

# The Tax File

Issue 86

2009 SECOND QUARTER

## PERSONAL TAX

### 86(1)

#### HUMAN RIGHTS CODE AWARD

In a 2008 **Advance Income Tax Ruling**, CRA noted that amounts paid by an employer to an employee pursuant to an **arbitration award** for **breach** of the employee's rights under the **Human Rights Code** are **not taxable**.



#### MEDICAL EXPENSES - NURSING HOME

In a January 16, 2009 **External Technical Interpretation**, CRA notes that care in a "**nursing home**" normally qualifies as a **medical expense**.

If a facility does **not qualify** as a "**nursing home**", amounts paid to the facility that relate to **remuneration for tenant care or supervision** also qualify as a **medical expense**. The receipt should **differentiate** between **attendant care or supervision** and **non-eligible costs**, such as lodging costs.

Since the term "**nursing home**" is not defined in the Income Tax Act, CRA relies on its **ordinary meaning**. Generally, this is an establishment that provides full-time maintenance or nursing

care for persons (example, the aged or chronically ill) who are unable to care for themselves.

#### MEDICAL EXPENSES - TRAVEL

In a February 2, 2009 **External Technical Interpretation**, CRA notes that an individual may claim **transportation** and **travel** as **medical expenses** provided:

- (i) substantially **equivalent medical services** were **not available** in the individual's locality,
- (ii) a reasonably **direct travelling route** was taken by the individual, and
- (iii) the individual travelled to the particular place to obtain **medical services** and it is reasonable to have travelled to that place for medical services.

In another **Technical Interpretation**, CRA notes that if the patient has been **certified** by a medical practitioner as being **incapable of travelling alone**, the meals and accommodations of an **accompanying person** will qualify as medical expenses.

#### MOVING EXPENSES - NO TIME RESTRICTION

The **definitions** of "**moving expenses**"

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and "**eligible relocation**" in the Income Tax Act do **not refer** to a **time restriction**.

For example, in a June 25, 2004 **Tax Court** of Canada case, the taxpayer incurred moving expenses in **1997** but, did not have any income at the new work location until **1999**.

#### Taxpayer wins!

The Court concluded that moving expenses may be deducted in the year of the move, or **any subsequent year** (in this case **1999**), to the extent that the taxpayer has employment or business income at the new work location. Also,

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the Court noted that the phrase “**the new work location**” is to be interpreted with **flexibility**.

Also, in a February 4, 2005 **Tax Court** of Canada case, the taxpayer’s **employer relocated** from Nanaimo to Courtenay, British Columbia in 1996. The taxpayer commuted to Courtenay from his Nanaimo home for **seven years**. In November, 2003 the taxpayer sold his home and relocated to a home closer to Courtenay.

Even though the move occurred **seven years** after the change of employment location, the **Court permitted the moving expense** on the basis that the delay in moving was caused by business problems and a lien registered against the Nanaimo property.

### MOVING EXPENSES

In a February 19, 2009 **Tax Court** of Canada case, the taxpayer was **employed** on a **part-time** basis in the **Oshawa hospital** on the seventh floor. She was offered a **new full-time position** in the hospital on the sixth floor. Therefore, she moved from her **old residence**, which was 62 kilometers from the hospital, to a **new residence** which was only a few kilometers from the hospital.

### Taxpayer Wins!

The Court noted that the **move** was related to a **change in work status** from part-time to full-time and from the seventh to the sixth floor, even though the location was the same. The requirements for moving expenses were technically met.

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## EMPLOYMENT INCOME

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### 86(2)

#### PARKING PASSES

In a December 18, 2008 **Tax Court** of Canada case, the Court concluded that the **parking pass** provided to Mr. S by **Telus Corporation** was a **taxable benefit** because it was not given primarily for

business reasons. Mr. S **did not use** the vehicle to any great extent for business purposes. It was simply used to travel to and from work.



However, Mr. J was found **not** to have a **taxable benefit** on his Telus parking pass because he needed the vehicle in the course of his duties.

On February 4, 2009, CRA introduced an **interactive questionnaire** to help employers **determine** whether the parking they provide to employees is considered a **taxable benefit**. To access the questionnaire, go to [www.cra.gc.ca/payroll/index.html](http://www.cra.gc.ca/payroll/index.html) and select “P” from the drop-down menu for “parking”.

### SPECIAL WORKSITE

In a November 3, 2008 **External Technical Interpretation**, CRA notes that the Income Tax Act **excludes** from income an allowance for **board and lodging** at a “**special worksite**”.

CRA notes that a “**special worksite**” may be **any place** in the world, including a large metropolitan city such as Toronto, New York, or New Delhi, where the duties are of a **temporary nature** and at another location the employee has a **principal residence**, at another location, to which the employee could not reasonably return daily.

Also, in a December 9, 2008 **External Technical Interpretation**, CRA notes that free or subsidized **transportation** between the employee’s principal place of **residence** and the **special worksite** is **non-taxable**.

### EMPLOYER-PAID SOCIAL EVENTS

In a January 14, 2009 **External Technical Interpretation**, CRA notes that they will generally **not** assess a **taxable benefit** to an employee for attending an **employer-provided social event** which is generally available to all employees at

an employer’s particular place of business. This could mean a branch or division depending on the circumstances. However, the cost per employee **must be reasonable** - not more than \$100 per person.

### REASONABLE AUTOMOBILE ALLOWANCES

In a February 23, 2009 **Internal Technical Interpretation**, CRA notes that a **per kilometre reasonable allowance** received by an employee for the use of his/her personal **motor vehicle** in connection with **employment duties** may be **excluded** from employment income.

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## BUSINESS/PROPERTY INCOME

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### 86(3)

#### SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT (SR&ED)

Some **new SR&ED developments** include:

December 30, 2008 - Some new releases in CRA’s **SR&ED Small Business Action Plan** include **Guides RC4467, 4472, T4088** and a **CD-ROM**.

The **SR&ED home page** on the CRA website ([www.cra.gc.ca](http://www.cra.gc.ca)) provides an **overview** of the filing requirements, a section for potential and first-time claimants, a web version of a new **SR&ED Claim Form T661** and a **sample of a completed Claim Form** and a “**Complete Claim Checklist**”.

Also, an online eligibility self-assessment tool has been released.

### SOURCE DOCUMENTS FOR DEPRECIABLE ASSETS

**Documentation** relating to long-term transactions such as investments and other **capital and depreciable property** should be maintained



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until **six years** after the year in which such a transaction could **enter into any calculation** for income tax purposes.

With respect to **depreciable assets** and **eligible capital property**, it is important that the source documents be kept because capital cost allowance (CCA) and eligible capital expenditures (ECE) are claimed continuously on the asset.

We understand that CRA has disallowed CCA and ECE where the client cannot produce the invoice for assets purchased many years prior.

Also see CRA Guide **RC4409 - Keeping Records**.

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## OWNER-MANAGER REMUNERATION

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### 86(4)

#### DUE CARE AND DILIGENCE

In a June 13, 2008 **Tax Court** of Canada case, the **taxpayer/director** was held **not** to be **liable** for the **unremitted GST** on the basis that he exercised **due care and diligence** because he had **lost de facto control** when the company was put in the hands of the National Bank. The Court believed the Appellant when he said that even if he had required that the GST owing be paid, the Bank would not have honoured the cheque.

Also, in a July 11, 2008 **Tax Court** of Canada case, the **taxpayer/director** was found **not** to be **liable** for the **unremitted GST** as he was effectively **removed** from the **normal operations** of a director as a result of the refinancing.

#### UNPAID WAGES

An article in **Law Times** noted that directors of two bankrupt Ontario construction companies were **liable** for more than **\$40,000 for unpaid wages and benefits** in an Ontario Labour Relations Board decision.



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## 2009 FEDERAL BUDGET

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### 86(5)

On **January 27, 2009** the Honourable **Jim Flaherty**, Minister of Finance, presented his **fourth Budget** to the House of Commons.

Some 2009 Budget proposals include:

#### 1. Home Renovation Tax Credit (HRTC)

Individuals will be able to claim a **15-per-cent non-refundable tax credit**.

The **HRTC** will apply to expenditures made after January 27, 2009 and before February 1, 2010 in excess of \$1,000, but not more than \$10,000, resulting in a maximum federal credit of **\$1,350** (\$9,000 x 15%). The HRTC will **not be reduced** by any other tax credits or grants.

Family members will be subject to a **single limit** based on their pooled expenditures.

Two or more families that **share ownership** of an eligible dwelling will each be eligible for their own credit.

In general, a housing unit is considered to be eligible if it is an individual's **principal residence**.

Expenditures will qualify for the **HRTC** if they are incurred in relation to a renovation or alteration of an **eligible dwelling** (including **land** that forms part of the eligible dwelling).

Expenditures **not eligible** for the credit include routine repairs and maintenance, appliances and audio-visual electronics, financing costs associated with a renovation.

Some examples of **eligible expenditures** include renovating a kitchen, bathroom or basement; new carpet or hardwood floors; building an addition, deck or fence; a new furnace or water heater; a new or resurfaced driveway; and paint-



ing of interior or exterior of a house.

#### 2. Home Buyers Plan (HBP)

The HBP-RRSP withdrawal limit will be increased to **\$25,000** from \$20,000 after January 27, 2009.

#### 3. First-Time Home Buyers' Tax Credit

Introduces a new non-refundable tax credit based on **\$5,000** (@15% = \$750) for **first-time** home buyers who acquire a qualifying home after January 27, 2009.

An individual will be considered a **first-time** home buyer if neither the individual nor the individual's spouse or common-law partner owned and lived in another home in the calendar year of the home purchase or in any of the **four preceding** calendar years.

#### 4. Small Business Limit

The annual amount of **active business income** eligible for the reduced tax rate – generally referred to as the “small business limit” – will be increased as of January 1, 2009 to **\$500,000** from \$400,000.

#### 5. Computers: Accelerated CCA

In general, **eligible computers** acquired after March 18, 2007, are included in Class 50 and are eligible for a 55-per-cent declining-balance CCA rate.

Budget 2009 proposes a temporary **100-per-cent CCA** rate for **eligible computers and software**, currently described in Class 50, acquired after January 27, 2009 and before February 2011. This includes general-purpose electronic data processing equipment, with some exceptions.

Eligible computers and systems software must not have been used, or acquired for use, for any purpose before acquired by the taxpayer for use in Canada.

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## 6. Wage Earner Protection Program (WEPP)

Proposes to extend the **WEPP** to cover unpaid **severance and termination pay** to eligible workers of bankrupt employers after January 27, 2009 to a maximum of four weeks of insurable earnings (currently **\$3,254**).

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## ESTATE PLANNING

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### 86(6)

#### CHARITIES - HELPFUL HINTS



In the CRA **Registered Charities Newsletter** (No. 31 - Winter 2008), CRA provided **helpful hints** including:

- if a charity made an error on the **Form T3010**, it should complete **Form T1240**, Registered Charity Adjustment Request;
- a charity should advise the **Charities Directorate** of CRA by letter of **changes** to directors, trustees or other authorized representative; and
- ways in which charities may **avoid delays** in CRA's processing of their **Form T3010**.

#### REGISTERED DISABILITY SAVINGS PLAN (RDSP)

See **CRA Guide 4460** for details and examples on the **RDSP** including:

1. An RDSP is a **long-term savings plan** intended to help parents and others save for the **long-term** financial security of a person who is eligible for the **Disability Tax Credit**.
2. **Contributions** to an RDSP are **not tax deductible and are non-taxable** when withdrawn and can be made until the end of the year in which the beneficiary turns **59 years** of age.
3. **Canada Disability Savings**

**Grants** (maximum **\$70,000**) and **Bonds** (maximum **\$20,000**) are available.

4. A person may be a **beneficiary** of an RDSP if eligible for the Disability Tax Credit, has a valid Social Insurance Number, is a resident of Canada, and is under the age of 60.
5. There is **no annual limit** on amounts that can be contributed to an RDSP, however, the overall lifetime limit is **\$200,000**.
6. If any of the following **triggering events** occur, **all Grants and Bonds** paid into the Plan during the preceding **ten years** must be **repaid**:
  - (i) the RDSP is **terminated**,
  - (ii) the Plan is **deregistered**,
  - (iii) a **payment** is made from the RDSP,
  - (iv) the beneficiary **ceases to be eligible** for the disability amount, or
  - (v) the beneficiary **dies**.
7. The **RDSP** must be **terminated** if the beneficiary **no longer** has a severe and prolonged **impairment** or **dies**.

#### CREDITOR PROOFING

"**Creditor protection**" is a common term used in estate planning. Are there ways to **creditor protect** one's assets?

A recent decision of the **Supreme Court of British Columbia** appears to call into question the ability of a person to **creditor protect their assets** in certain circumstances.

A corporation owned approximately **\$19 million of assets** on September 30, 2005, the day it became a **general partner** of a high risk car leasing partnership.

The corporation was **advised by legal counsel** to remove its \$19 million of assets for **creditor protection** purposes.

Approximately one month later, the cor-

poration entered into a series of transactions for the **purpose of creditor protection**. A series of transactions were implemented whereby the corporation declared and paid a \$19 million dividend to another corporation. The result was a **conveyance of the \$19 million of assets** to the **other corporation**.

19 months later, in May, 2007, the corporation filed for bankruptcy with **\$20 million of debts**. These debts were a result of losses incurred from the car leasing business.

The court found that the **creditors could access** the \$19 million.

What can you take from this case? You may wish to **think twice** before attempting to **creditor protect** assets from **future creditors** by simply conveying assets to shareholders by way of a dividend.

Note that the case is apparently under appeal and is scheduled to be heard in the fall of 2009.

**Legal advice** is needed.

#### CLEARANCE CERTIFICATE

In a March 3, 2009 **CRA Release**, CRA notes that a **legal representative** can be **held liable** for **tax amounts** that the **deceased person** owes **unless a Clearance Certificate** is obtained before distributing property.

The legal representative may make a Clearance Certificate request on Form TX19.

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## FARMING

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### 86(7)

#### PROCEEDS FROM EASEMENT ON LAND

In a December 17, 2008 **External Technical Interpretation**, CRA notes that generally the granting of an **Easement**, or a public right of way, is considered a disposition of property and could result in a **taxable capital gain**.

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However, **CRA will accept** an amount equal to the proceeds from such a disposition as being the reasonable portion of the adjusted cost base provided that the **property expropriated is not** more than **20%** of the area of the total property and the **compensation received is not** more than **20%** of the adjusted cost base of the property.

## LAND PARTITION

In a January 21, 2009 **External Technical Interpretation**,



CRA notes that two parcels of **farmland**, which each have the names of two brothers on title, can be **partitioned** so that only **one name** will remain on **each parcel** without any tax consequences.

However, the subdivision must occur in the course of a **partition** and **each parcel** has the **same value**.

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## GST/HST

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### 86(8)

#### CHARITIES

CRA **Guide RC4082** provides GST/HST information for **charities**.

#### NON-PROFIT ORGANIZATIONS

CRA **Guide RC4081** provides GST/HST Information for **Non-Profit Organizations**.

## RESIDENTIAL CARE FACILITY

CRA **Guide GI-050** explains the new election that can be filed using Form GST119 as it relates to builder-operators of residential care facilities.

## NEW RESIDENTIAL RENTAL PROPERTY REBATE

CRA **Guide RC4231** provides information on claiming the GST/HST **New Residential Rental Property Rebate**.

The Guide provides information for **landlords** of new residential rental properties on the **rebate** and how to **complete** the Forms.

## 2009 FEDERAL BUDGET, DIRECT SELLERS

On January 27, 2009, the **Federal Budget** proposed measures to simplify the operation of GST/HST for persons in the **direct selling industry** (i.e., network sellers) who sell their products directly to consumers through a network of **commissioned-based sales representatives**. These proposed measures will apply in respect of fiscal years that begin on or after **January 1, 2010**.

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## DID YOU KNOW...

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### 86(9)

#### RECORDS OF IMPORTERS

**Canada Border Services Agency Memorandum D17-1-21** provides information concerning the records that must be maintained by **importers**. The Release

discusses imaged and microfilm records, electronic data process records, and having records available for inspection and delivery.



## IMPORTATION OF VEHICLES

**Memorandum D19-12-1** provides information on the **importation** of a **vehicle**.

## ECO ENERGY RETROFIT PROGRAM

Effective **January 1, 2008**, you may be able to **retrofit a home** and qualify for a **grant** (including mobile homes on a foundation and low-rise multi-unit residential buildings (MURBs)).

For details, do a **Google** search on “**Eco Energy**”.

## BANKRUPTCY, INSOLVENCY, FINANCIAL DIFFICULTY

A **financially distressed corporation** may issue “**distress preferred shares**” in **exchange** for existing **debt** such that the payments on the shares are in the form of **dividends**, which are **not deductible** to the payor and are **not taxable** to the financial institution.

Therefore, the **interest rate** is exchanged for a **lower non-taxable/deductible dividend rate**.

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