

JONES THOMBLISON LLP, CHARTERED ACCOUNTANTS

3515 Mainway
Burlington, ON L7M 1A9

Dear Clients/Friends:

This is a quarterly newsletter which we send to clients, referral sources and friends. The information is meant to be educational and application of the concepts should be on an individual basis. Please do not hesitate to contact us should you require further clarification of any item.

Ph: (905) 319-3515
Fax: (905) 332-7712
Email: steve@jtca.ca
jay@jtca.ca

PERSONAL TAX

89(1)

MEDICAL EXPENSES - TRAVEL

In an October 1, 2009 Tax Court of Canada case, the taxpayer lived in Nanaimo, British Columbia but had bypass surgery in Victoria and claimed medical expenses totaling \$12,248. The taxpayer was certified to be incapable of travelling without the assistance of an attendant.

Initially, CRA disallowed \$3,912 of medical expenses pertaining to expenses incurred by his accompanying wife for accommodations and meals in Victoria during the eighteen days that he was hospitalized for bypass surgery.

Taxpayer Wins!

The Court noted that medical travel expenses embrace not simply the cost of movement from one place to another, but also the attendant cost of living away from home during the treatment period.

COMMON-LAW RELATIONSHIP

In a November 13, 2009 Tax Court of Canada case, the issue was whether Ms. B was in a common-law relationship with Mr. V which would

have adversely impacted her GST credit and her Child Tax Benefit amounts. Both incomes of common-law partners are considered in determining if they qualify for these amounts.

The Court noted that the definition of common-law partner turns entirely upon whether the persons cohabited in a conjugal relationship.

The characteristics of shared shelter, sexual and personal behavior, services, social activities, economic support, children and societal perception are relevant, but not all are necessary. The weight given to each factor varies on a case-to-case basis.

Taxpayer Loses

The Court noted that she was in a common-law relationship because:

1. they regularly made meals for one another and did one another's laundry;
2. Ms. B did household tasks, they dined out together and went to functions such as bowling, and mini golf;
3. they had sexual relations on occasion and neither was seeing anyone else;

IN THIS ISSUE

[PERSONAL TAX](#)
[EMPLOYMENT INCOME](#)
[BUSINESS/PROPERTY INCOME](#)
[OWNER-MANAGER REMUNERATION](#)
[MARRIAGE BREAKDOWN](#)
[ESTATE PLANNING](#)
[DID YOU KNOW...](#)

4. they exchanged gifts at Christmas and birthdays;
5. they shared personal discussions and he assisted her with considerable personal and financial difficulties;
6. he was named on her car insurance as a driver of her car;
7. he provided financial support to her, and the neighbours regarded them as a couple; and
8. she sent letters to government authorities indicating that they were a common-law couple.

POST-SECONDARY STUDENTS OUTSIDE CANADA

CRA's December, 2009 Guide RC190 provides information and forms to make a claim for the tuition, education, and textbook tax credits for post secondary education outside

Tax Tips & Traps

Canada.

EMPLOYMENT INCOME

89(2)

TRAVEL EXPENSES

In a September 9, 2009 **Tax Court** of Canada case, the teacher claimed **motor vehicle employment expenses** of \$5,272 in 2005 while employed as a **substitute teacher** with **Catholic** and **Public School Boards** in Peterborough. He travelled to **various schools** throughout the districts in that year.

The taxpayer received a **Form T2200** from the **Catholic School Board**, but **not** from the **Public School Board**.

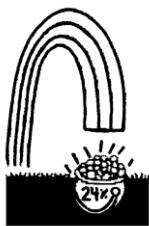
Taxpayer Wins - Sort Of!

The Court found that the **Catholic School Board travel expenses** were **tax deductible** on the basis that he was **required** to work **away from** the employer's place of business, and did not receive an allowance, and did receive a **Form T2200** - Declaration of Conditions of Employment.

However, the expenses related to the **Public School Board** were **not deductible** because the Public School Board did **not** provide a **Form T2200**.

SCHOLARSHIP/FREE TUITION

In a September 1, 2009 **External Technical Interpretation**, CRA notes that as a result of several recent Court Decisions, CRA **now accepts** that where an arm's length employer provides a **post-secondary scholarship, bur-**



sary or free tuition to family members of an **employee** under a scholarship program, the amount will be included in the **student's income, not** the **employee's income**.

If the **student** is **eligible** to claim the **education tax credit** (post-secondary education) the **entire amount** may be **exempt** from tax.

With respect to employer-paid **training or educational assistance** for arm's length employees, CRA states that when the training is taken **primarily** for the **benefit** of the **employer**, there is **no taxable benefit** whether or not this training leads to a degree, diploma or certificate.

When an employee must **resume** his/her **employment** for a **reasonable period of time** after completion of the courses, CRA generally considers that the **employer** is **primarily** the one to benefit and, therefore, the amounts are **non-taxable** to the employee.

BUSINESS/PROPERTY INCOME

89(3)

GENERAL PURPOSE COMPUTER EQUIPMENT

A 100% Capital Cost Allowance (CCA) deduction rate applies to certain **general-purpose computer equipment**, including related **system software** and ancillary **data processing equipment**, that:

- is acquired after **January 27, 2009** and before **February, 2011**;
- is situated in **Canada**; and
- is acquired for the purpose of **earning income in Canada**.

In addition, the property must be **new**.

An **example** of ancillary data processing equipment is a **printer** that is connected to a general-purpose computer such as a desktop or laptop.

Also, in a July 13, 2009 **External Technical Interpretation**, CRA notes that a restaurant **Point of Sale Computer System** generally **qualifies**.

TAX-DEDUCTIBLE INTEREST EXPENSE

A procedure of selling non-registered securities, using the proceeds to pay off a personal debt, and then re-borrowing to purchase securities may **create tax deductible interest** on the new debt.

This **conversion of non-tax deductible interest** into **tax deductible interest** has **complexities** which may require **professional assistance**.

BONUSES PAYABLE AND PAYROLL REMITTANCES

It is sometimes difficult to remember to make appropriate and **timely source deductions** for **remuneration** received from your corporation. However, failure to do so can carry **significant costs**.



Also, any remuneration **not paid within 179 days** of the end of the fiscal year in which it was **accrued** is **non-deductible** until is **paid**.

The **best answer** is to ensure that the **source deductions** are **remitted** on a schedule that demonstrates **full payment** of the bonus **within 179 days** of the fiscal year end.

Tax Tips & Traps

OWNER-MANAGER REMUNERATION

89(4)

DIRECTOR LIABILITY

Under the Income Tax Act, where a **corporation** has **failed** to remit **source deductions** or **GST/HST**, the **directors** at that time may be **jointly and severally** liable to pay **that amount** plus any **interest** or **penalties** to **CRA**.

However, a director is **not liable** where the director exercises the degree of **care, diligence and skill** to prevent the failure that a **reasonably prudent person** would have exercised in comparable circumstances.



In addition, no **CRA** action may be made against the director if **more than two years** has expired after the director last ceased to be a director of that corporation.

MANAGEMENT FEES

In a June 30, 2009 **Tax Court** of Canada case, \$80,000 in **management fees** paid by the Appellant to a related company were considered **not** to be **deductible** on the basis they were **not incurred** to earn income from a business and were **not reasonable**.

The Court noted that the **lack** of any **written or verbal agreement** stating the **terms and conditions** of the services to be provided to the Appellant and the **absence** of the formalities required to create **real legal obligations** between the companies lead to the **disallowed deduction**.

MARRIAGE BREAKDOWN

89(5)

DISCLOSURE OF ASSETS

In a **breakdown of a marriage** where one of the **spouses** is a **beneficiary** of a **Discretionary Family Trust**, the details of the **Trust interest** may have to be **disclosed** to the other spouse.



This obligation may **override** the Trust's claim of **privacy and confidentiality**.

In one example, a **Discretionary Family Trust**, in which a **daughter** is a **beneficiary**, acquired a class of shares in the **family corporation**. Upon the **divorce of the daughter**, the parent Trustees have been in a **battle** with the **other spouse** with respect to the disclosure of the Trust assets, including the family corporation shares.

ARREARS

In an October 14, 2009 **Tax Court** of Canada case, the **issue** was whether a payment for **spousal support arrears** is **deductible** to the payor and **taxable** to the **recipient**.

The Court noted that a payment of **spousal support arrears**, whether in a lump sum or over time, **generally continues** to be **deductible**.

However, the result is **different** if the payment is **not** simply a payment of **arrears**. A recent example of this is where the taxpayer agreed to make a **payment of \$100,000** at a time when there were **arrears** in the amount of **\$370,000**. The Court concluded that the **lump sum amount** was paid to

obtain a release from the liability to pay the **arrears** and that the character and the nature of the payment were, therefore, **altered**.

Whether a payment retains its character as a **payment of arrears** or **something else** is largely a **factual question** that depends on the circumstances.

CHANGE OF RELATIONSHIP STATUS

The **end of a marriage** or a **common-law relationship** has significant **income tax effects** including **support** calculations, and **property** settlements, in some cases.

It is fairly easy to determine when a legal **marriage** ends – the date of the divorce decree is stated in the legal documentation. The end of a **common-law relationship** can be more difficult to determine, or to plan around.

For income tax purposes, a **common-law relationship** comes into existence when two individuals cohabitate in a **conjugal relationship** and either have a child together or have cohabitated for at least a year. The relationship is deemed to continue thereafter unless they were **living separate and apart** at the particular time for a period of at **least 90 days** because of a breakdown in their conjugal relationship. **Common-law** partners are, therefore, effectively "**divorced**" on the 91st day after a **separation**.

Also, when a **relationship** changes, **individual income** becomes relevant for determining eligibility for such programs as the **GST Credit** and the **Child Tax Benefit** instead of family income. Depending on the couple's relative incomes, this could significantly enhance the entitlement to program payments.

Tax Tips & Traps

The above definition of **common law status**, like many other income tax definitions, applies **only** for **income tax purposes**. **Different statutes** apply different definitions, often under provincial rather than federal law.

ESTATE PLANNING

89(6)

REGISTERED DISABILITY SAVINGS PLAN (RDSP)

An **RDSP** is a Trust arrangement to which **contributions** (up to \$200,000) can be made for the benefit of an individual who qualifies for the **Disability Tax Credit (DTC)** and is under age 59.

In addition, amounts are paid by the Government into an RDSP including **grants** (up to \$70,000) and **bonds** (up to \$20,000) under The Canada Disability Savings Act (CDSA) and the Canada Disability Savings Regulations (CDSR).

(For information search “**RDSP**” @ www.cra.gc.ca)

TAX-FREE SAVINGS ACCOUNTS (TFSA)

TFSAs have been available since **January 1, 2009** at \$5,000 per year. **Income** earned in these plans is **non-taxable**. (For more information search “**TFSA**” @ www.cra.gc.ca)



Generally, an individual’s **TFSA** will lose its **tax-exempt status** upon

death. However, if a **spouse or common-law partner** is the “**successor account holder**”, the account will **maintain its tax-exempt status**.

Even though **TFSA**s provide for the designation of a **spouse or common-law partner** as the “**successor account holder**”, many financial institutions **did not provide** this on the initial application forms in early 2009. Today, every person can name the spouse or common-law partner as a “**successor account holder**” for their **TFSA** to obtain the rollover treatment on death. Therefore, persons that acquired **TFSA**s earlier in 2009 should consider **going back** to the financial institution and **complete the required Forms**.

ACQUIRING A MORTGAGE IN AN RRSP

A benefit of acquiring a person’s **mortgage** in an **RRSP** is that the **bank** may **charge, say, a 4%** interest rate on a five-year mortgage while **only paying 1%** on guaranteed investment certificates. This **spread of 3%** could be saved if a **self-directed RRSP** purchases the person’s mortgage as an **eligible investment** with, say, a 4% rate of return. On a \$50,000 investment, the benefit would be \$1,500 per year.

For example, a taxpayer could acquire their **own mortgage**, or a **child’s mortgage**, in an **RRSP** but they must first open a **self-directed RRSP**. **Costs** include **mortgage appraisal fees, legal fees, mortgage insurance** under Canada Mortgage and Housing Corporation, annual **mortgage administration fees**, and annual **self-directed RRSP fees**. Also, an **approved lender** from the National

Housing Act must **administer** the mortgage and there may be additional costs in paying off a current mortgage.

Specific **professional assistance** may be needed.

DONATION PROGRAMS

In a November 12, 2009 **Tax Court** of Canada case, the **issue** was whether the taxpayer was entitled to a **charitable donation tax credit** in respect of a \$100,000 payment made under an **arrangement** known as the 2001 Donation Program for Medical Science and Technology (The Program) marketed by **Trinity Capital Corporation (Trinity)**.

The Program involved “**leveraged donations**”.

For example, based on a pledge of \$100,000, the Trinity Program would require a payment of \$20,000 to Trinity, an agreement to borrow, on a non-interest bearing basis, \$80,000 from a **wholly-owned** subsidiary of Trinity (**Capital Ltd.**), and an additional payment of \$10,000 to **Capital Ltd.** as **security** for a loan, a fee for arranging the loan, and a premium in respect of an **insurance policy**.

Taxpayer Loses

The Court noted that it is clear that the **Appellant** did **not make a “gift”** to the Foundation because a **significant benefit** flowed to the Appellant in return for the Donation. Therefore, the **entire donation tax credit** was **disallowed**.

Tax Tips & Traps
