

The Tax File

Issue 85

2009 FIRST QUARTER

2008 PERSONAL INCOME TAX RETURN CHECKLIST

85(1)

Appendix A provides a *checklist* of information that will be needed to complete your 2008 *Personal Income Tax Return*.



PERSONAL TAX

85(2)

DISABILITY TAX CREDIT TRANSFER

If a disabled person does not need to claim the Disability Tax Credit (DTC) to reduce his/her tax payable to nil, the unutilized portion may be transferred to a spouse or common-law partner or to another supporting person. Another supporting person may claim the DTC for a parent, grandparent, child, grandchild, brother, sister, aunt, uncle, nephew or niece of the individual.

We understand that "*support*" could include assistance with the *basic necessities of living* such as food, clothing or shelter. Also, the credit may be transferred to a *supporting relative even* if the dependent person is *not living with* the supporting

relative.

EDUCATION TAX CREDIT - UNIVERSITY OUTSIDE CANADA

In an August 28, 2008 *External Technical Interpretation*, CRA notes that a fee to attend an *educational institution* located *outside Canada* qualifies for the *tuition credit* if it is recognized by an accrediting body (that is nationally accepted in *that country*) as being an educational institution which *confers degrees*, at least at the bachelor or equivalent level.

MEDICAL EXPENSES - TRAVEL

In an October 23, 2008 *External*



Technical Interpretation, CRA notes that amounts paid by an individual to a "*medical practitioner*" or to a "*public or licensed private hospital*" to obtain medical services qualify as medical expenses.

Qualifying medical expenses can be in respect of amounts paid to persons, or for services received, either *within or outside of Canada*.

Transportation and Travel Expenses

An individual is entitled to claim *transportation and travel expenses* if he/she

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travels not less than 80 kilometres and, substantially *equivalent medical services* were *not available* in the individual's locality.

Editor's Comment

In a March 27, 2008 *Tax Court* of Canada case, the Tax Court found that amounts paid to an *alternative medical provider* such as an acupuncturist in Ontario, may be eligible medical expenses even though the acupuncturist was *not regulated* under the provincial medical association at that time.

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This *decision* has now *been overturned* in the Federal Court of Appeal.

CANADA CHILD TAX BENEFIT (CCTB)

It is often difficult to determine who is the “*eligible individual*” for purposes of receiving the CCTB in *marriage breakdown* situations.

In an October 21, 2008 *Tax Court* of Canada case, the Court concluded that the “*eligible individual*” (the person who *primarily fulfills* the responsibility for the *care and upbringing* of the child) was, in this case, *two-thirds* of the year the *father* and *one-third*, the *mother*.

In a February 26, 2008 *Tax Court* of Canada case, the Court determined that the *father* was the “*eligible individual*” because the child spend *12 out of each 14 days* with the father.

In two other *Tax Court* of Canada cases the *mother* was successful in overturning CRA’s rejection and qualifying for the CCTB.

EMPLOYMENT INCOME

85(3)

LEGAL OBLIGATIONS OF DEPARTING EMPLOYEES

An October 9, 2008 Supreme Court of Canada case confirms that a departing employee has a legal obligation to their former employer when they accept employment with a competitor.

In this case, a *branch manager* of *RBC Dominion Securities* assisted in the departure of himself and a number of other employees to commence employment with *Merrill Lynch*. The employees *used information* and *solicited business clients* of *RBC* in their new employment with *Merrill Lynch*.

The *SCC* awarded damages to *RBC* of approximately *\$1.5 million* thereby con-

firmed that a *departing employee* in a managerial position must act *in good faith*, such as encouraging other employees to continue in the employment with *RBC*, as opposed to encouraging them to leave to join a competitor.

RBC successfully argued that the former employees had a *fiduciary duty* because of their key roles with *RBC* and *RBC*’s vulnerability under the circumstances.

EMPLOYEE TRAINING

CRA’s Income Tax Technical News (ITTN) No. 13 provides that when training is taken by an employee primarily for the benefit of the employer, there is no taxable benefit, whether or not this employer-paid training leads to a degree, diploma or certificate. Accordingly, costs are deductible to the employer and not a taxable benefit to the employee.

This was also discussed in an August 29, 2007 *Internal Technical Interpretation* where CRA noted that *employer-paid training costs* for the *son/employee* of the sole shareholder to upgrade his employer-related skills would normally be *deductible* to the employer and *not a taxable benefit* to the son assuming the criteria in *ITTN No. 13* is met.

SCHOLARSHIPS

In two March 7, 2008 *Tax Court* of Canada cases, the taxpayers were *successful* in *overturning* CRA’s *employment income* reassessment. In both cases, the taxpayers were employees of *Dow Chemical Canada* and their children received scholarships of \$3,000 under the Company Scholarship Program. CRA included these amounts as employment income in the parent’s hands.

More Good News for Dimaria and Bartley!

CRA’s appeal to the *Federal Court of Appeal* on December 9, 2008 has been *dismissed* by the



Court.

EMPLOYEE VS. INDEPENDENT CONTRACTOR

In three *Federal Court of Appeal* cases, the Federal Court confirmed the Tax Court decision that in *all three cases* the *workers* were *employees* of the payor, not independent contractors, and the payor was required to remit Employment Insurance and Canada Pension Plan. Also, the workers were not allowed to deduct business expenses.

The *first case* consisted of *130 health care workers* who were placed by the Appellant in a number of health care facilities for short-term work. The *second case* was a worker for a family corporation. The *third case* was simply a worker being treated as an employee of the payor.

BUSINESS/PROPERTY INCOME

85(4)

TRAVEL EXPENSES

In a September 30, 2008 *Tax Court* of Canada case, the taxpayers owned a *rental property in Florida* in which they made *several trips* to meet with the *condo association* to review the *interview process* for renting the property, to *repair and paint* the property, to *inspect* the property and to *purchase minor items* for the property. The taxpayer deducted the *motor vehicle expenses* to travel to Florida. CRA disallowed these expenses on the basis that the property was *managed* by an *independent company* and the travel and motor vehicle expenses were of a *personal nature*.

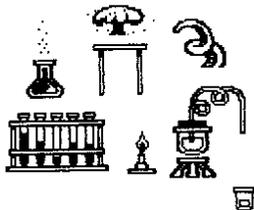
Taxpayer Wins!

The *Court accepted* the taxpayers’ evidence that the trips did *not* have a *personal component*. Therefore, the travel expenses were allowed. The travel expenses were supported by a *log* which recorded 14,596 kilometres for the trips in 2001 and 10,927 kilometres for the trips in 2002.

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SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT (SR&ED)

In a November 17, 2008 *Release*, CRA discussed the SR&ED *Eligibility Self-Assessment Tool* to earn *income tax credits*.



CRA note that the *Eligibility Self-Assessment Tool* is a web-based tool consisting of a series of questions that address the SR&ED eligibility requirements.

CRA also has a *CD-Rom*, brochure and leaflet to explain the SR&ED Program.

For more information see www.cra.gc.ca/sred/index.html.

DIRECTOR LIABILITY

85(5)

DIRECTOR LIABILITY - ADMINISTRATOR OF NON-PROFIT ORGANIZATION

In a June 2, 2008 *Tax Court* of Canada case, *CRA assessed* the taxpayer in her capacity as *director* of the *non-profit organization* for *unremitted GST*.

Taxpayer Wins!

The Court found that she exercised the *degree of care, diligence and skill* that a *reasonably prudent* person would have exercised under these circumstances. She therefore was *exempt* for the personal liability on the *unremitted GST*.



The Court noted that she was *23 years old* with *no business experience* and *no post-*

secondary education when she became a *director* of the organization because of her *interest* in the *organization's objectives*. She was assigned the role of *secretary* but was *limited to preparing the Minutes*. She *did not sign cheques*.

The Court found that the Appellant has *discharged* her *burden of proof* on the balance of probabilities, and that she has shown that she *acted* with *reasonable care, prudence and diligence* given the circumstances of this case.

FARMING

85(6)

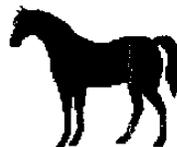
RESTRICTED FARM LOSSES - TAXPAYER WINS

In an August 29, 2008 *Tax Court* of Canada case, the taxpayer is a *dentist* who also carried on an *emu farming business* and a business of *breeding Arabian horses*. These businesses had *substantial losses* which were *deducted* against the *dental income* for the years 1999 and 2000.

CRA reduced the losses of \$382,852 and \$202,475 respectively to *\$8,750* for each year on the basis of the *Restricted Farm Loss* rules in the Income Tax Act.

Taxpayer Wins!

The Court noted that the Appellant's profitable *dental business* was *supporting* his unprofitable *farming businesses* and the Appellant had substantial *capital committed* and *time spent*. It is *not a precondition* that the *two sources* be *connected*. The *farm's profitability*, both *actual and potential*, must be considered.



MARRIAGE BREAKDOWN

85(7)

ARREARS PAYMENT

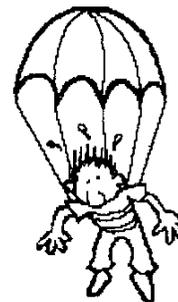
In an August 22, 2008 *Tax Court* of Canada case, the taxpayer was *ordered* by the *Ontario Superior Court* on December 11, 2003 to pay interim spousal support to the former spouse of \$3,600 per month *retroactive to November 16, 2001*.

The *retroactive payment* under this Order totalled *\$90,000* and was paid in *April, 2004*. The Appellant also commenced to pay \$3,600 per month to his former spouse effective the first day of January, 2004.

CRA disallowed the *\$90,000 arrears* payment but allowed the monthly payments in 2004.

Taxpayer Wins!

The Court determined that the *\$90,000 arrears payment* was *deductible*. The payment of the *\$90,000* was *exactly equivalent* to the *arrears*.



PRIOR PAYMENTS

Spousal support payments made *prior* to a *Written Separation Agreement* will *not be deductible* unless the Agreement specifically provides for this. For example, in one case, even though the lawyers exchanged correspondence, they did not reach a final agreement in time and the *prior year payments* were *not deductible*.

RRSP DIVISION OF MATRIMONIAL PROPERTY

In an October 16, 2008 *External Technical Interpretation*, CRA notes that the Income Tax Act permits a direct *transfer of an amount* from an *individual's RRSP* to an *RRSP* of which his/her *former spouse* is the annuitant, where the payor and recipient are *living separate and apart*. The

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payment or transfer must be made under a *Decree, Order or Judgment* of a competent tribunal or under a *Written Separation Agreement*, and the transfer or payment relates to the *division of property* in settlement of rights arising on the breakdown of a marriage.

ESTATE PLANNING

85(8)

STRUCTURED SETTLEMENT

In a 2008 *Advance Income Tax Ruling*, an individual (Plaintiff) was injured and commenced an action for damages against various Defendants. In an out of Court settlement, the *casualty insurer* of the Defendants will *assign their rights* to an *assignment company* who will purchase a single premium annuity contract with a life insurance company to provide the proposed periodic payments to be received under a *structured settlement* arrangement by the Plaintiff.

The assignment company will direct the life insurance company to pay the *periodic payments* under an *annuity contract* to the *Plaintiff* or the Plaintiff's Estate. Such payments will *not* be *taxable* in the hands of the *Plaintiff*.

CANADA PENSION PLAN (CPP) - THE CHILD REARING DROPOUT (CRDO) PROVISION

This *CRDO* provision relates to periods of time when a CPP Applicant's *earnings from work* were *low or zero* because he/she was raising children *under the age of seven*. The years for this period of time can be *eliminated* from the Applicant's contributory period.



In general, to qualify, the Applicant must have been receiving Family Allowances or been entitled to the Canada Child Tax Benefit. The person must have been the *primary caregiver* of the child.

WEB TIPS

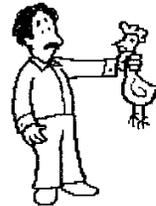
85(9)

NATIONAL DO NOT CALL LIST

<http://www.crtc.gc.ca/ENG/dncl.htm>

At this web address you will be able to register for the *Do Not Call List* in addition to finding more information on the following:

- file a complaint about a telemarketing call,
- *general information* for consumers and telemarketers,
- how the CRTC handles telemarketing complaints.



ELECTRICITY COST CALCULATOR

<http://www.energy.gov.on.ca/index.cfm?fuseaction=conservation.calculator>

To get a quick *estimate of what your monthly electricity costs would* be, visit this website (geared towards the Ontario market). In addition to this tool, the ability to determine how much you'll save by

switching to Compact Fluorescent bulbs is available.

For tips on how to *save energy* go to:

<http://www.powerwise.ca/tips/>

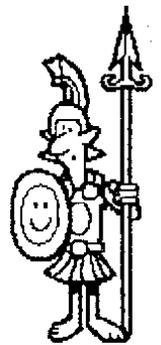
This site provides numerous tips on how to *conserve energy on a category by category basis*. A few examples of the categories are: *windows and doors, appliances, lighting, cooling, heating, seasonal, and insulation*.

DID YOU KNOW...

85(10)

CREDITOR PROTECTION

Amendments to the Bankruptcy and Insolvency Act that extend *creditor protection* to all *RRSPs, RRIFs and DPSPs* came into force on *July 7, 2008*. The provision is subject to a *clawback of contributions* made in the *twelve months* prior to bankruptcy subject to overriding protection under certain provincial legislation.



Also, new regulations with respect to *unpaid wages* came into force at that time.

Editor's Comment

This is a *specialized area* which may need assistance from a *Bankruptcy Trustee*.

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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APPENDIX A
2008 PERSONAL INCOME TAX RETURN CHECKLIST

INFORMATION REQUIRED INCLUDES:

1. All *information slips* such as T3, T4, T4A, T4A(OAS), T4A(P), T4E, T4PS, T4RIF, T4RSP, T5, T10, T2200, T2202, T101, T1163, T1164, TL11A, B, C and D; T5003, T5007, T5008, T5013, T5018 (Subcontractors), RC62 and corresponding provincial slips.
2. Details of *other income* for which no T slips have been received such as:
 - other employment income (including stock option plans and Election Form T1212),
 - business income,
 - partnership income,
 - rental income,
 - alimony, separation allowances, child maintenance,
 - pensions (certain pension income may now be *split* between spouses - see #35)
 - interest income earned but not yet received - example Canada Savings Bonds, Deferred Annuities, Term Deposits, Treasury Bills, Mutual Funds, Strip Bonds, Compound Interest Bonds
 - professional fees,
 - director fees,
 - scholarships, fellowships, bursaries,
 - replacement properties acquired.
3. Details of *other expenses* such as:
 - employment related expenses - Provide Form T2200 - Declaration of Conditions of Employment,
 - tools acquired by apprentice vehicle mechanics,
 - business and employment purchases like vehicles, supplies, etc.,
 - interest on money borrowed to purchase investments,
 - investment counsel fees,
 - moving expenses - including costs of maintaining a vacant former residence,
 - child care expenses,
 - alimony, separation allowances, child maintenance,
 - safety deposit box fees,
 - accounting fees,
 - pension plan contributions,
 - film and video production eligible for tax credit,
 - mining tax credit expenses,
 - business research and development,
 - adoption related expenses,
 - clergy residence deduction information, including Form T1223,
 - disability supports expenses (speech, sight, hearing, learning aids for impaired individuals and attendant care expenses),

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- tradeperson's tools acquired by an employee,
 - public transit passes acquired,
 - amounts paid for *programs of physical activity* for children *under age 16* at any time during the year (*under 18* for children with *disabilities*).
4. Details of *other investments* such as:
 - real estate or oil and gas investments - including financial statements,
 - labour-sponsored funds.
 5. Details and *receipts* for:
 - Registered Retirement Savings Plan (RRSP) contributions,
 - professional dues,
 - tuition fees - including mandatory ancillary fees, and Forms T2202, TL11A, B, C and D,
 - charitable donations (including publicly traded securities),
 - medical expenses (including certain medical related modifications to new or existing home and travel expenses),
 - political contributions.
 6. Details of *capital gains and losses* realized in 2008.

Also, new rules now permit *rollovers* for *foreign share spin-offs* and various *foreign share reorganizations*.
 7. Details of previous *capital gain exemptions* claimed, *business investment losses* and *cumulative net investment loss accounts*.
 8. Name, address, date of birth, S.I.N., and province of *residence* on December 31, 2008.
 9. *Marital/common-law status* and spouse/partner's income, S.I.N. and birth date.
 10. List of *dependants/children* - including their incomes and birth dates.
 11. If you or one of your dependants was in full time attendance at a *college or university*, details concerning name of institution, number of months in attendance, tuition fees, income of dependant, Form T2202.
 12. Are you *disabled or are any of your dependants* disabled? Provide Form T2201 - disability tax credit certificate. This also includes extensive therapy such as kidney dialysis and certain cystic fibrosis therapy. Also, the *transfer rules* include relatives such as parents, grandparents, child, grandchild, brothers, sisters, aunts, uncles, nephews or nieces.

Persons with *disabilities* also may receive tax relief for the cost of *disability supports* (eg. sign language services, talking textbooks, etc.) incurred for the purpose of *employment* or *education*.

Also, see #33 for **Registered Disability Savings Plan** information.
 13. Details regarding residence in a prescribed area which qualifies for the *Isolated Area Deduction*.
 14. Information regarding *child tax benefit* receipts.
 15. Details regarding contributions and withdrawals from *Registered Education Savings Plans*.
 16. Details regarding *RRSP - Home Buyers' Plan* withdrawals and repayments; *RRSP - Lifelong Learning Plan* repayment.
 17. Receipts for 2008 income tax *installments* or, payments of tax.
 18. Copy of 2007 personal tax *returns*, 2007 Assessment *Notices* and any correspondence from Canada Revenue Agency (CRA).
 19. 2008 *Personalized Tax information* which CRA may have sent you.
 20. Do you want your *tax refund or credit* deposited directly to your account in a financial institution? Yes/No.

To start direct deposit, or to change banking information, attach a void personalized cheque or your branch, institution and account number.
 21. Details of *carry forwards* from previous years including losses, donations, forward averaging amounts, registered retirement savings

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plans.

22. Details of *foreign property* owned at any time in 2008 including cash, stocks, trusts, partnerships, real estate, tangible and intangible property, contingent interests, convertible property, etc..
23. Details of *income* from, or *distributions* to, *foreign entities* such as foreign affiliates and trusts.
24. Details of your *Pension Adjustment Reversal* if you ceased employment and were in a Registered Pension Plan or a Deferred Profit Sharing Plan. (T10 Slip)
25. If you provided *in-home care* for a *parent or grandparent* (including in-laws) 65 years of age or over, or an infirm *dependent relative*, a federal tax credit may be available.
Also, the caregiver may claim related *training costs* as a medical expense credit.
26. Interest paid on qualifying *student loans* is eligible for a tax credit.
27. ***Retroactive lump-sum payments***
Individuals receiving qualifying retroactive *lump-sum payments* over \$3,000 may be allowed to use a special mechanism to compute the tax.
28. Changes in *family circumstance* that could affect the *Goods and Services Tax Credit*, such as births, deaths, marriages, reaching the age of 19 years, and becoming or ceasing to be a resident in Canada.
29. *Children* of low or middle income parents may be entitled to a *Canada Learning Bond* of \$500 in the initial year and \$100 per year until age 15. Please ask us for details.
30. Do you have any *personal interest expense* - such as on a house mortgage or vehicle?
If so, it may be possible to take steps to convert this into deductible interest. Please ask us for details.
31. An *investment tax credit* is available in respect of each *eligible apprentice* employed in one of the 45 Red Seal Trades. Also, a *\$1,000 grant* is available for first and second year apprentices effective *January 1, 2007*.
32. Have you received the *Universal Child Care Benefit* of \$100 per month for each child under *6 years* of age? This commenced in *July, 2006*.
33. Commencing in 2008, any person eligible for the *disability tax credit*, or their parent or legal representative, may establish a **Registered Disability Savings Plan** which receives *government grants*. Please ask us for details.
See #12 for information on **disabilities**.
34. The age limit for *maturing* Registered Pension Plans, Registered Retirement Savings Plans, and Deferred Profit Sharing Plans is increased to *71 years* of age from 69 years of age commencing in 2007.
35. Spouses may *jointly elect* to have up to 50% of *certain pension income* reported by the *other spouse*. Please ask us for details.
36. Individuals 18 years of age and older may deposit **up to \$5000** into a **Tax-Free Savings Account**. Please ask us for details.

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