gain exemption on "qualified farm property" bought after June 17, 1987, a gross-revenue test must be met. Two years while the property was owned the gross revenue of the individual, spouse, child or parent of the individual from the farming business carried on in Canada in which the property was principally used, and in which such a person was actively engaged on a regular and continuous basis, must exceed the person's income from all other sources.

The person meeting the gross-revenue test need not be the person who owns the property. For instance, it may be the spouse, child or parent of such a person.

Alternatively, where the land was acquired before June 18, 1987, the land will qualify where it was used by the individual, the spouse, child or parent principally in the course of carrying on the business of farming in Canada, either in the year the property is disposed of, or in at least five years during which it was owned by such a person.

Business and Property Income

SALARIES TO FAMILY MEMBERS

In a September 2, 2004 Tax Court of Canada case, the taxpayer's salaries to his sixteen/seventeen-year old son in 1999 and 2000 of \$4,279 and \$4,090 respectively were disallowed by the Court because:

1. There was no evidence of cheques being made for those amounts - just an indication by the father that he had bought items for the son which were reflected in the salary.
2. Hours of work were not kept.
3. The son did not report the amounts in income.



The Court noted that business transactions between related persons must have their "i's" dotted and their "t's" crossed.

For salaries to be allowed to family members, the amounts must be paid in a normal manner and specific duties and hours worked should be documented.

In a June 23, 2004 Tax Court of Canada case, salaries of \$12,000 and \$3,500 paid to a sixteen year old and twelve year old child were disallowed for reasons including no evidence of actual payment or reporting.

In a July 16, 2004 Tax Court of Canada case, the Court reviewed a number of expenses which had been deducted in carrying on the Watkins products for sale business. One of the items allowed as a deduction by the Court was a salary of \$25 per month to their 12 year old son and \$15 per month to their 7 year old daughter for assisting them in various business functions. The Court was satisfied that the remuneration was paid and reasonable.

KEEP RECEIPTS

In a September 20, 2004 Tax Court of Canada case, the taxpayer was reassessed by CRA for the 1993, 1994 and 1995 years to disallow most of the interest expense, entertainment expense, business use of residence, and farm expenses.

Taxpayer Loses

The Tax Court also disallowed the expenses and noted that the taxpayer did not keep receipts. The best evidence would have been an invoice, a cancelled cheque, a receipt or other proof of payment. Instead, only schedules in the handwriting of the Appellant with his oral explanation were provided.

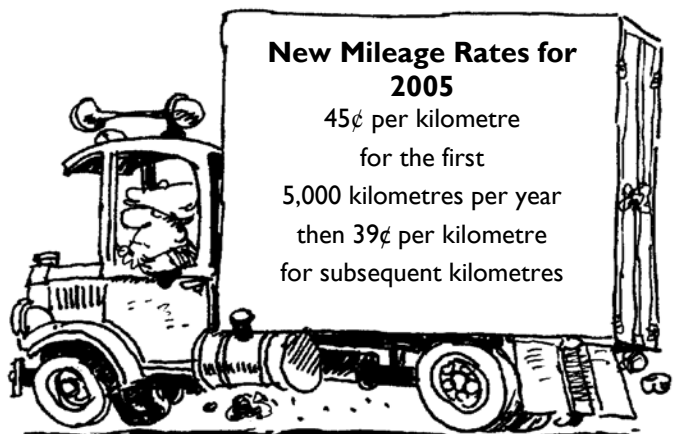


TAX REGISTRATION

Registrations for a new business or partnership may be done over the internet at www.businessregistration.gc.ca

OUT-OF-COUNTRY TRAINING COSTS

In an October 20, 2004 External Technical Interpretation, CRA notes that where training in respect of a business is taken to maintain, update or upgrade an already existing skill or qualification, the related costs (course fees, travel, food, beverages and lodging) are deductible as a current business expense. However, the food and beverage portion may be restricted to the 50% deduction in Section 67.1.



Marriage Breakdown

CHILD SUPPORT - COMMENCEMENT DAY

In a July 13, 2004 Tax Court of Canada case, the taxpayer signed a Separation Agreement in 1988 which required a \$225 per child per month child support payment.

After May 1, 1997, the taxpayer moved from Manitoba to British Columbia. A new Order of the Income Security Division in British Columbia retained the Manitoba Order but had a top-up of the child support from \$225 per month to \$425 per month.



Taxpayer Loses!

The Tax Court noted that the deduction is lost because a new or amended agreement was made after April 1997.

SPOUSAL SUPPORT

In the August 23, 2004 issue of the Globe and Mail it was noted that the Federal government is proposing to release Federal Guidelines for negotiating income-sharing agreements between divorced couples. The Guidelines include formulas for calculating reasonable settlements. Factors such as the length of the marriage and the presence of dependent children are included. For example, if a couple married for twenty years has no dependent children and the man is earning a salary of \$90,000 and his wife is earning \$30,000, the spousal support figure that the man would pay his ex-wife ranges between 1.5% and 2.0% of the difference (\$60,000) times the number of years the couple were married. This is between \$18,000 and \$24,000 a year or \$1,500 to \$2,000 a month.

The payments continue to be tax deductible to the payor and taxable to the recipient. Unlike the child support guidelines which do have the effect of law, the spousal guidelines are just a starting point in negotiations.

SPOUSAL SUPPORT

It was noted in the National Post on September 27, 2004 that the British Columbia Court of Appeal was asked to cancel or reduce Mr. L's Court-ordered \$2,250 per month spousal support to his 57 year old former wife on the basis that she had not made reasonable attempts to obtain employment. The Court rejected the Appeal on the basis that Ms. L's family and medical problems were exacerbated by the breakdown of her marriage. Ms. L's inability to achieve financial self sufficiency resulted, (at least in part) from the emotional devastation as well as from her age, a lingering back problem, and a string of death and illnesses in her close family.

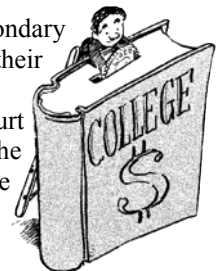


PAYING FOR CHILD'S MASTERS DEGREE

It was noted in the July 15, 2004 issue of the National Post that the Ontario Superior Court held that divorced parents of a 25 year old daughter must pay for her Masters Degree.

In the past, it has been common for Judges to require divorced parents to pay for a child's first post-secondary degree. However, this case found that where the parents are highly educated and have high expectations for their child, the costs for the Masters Degree are also required to be paid.

The daughter took the Masters Degree at a university in the United States at a cost of \$127,000. The Court noted that the parents should only be required to pay the equivalent costs for a degree in Canada, which the Court determined to be \$40,000 (\$22,800 for the father and \$17,200 for the mother based on their respective incomes).



Estate Planning

CHARITY REIMBURSEMENTS

A person who incurs expenses while volunteering for a charity could consider having the expenses reimbursed by the charity. The volunteer could then donate the amounts back to the charity. This will provide a tax credit for the donation. It is important to cross cheques.

PUBLIC BENEFIT

Organizations that want to register as a "Charity" must have purposes directed to the "public benefit". On September 30, 2004, CRA issued a 27-page Guide "Consultation on Proposed Guidelines for Registering a Charity: Meeting the Public Benefit Test".

CANADA PENSION PLAN (CPP)

In a Government of Canada Income Security Program seminar it was noted that:

1. In applying to collect a person's CPP, it is possible to drop out certain years:
 - (i) periods of CPP disability,
 - (ii) periods during which children were raised up to age 7,
 - (iii) 15% of the lowest earning years in your contributory period.

See the "Canadian Retirement Income Calculator" at www.hrdc.gc.ca.

2. CPP credits may be divided upon divorce, legal annulment or separation of spouses or common-law partners. The applicant's ex-spouse or ex-partner is to be notified of the request in writing. For divorces after January 1, 1987, there are no time barriers for applying.
3. Spouses or common-law partners may apply to share CPP entitlements if they are both at least age 60.
4. Disability CPP benefits must be applied for in writing. The person must have a severe and prolonged disability including a condition which prevents the person from doing any work on a regular basis.

SPOUSAL TRUST

Assets may be rolled over on death to a Spousal Trust which is a Trust created in the Will under which the taxpayer's spouse or common-law partner is entitled to receive all of the income of the Trust that arises before the spouse's or common-law partner's death and, no person except the spouse or common-law partner may, before their death, receive or otherwise obtain the use of any of the income or capital of the Trust.

In a second marriage situation, persons that wish to ensure that their assets will eventually go to their children, not their new spouse's children, upon their new spouse's death, may wish to establish a Spousal Trust in which the new spouse receives all the income during his/her life but, there can be no encroachment on capital until the spouse's death at which time, the capital will go to beneficiaries chosen by the deceased taxpayer, such as his/her children. Expert legal advice is needed here.

GIFT FROM AN ESTATE

In a June 11, 2004 External Technical Interpretation, CRA reviewed a situation where, prior to the death of Brother A, Brother B took care of his personal needs and managed his finances. Brothers B, C, D and E are the beneficiaries of Brother A's Estate. Brothers C, D and E agree that the Estate should pay Brother B for the care provided to Brother A. CRA agreed that this payment is a non-taxable gift to Brother B from the Estate.

RRSP/RRIF TESTAMENTARY TRUSTS

In a June 20, 2003 Technical Interpretation, CRA notes that where a taxpayer designates a Trust as the beneficiary of his/her RRSP or RRIF upon his/her death, if this is a testamentary instrument provided for in the Will, then the transfer of the property would be considered as occurring as a "consequence of death". Therefore, the recipient Trust would be a "Testamentary Trust" eligible for advantageous tax implications such as filing Trust returns using the regular marginal income tax rates.

TAX SHELTER DONATION ARRANGEMENTS

On November 25, 2004 CRA introduced a Fact Sheet which notes that CRA is aware that donation arrangements continue to be promoted using Trusts and leveraged cash donations. CRA's position is that the 2003 Income Tax Act changes will significantly reduce tax benefits.

GST

LAND SALE

In an August 20, 2004 Tax Court of Canada case, the vendor sold land and a building to the “Heart of Trail Society” for \$100,000. The Society advised the vendor that they were registered for GST. Therefore, the vendor did not charge GST on the basis that the purchaser would self-assess.

However, the GST Registration of the Society had been cancelled prior to the sale.

Vendor Loses!

The Court noted that even though the Vendor was misled by the fraudulent statement made by the agent for the Society, the Act is clear. The Court found that the Vendor is responsible for the \$7,000 of GST plus a penalty of \$1,140 and interest of \$604.

DIRECTOR LIABILITY

Directors may be held personally liable for unremitted GST and source deductions unless they exercised due care and diligence or the assessment is more than two years after the person has ceased to be a director.

In an August 13, 2004 Tax Court of Canada case, the taxpayer ran a Tim Horton franchise which did not remit GST. CRA assessed penalties and interest of \$37,430 which were not objected to by the corporation. Upon being assessed personally, the directors did not argue “due diligence” but did argue that the amount of \$37,430 was incorrect. This was based on a rough calculation done by their accountant totaling \$14,190.

Oops - Taxpayer Loses!

Even if the assessment is incorrect, if it is not objected to by the company, the directors are still personally liable.

Editor's Comment

Always object to incorrect GST assessments even if the corporation is insolvent.

NON-PROFIT ORGANIZATIONS

In September, 2004, CRA introduced a 20-page Guide RC4081 which discusses who should register, exemptions for non-profit organizations, special issues, input tax credits, public service bodies' rebates, simplified accounting methods, and real property implications.

Web Tips

FINDING INFORMATION FOR/ABOUT SENIORS

At www.seniors.gc.ca you will find federal information about senior programs, initiatives, forms and contact information at this website. Subjects covered include care for seniors, computers and education, end of life, financial and legal, health, housing, seniors' networks, travel and leisure, veterans, work and volunteering. Also, check out the “My Province or Territory” section on the left hand toolbar of the page for information that is specific to your province.



LIFE EXPECTANCY CALCULATOR

If you would like to see how long you will have an opportunity to be a senior, check out this site:

www.livingto100.com

Most people realize that eating, exercising and living in an unpolluted environment can increase your life expectancy, but do you know by how much? Also, did you know that something as small as flossing your teeth could add two years to your life? This website gives an estimated life expectancy based on one's habits, genetics, health and environment. The user simply fills out the 41 question multiple response worksheet and is then presented with an expected age and an explanation of the results.

STARTING A NEW BUSINESS

This website, www.vpspro.com contains a 12 step planner that looks at numerous items that need to be considered when starting a new business. Various reports can be obtained including 3 year financial projections, cash flows, and project costs.

Web Tips — continued

GOOGLE DESKTOP SEARCH

Have you wondered how those Internet search engines like Google can search millions of websites and in a split second return thousands of site matches ... while it can take over 100 times as long to use your computer's search button to find lost files? Google has just developed a desktop tool that not only searches your computer for files, but searches inside of files (MS Word, Excel, PowerPoint etc.). Not only does it search for files but it also returns a list of relevant websites that you have recently visited. The fun doesn't stop just there - the tool can also search your email! At the moment, this last feature works best with users of MS Outlook but is still extremely useful for other users.

When downloading the file, please note that it takes a while for the engine to fully catalogue your files. However, this is done while you are not using the computer. Once the files are catalogued, you are ready to get split second responses.

Go to www.google.ca/about to find out more.

Meet Our Staff



Ian McInnes, CGA (Partner — Prince George)

Ian, born and raised in Vancouver, earned his CGA designation in 1981 while working for a large forestry company where he gained a wide range of experience from internal audit in Vancouver to various mill accounting positions throughout the province. After an eight year stint in Mackenzie Ian and his family were recruited in 1985 by a large steel and shipping company in New Zealand where he gained international accounting experience. Upon their return to Canada in 1990 they settled in Prince George where Ian worked for twelve years in the non-profit charity sector. Ian joined TBJ in 2001 where he quickly progressed to a partner position in January 2004.

Ian is actively involved in the local CGA chapter, currently as chair. He is a member of the Kiwanis club of Prince George and serves as Treasurer for his church. He is an avid golfer and likes to spend time in the garden with his wife of 30 years.

Dan McNeill, CGA, CFP, CPA (Vt) (Prince George)

Dan received his CGA designation in 1977. Prior to entering public practice in 1981, Dan had various accounting and management positions in the logging industry, health care, education, and municipal government. Dan served on the Public Practice Advisory Group of the Certified General Accountants Association of BC from 1991 to 2003. He is regularly engaged by CGA-BC to develop and present seminars on accounting and auditing topics to other members of the Association and to conduct peer reviews. Dan has contributed extensively to CGA Canada's Public Practice Manual. In order to expand the services he offers to his clients, Dan successfully challenged the Certified Financial Planner (CFP) exam in 1997 and the U.S. Certified Public Accountant (CPA) exam in 2003. Dan now is a CFP licensee and is licensed as a CPA by the state of Vermont.

As senior partner of McNeill & Co., Certified General Accountants, Dan saw a need to ensure that the firm's clients would continue to receive all the services they require now and into the future. Consequently, McNeill & Co. joined Terlesky Braithwaite Janzen (TBJ) in 2004. While Dan continues to work with TBJ to provide accounting, tax, and financial planning services to his clients, the additional resources of TBJ have provided an opportunity for Dan to pursue some of his other interests including providing consulting services to other accountants, as well as traveling after tax season. Dan and his family have lived in Prince George for over 27 years.

Ron Terlesky, CGA (Mackenzie)

Ron began his accounting career at Savona Timber in 1963. From 1963 to 1980, Ron held various accounting positions in the mining and forestry industries. During that time, he worked in Ashcroft, Merritt, and Kamloops. In 1980, Ron and his family moved to Mackenzie where he began in public practice as Terlesky & Co. Ron's industry background has been an asset to the firm as much of the economy in Mackenzie is based on the forest industry.

Ron and his wife of 40 years, Karen, enjoy living near four of their five grandchildren. Ron takes full advantage of the outdoor recreation opportunities in the Mackenzie area. Ron enjoys the freedom to move throughout that beautiful area of British Columbia, while enjoying camping, fishing, & hunting.

Ron has always been an active member of the community and has served in various capacities from hockey coach to Chamber of Commerce president. Ron is a charter member of the Rotary Club of Mackenzie, having served as club president, treasurer and in various directorships. He is currently the Treasurer for the community radio society.



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Office News

We are pleased to welcome two new staff members to our Prince George team, Mary Proctor-Landry and Nicole Pavich. Mary has recently moved to Prince George from Nova Scotia and brings many years of bookkeeping experience. Nicole is a senior CGA student and has had several years experience in public practice including five years with McNeill & Co.

Our office will be closed March 25, 2005 for Good Friday.



Reminder

The deadline for filing personal tax returns is
April 30th.

Website Contest

Visit our website, e-mail us with the correct answer to the following question and you will be eligible to win a small prize. Over the years TBJ has had several names, what was the name prior to Terlesky Braithwaite Janzen and what year did it change?

E-mail: tbjpg@tbjcg.com



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