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The Tax File

Issue 90

2010 Second Quarter

PERSONAL TAX

90(1)

APPRENTICESHIP GRANTS

Apprenticeship Incentive Grant (AIG)

The AIG is a taxable grant of \$1,000 per year up to a maximum of \$2,000 per person, available to registered apprentices once they have successfully completed their first or second year/level (or equivalent) of an Apprenticeship Program in one of the Red Seal Trades. There is a deadline to apply.



Apprenticeship Completion Grant (ACG)

The ACG is a \$2,000 taxable grant to encourage apprentices registered in designated Red Seal Trades to complete their Apprenticeship Program and receive their certification. Eligibility is retroactive to January 1, 2009.

The ACG is offered to apprentices who **complete** their training, become certified journeymen/journeywomen in a designated **Red Seal Trade** and who obtain either the **Red Seal Endorsement** or a provincial or territorial **Certificate of Qualification**.

There is a **deadline** to apply.

Trades Included in the Red Seal Program

To date, there are **fifty trades** included in the **Red Seal Program** on a national basis. For a list of Red Seal Trades, Google "**Red Seal Trade**".

Editor's Comment

Your **province** may also offer Apprenticeship Grants.

MEDICAL EXPENSE - TUITION COSTS

In a January 20, 2010 **External Technical Interpretation**, CRA notes that where, due to a **physical or mental handicap**, a **student** who is **certified** to require specialized care, or care and training, at a school

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or institution, may claim a **medical expense tax credit** for the cost of such care, or such care and training.

MEDICAL EXPENSES

In a February 2, 2010 **Tax Court** of Canada case, the taxpayer had progressive **Multiple Sclerosis** and successfully deducted as a medical expense the amount paid to the **Huron Lodge** (a home for the aged) in Windsor, Ontario.

Tax Tips & Traps

NURSING HOME

The Income Tax Act provides a medical expense for **full-time care** in a **nursing home** if the patient has been certified by a **medical practitioner** to lack normal mental or physical capacity, and in the foreseeable future will continue to be dependent on others.

EMPLOYMENT INCOME

90(2)

OVERTIME MEAL ALLOWANCES



Starting **January 1, 2009** where an employer provides **overtime meals** or an **allowance** for overtime meals to its employees, the CRA will **not** assess a **taxable benefit** where:

- the amount of the overtime meal allowance, or the cost of the meal, is **reasonable**;
- the employee works **two or more hours** of overtime right before or right after his/her scheduled hours of work; and
- the overtime is **infrequent** and occasional in nature. (CRA generally considers **less than three times** a week, or more in special circumstances, as being **infrequent and occasional**.)

CRA will generally consider an amount **not exceeding \$17** as being **reasonable**.

IN-SERVICE PROGRAM WHICH PROVIDES A LAPTOP COMPUTER

In a January 6, 2010 **External Technical Interpretation**, CRA notes that it has considered **several programs** where **employers** have **provided** their employees with **personal computers, printers, software** and/or **Internet access** for developing their employees' **computer and Internet skills**.

BUSINESS/PROPERTY INCOME

90(3)

TRUCKS OR TRACTORS FOR HAULING FREIGHT

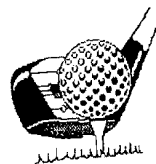
The Income Tax Act provides a **40% Capital Cost Allowance rate** for a **truck or tractor** designed for **hauling freight** and that has a "gross vehicle weight rating" in excess of **11,788 kilograms**.

In a CRA **Technical Interpretation**, CRA notes that this may **apply** to a taxpayer that **hauls its own freight**.

Also, in an October 9, 2009 **Technical Interpretation**, CRA notes that **garbage trucks** used for the collection and hauling of residential and industrial waste would normally also qualify.

EVENTS AT A GOLF CLUB

In a January 22, 2009 **Technical Interpretation**, CRA notes that where a business holds a **day of golf**



for **all employees** and the company pays for the **green fees**, rental of **golf equipment**, and **food provided** to the employees, the Income Tax Act does **not** allow a **deduction** in respect of any expenditure for the use of a **golf facility**.

However, with respect to the **meals**, CRA notes that a golf club facility does **not include** the **dining room, reception hall, conference room, lounges or a bar of a golf club** so the **deduction** of expenses incurred to buy **food and beverages** is not restricted by the golf facility rules.

Also, assuming that the food was offered to **all employees**, and it is **one of six special events** held in the year by the company, the Income Tax Act allows a **100% deduction** for the food and beverages, as opposed to the 50% which is normally allowed.

OWNER-MANAGER REMUNERATION

90(4)

THE TWO-YEAR LIMIT

In a March 5, 2010 **Tax Court of Canada** case, CRA assessed Mr. M., as the "**de facto director**" of the corporation, for the **unpaid GST (plus interest and penalties)** owed by a company.

The taxpayer had **resigned** as a **director on January 15, 2004** and the **assessment was not issued until more than two years later, June 29, 2006**.

Tax Tips & Traps

Taxpayer Wins!



The Court noted that, even though the Excise Tax Act provides a **two-year statute of limitations**, a person who is **not a director** may be considered a “**de facto director**” if they hold himself/herself out as a director such that a third party relies upon that person’s implicit authority as a director. In this case, the taxpayer was **not a “de facto director”** of the company.

2010 FEDERAL BUDGET

90(5)

On **March 4, 2010** the Honourable **Jim Flaherty**, Minister of Finance, presented his **fifth Budget** to the House of Commons.

The **Government’s fiscal positions** include deficits in the years 2009/2010 (\$53.8 billion), 2010/2011 (\$49.2 billion), 2011/2012 (\$27.6 billion), and 2012/2013 (\$17.5 billion).

Some proposals include:

A. PERSONAL INCOME TAX

1. Medical Expense Tax Credit – Purely Cosmetic Procedures

Budget 2010 proposes that expenses incurred for **purely cosmetic procedures**

(including related services and other expenses such as travel) be **ineligible**



to be claimed under the **Medical Expense Tax Credit**. This generally includes surgical and non-surgical procedures purely aimed at enhancing one's appearance such as liposuction, hair replacement procedures, botulinum toxin injections, and teeth whitening.

These expenses will also become subject to **GST/HST**.

This will apply to expenses incurred after **March 4, 2010**.

2. Charities: Disbursement Quota Reform

Budget 2010 proposes to reform the **disbursement** quota for fiscal years that end on or after **March 4, 2010**.

3. Employee Stock Options

Budget 2010 proposes to **prevent both the stock option deduction** to the employee and a **deduction** by the **employer** from being claimed for the same employment benefit.

Budget 2010 also proposes to **repeal the stock option tax deferral election** to employees of public corporations.

Budget 2010 also proposes to introduce a **special elective tax treatment** for taxpayers who elected under the current rules to **defer taxation of certain public share stock option benefits** until the disposition.

B. OTHER TAX

Online Notices

Budget 2010 proposes that the *Income Tax Act*, *Excise Tax Act*,

Excise Act, 2001, *Air Travellers Security Charge Act*, *Canada Pension Plan* and *Employment Insurance Act* be amended to allow for the **electronic issuance** of those **notices** that can currently be sent by ordinary mail if **authorized by a taxpayer**.

ESTATE PLANNING

90(6)

VOLUNTEERS

In a March 11, 2007 **External Technical Interpretation**, CRA notes that where an individual is a **volunteer without remuneration**, or at most minimal remuneration, **reimbursements** of automobile expenses, airline tickets, and payment of allowances for meal expenses to attend meetings of the Board of Directors (including allowances to cover meals for their spouses) are **not considered income** for tax purposes.

TURNING AGE 71 IN 2010

Taxpayers turning **age 71** in 2010 could consider making one year advance **contributions** to their **RRSP**. For example, by making the 2011 contribution in **December, 2010** (just before the RRSP is wound-up), this **over-contribution** may be deducted in January, 2011 if there is sufficient **contribution room** for 2011. This would be subject to a **1% penalty** for the month of December on the **excess contributions** over \$2,000.



Tax Tips & Traps

However this penalty is minor compared to the large tax deduction in 2011.

Professional advice is recommended.

TAX-FREE SAVINGS ACCOUNT

On October 16, 2009, Finance News Release 2009-099 provided technical amendments to the TFSA rules including a **100% tax** on the **income** under the “**advantage**” rules, in addition to the existing **1% per month penalty tax** on **over-contributions**.

GIFT OF ECOLOGICAL PROPERTY

In an October 9, 2009 **Technical Interpretation**, CRA notes that when a taxpayer makes a **gift of land** which is **ecological property**, in addition to being able to claim a **donation tax credit** (in the case of an **individual**) or a **deduction** for gifts (in the case of a **corporation**), the **capital gain**, resulting from the disposition of the land is **cancelled**.

STRUCTURED SETTLEMENT

In a 2009 **Advance Tax Ruling**, CRA Ruled that the payments under an annuity contract to the Plaintiff will **not be taxable** in the hands of the recipient as it meets the terms of a **structured settlement**.

In this case, an individual (Plaintiff) suffered **serious permanent injuries** at the time of **birth**. The **Plaintiff** commenced an **action** against the **Defendant**. Pursuant to an **out-of-Court settlement**, the **casualty**

insurer of the Defendant assigned its rights and obligations to an **assignment company** who will purchase a **single premium annuity contract** with a life insurance company to provide **periodic payments** to be **received** under a **structured settlement arrangement**.

FARMING

90(7)

FULL DEDUCTION FOR FARMING

In a September 25, 2009 **Tax Court** of Canada case, the taxpayer worked approximately **40 hours per week** as a **police officer** in Ottawa and at least **40 hours per week** on his **farm**. CRA had **restricted** the **deduction** of the **\$25,379** 2004 **farm loss** against employment income to **\$8,750**.



The farm was a **family operation** and his spouse supervised the farm business when the taxpayer was at work as a police officer. The Court noted that the family has worked extremely hard on the farm operation.

Taxpayer Wins!

The Court had **no problem** in concluding that the **farm losses** were **fully deductible** against the police officer **employment income** on the basis that the taxpayer’s **chief source of income** was a **combination** of **farming** and his **employment** as a police officer.

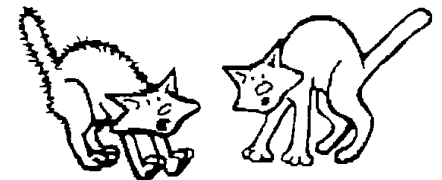
HORSE RACING OPERATIONS

In a December 17, 2009 **Tax Court** of Canada case, the Court allowed the taxpayer a **full deduction** for **horse race operation** losses.

The taxpayer’s position was that the **horse operation**, in conjunction with his **law practice**, was his **chief source of income**.

EMPLOYEE VS. INDEPENDENT CONTRACTOR

90(8)



In a December 23, 2009 **Court of Appeal for Ontario** case, the **Court** found the **Agreement** between Elizabeth McKee and Reid’s Heritage Homes (RHH) was one of **employment**, not independent contractor.

The Court then noted that it is an **implied term** in an **employment situation** that the employee is entitled to reasonable **notice of termination**.

In this case **Mrs. McKee** worked **exclusively** for RHH. She was also **under the control** of RHH as to where she was to sell, the promotion methods, what she was to sell, and how much it was to sell for. With

Tax Tips & Traps

respect to the “**tools**”, Mrs. McKee performed her sales functions in **model homes** provided by RHH and RHH supplied her **stationery and forms**. Also, Mrs. McKee was **financially dependent** on RHH and had **no expectation** that she might earn a profit as distinct from the fixed commissions. Also, the sales force of which Mrs. McKee was a member was a **crucial element** of RHH’s business organization.

Editor’s Comment

It is **important** to have the **terms** of the engagement in **writing** and that the **relationship** meets the required tests if **independent contractor status** is to be obtained.

Also, another **downside** for the **payer** is that when a **recipient** is considered to be an **employee**, the payer may be subject to **penalties** for failing to withhold and remit **source deductions** for income tax, CPP, EI and Workers Compensation. The payer may also have liability if the worker was to have received **other benefits**.

GST/HST

90(9)

PLACE OF SUPPLY RULES

On **February 25, 2010**, Finance Release **2010-014** introduced new **Place of Supply Rules** related to **where** the recipient of a service or an intangible property is located with respect to the



GST/HST rules.

For example, **Ontario** (13%) and **British Columbia** (12%) are proposing to introduce HST on **July 1, 2010**.

DIRECT SELLING INDUSTRY

On January 13, 2010, CRA introduced **GST/HST Info Sheet GI-052 - Direct Selling Industry** - The Network Sellers Method for Network Sellers and Sales Representatives. This **8-page Release** reflects proposals from the **January 27, 2009 Federal Budget** for any fiscal year of a Network Seller that **begins** on or after **January 1, 2010**.

INPUT TAX CREDITS

In a January 28, 2010 **Tax Court** of Canada case, the **issue** was whether **Comtronic** was entitled to **Input Tax Credits** (ITCs) where the **GST Registration Number** of the **supplier** shown on the invoice was **not** that of the **supplier** but was a validly issued number **belonging to someone** else as part of an **identity theft operation**.

Taxpayer Loses

The Court noted that under the Excise Tax Act an **ITC cannot be claimed** unless the claimant has obtained prescribed information including the name of the supplier and the registration number **assigned to the supplier**.

CREDIT CARD EXPENSES AND THE REGISTRANT’S USE OF FACTORS FOR CLAIMING INPUT TAX CREDITS

In an April 28, 2010 CRA **Release P-184**, CRA discussed the use of the **Factor Method**, instead of the **Exact Calculation Method**, to compute the eligible **Input Tax Credits** (ITCs) in relation to **credit card reimbursements** for expenses incurred by employees.

ELECTRONIC FILING

On January 4, 2010, CRA proposed **mandatory electronic filing** requirements for certain GST/HST Registrants beginning July 1, 2010.

Under the measures, the following groups will be **required** to file their GST/HST Returns **electronically**:

- GST/HST Registrants with **greater than \$1.5 million** in annual taxable supplies (except for charities);
- Registrants required to recapture **Input Tax Credits** for the provincial portion of the HST on certain inputs in **Ontario or British Columbia**; and
- builders affected by the transitional housing measures announced by **Ontario or British Columbia**.

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WEB TIPS

90(10)

THE PERFECT GIFT

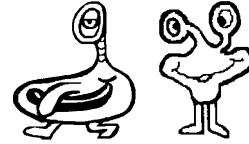
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