

## PERSONAL TAX

### 75(1)

#### TUITION FEES - ONLINE COURSE AT FOREIGN UNIVERSITY

The Income Tax Act requires a student to be in *full-time attendance* at a university *outside Canada* to claim a tax credit for *tuition fees*.



In a March 9, 2006 *Tax Court* of Canada case, the taxpayer took a *post-graduate degree* on an *online* basis from Open University in *England*. Although there are *no lectures*, visual presentations are provided in *CD format*. Students are given access to a dedicated *online connection* similar to a “*chat room*” so that issues can be discussed among the students and with the tutors.

Exams were written at the University of British Columbia.

#### Taxpayer Wins!

The Judge found that the Income Tax Act does *not* necessarily require *physical presence* at a university. The expression “*full-time attendance*” is *ambiguous* and should be *interpreted literally* to include programs that require the “attention” of the student on a full-time basis, such as the

*online program* taken here.

#### MOVING EXPENSES AS A MEDICAL EXPENSE TAX CREDIT

In an April 11, 2006 *External Technical Interpretation*, Canada Revenue Agency (CRA) notes that the Income Tax Act permits “*reasonable moving expenses*” of up to \$2,000 as a *medical expense tax credit* for a person who lacks normal physical development or has a severe and prolonged mobility impairment, where the move is to a *dwelling* that is *more accessible* by that person or in which the person is *more mobile or functional*.

For example, this may apply to a person who has to move because they have *Multiple Sclerosis* if the new dwelling is *more accessible* or you are more *mobile or functional* within the new dwelling.

## EMPLOYMENT INCOME

### 75(2)

#### HEALTH CARE EXPENSE ACCOUNT (HCEA) - BONUSES

In a 2005 *Advance Income Tax Ruling*, CRA Ruled that when part of a *bonus allocation* is credited to the *HCEA*, this will *not* be *taxable income*.

*Unused* balances in the HCEA at the end of the year may be carried over and used to reimburse eligible medical expenses in the *subsequent year*. *Unused* balances

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will *not* be payable in *cash*.

#### HEALTH SPENDING ACCOUNT (HSA)

In a 2006 *Advance Income Tax Ruling*, CRA noted that a company *compensates* its management employees with a *base salary* and *incentive pay*.

The company permits the employee to *elect to allocate* the *incentive pay* to an *HSA* which qualifies as a *Private Health Services Plan* (PHSP).

CRA *Ruled* that the *allocation* of credits to the HSA will *not* be considered *taxable income*.

#### PAYROLL DEDUCTIONS ON TIPS

In an April 18, 2006 *External Technical Interpretation*, CRA notes that where *tips*

are *controlled* by the employer, *payroll deductions* must be met and the amounts reported on the employee's T4.

*Controlled tips* include tips the *employer pays* or that pass through the *employer's books* before the employee receives them.

## TRUCKERS

In a May 12, 2006 *British Columbia Court of*



*Appeal* case, the Court found that this *class-action suit* that *truck drivers* should be allowed *deductions for meals*, without receipts, at the rates the Federal government pays its employees when they travel on business was *not allowed* by the Court.

### Editor's Comment

Therefore, *truck driver employees* are required to keep receipts for travel expenses unless they use CRA's *simplified method* of claiming \$15 per meal to a maximum of \$45 per day. However, deductions are subject to a 50% limitation under the Income Tax Act.

## OVERTIME MEAL ALLOWANCES

In a May 29, 2006 *External Technical Interpretation*, CRA notes that where an employer *pays* for reasonable *meal expenses* incurred while the employee is required to *work overtime*, a *taxable benefit does not result* where:

- (a) the employee works *three or more hours of overtime* right after his/her regularly scheduled hours of work, and
- (b) the overtime is *infrequent and occasional* in nature (less than three times a week).

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## BUSINESS/PROPERTY INCOME

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### 75(3)

## EMPLOYEE VS. INDEPENDENT CONTRACTOR

In a March 2, 2006 *Federal Court of Appeal* case (The Royal Winnipeg Ballet (RWB) vs. M.N.R.), the Court found that *dancers* with the *RWB* are *independent contractors* - not employees.



The *Federal Court* noted that the uncontradicted evidence of the parties as to their *common understanding* of the *legal relationship* as being that of an *independent contractor* should have been *considered*. This *common understanding* is borne out by the *contractual terms* and the other relevant factors.

## REPLACEMENT PROPERTY

In an April 18, 2006 *External Technical Interpretation*, CRA reviewed the *replacement property rules* whereby a *motel* business is *sold* and the funds used to *acquire a recreational vehicle park* to *defer the capital gain* on the sale of the *motel*.

The *replacement property rules* generally allow a taxpayer to *defer* recognition of *capital gains* and *recaptured capital cost allowance* on the disposition of a *capital property* when the replacement property is acquired by the end of the following fiscal period (voluntary dispositions) or the second fiscal period (involuntary dispositions).

## RENTAL LOSS

In a May 5, 2006 *Tax Court* of Canada case, the taxpayer purchased a *house in Toronto*. From 1981 to 1994 the house was *rented out to family members*. From 1994 on, it was rented out to *arm's-length persons*. The taxpayer *claimed losses* from 1987 through to the year 2000 rang-

ing from \$4,000 to \$14,000 each year.

*CRA disallowed* losses in the years *2001, 2002, 2003* of \$14,655, \$14,865, and \$16,385 on the basis that there was a *personal aspect* to the house.

### Taxpayer Wins on this Point!

The Court noted that there was *no sentimental attachment* to the premises nor was there any evidence that the taxpayer might put the property to some non-commercial use in the future.

### Taxpayer Loses on this Point!

CRA successfully argued that many of the expenses were *not deductible* because they were *not supported by receipts*.

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## OWNER-MANAGER REMUNERATION

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### 75(4)

## FAMILY MEMBERS AS DIRECTORS

A common issue in private corporations is the *remuneration* which can be paid to *family members* who are *not active* in the day to day operations of the business. Such salaries are *deductible* only to the extent they are *reasonable* in relation to the services provided.

Some *family members* are made *Directors* of the corporation to support payment of higher salaries. A recent case indicates that the additional *remuneration* a Directorship may support is *fairly small*. In that case, the Tax Court denied the deduction of a large portion of Directors' fees paid to adult children who were Directors of the corporation, but provided no other services. The Tax Court allowed a deduction of only *\$1,500* per child per year. A greater deduction (*\$11,600*) was allowed for one child who was *more active* in the business.

### Caution!

Prospective Directors should *carefully*

consider the *legal ramifications* and risks of *Directorship*, and consult with their legal counsel. Directors can be held *personally liable* for unremitted GST and source deductions and can also be *at risk of liability* for items such as environmental damages, improperly issued shares, improper payments to shareholders and wages not paid to employees.

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## FARMING

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### 75(5)

#### CANADIAN AGRICULTURAL INCOME STABILIZATION PROGRAM (CAIS) CHANGES

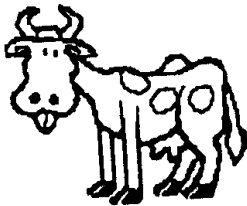
On *March 31, 2006* the Agriculture and Agri-Food Canada Department announced that the *CAIS deposit* has been *eliminated* and will be replaced by a *fee for the 2006 CAIS* Program. CAIS participants will receive a letter with details on how to join the Program for 2006 and how to pay the fee.

Producers will pay *\$4.50* per *\$1,000* of *Reference Margin* protected. The *Administrative Cost Share* (ACS) of \$55 per account *will remain* in place and will be collected at the same time as the fee.

Producers do *not* have to pay a *fee* for participating in CAIS for the *2003, 2004 or 2005* program years.

#### CAIS REPORT

The Canadian Federation of Independent Business released a report in March, 2006 entitled "*The Case Against CAIS*".



Some points mentioned include:

1. *Only 49%* of farmers surveyed *received a CAIS payment*.
2. *43%* said the payment did *not* cover their *margin losses*.

3. *45%* said the *paperwork* involved is a *major problem* while *62%* found the paperwork *too complex*.
4. *25%* reported a *low level of understanding* about CAIS even though they had gone through the application process.
5. *68%* used an *outside professional* firm to do the work.
6. Even with outside help, the average farmer still spends about *ten hours a year* while *10%* of the applicants spent *thirty hours* or more on the CAIS application.
7. The average farmer spent nearly *\$1,000* to have the *CAIS work done* whereas *9%* spent more than *\$5,000* to participate and a few people spent over \$9,000.

Even though there are problems with the effectiveness of the CAIS Program, Agriculture Minister Chuck Strahl noted that it will *remain* in place for *2006*.

#### QUALIFIED FARM PROPERTY

In a March 16, 2006 *External Technical Interpretation*, CRA reviewed a situation where the *individual's father* owned land that *he farmed* on a *full-time basis* for many years until he ceased farming operations. The land has been *rented out* on a crop-share basis ever since. Upon her *father's death*, the individual's *mother inherited* the land but she did not farm the land either. Upon her *mother's death*, the individual *inherited* the land but she also *did not farm the land*.

CRA noted that the land was still "*qualified farm property*" eligible for the *capital gain exemption* because the *father* satisfied the required farming test.

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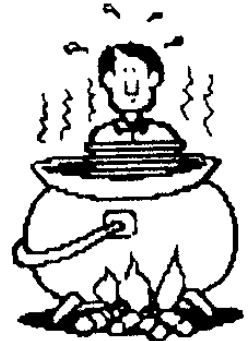
## ESTATE PLANNING

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### 75(6)

#### ART FLIP DONATIONS

In a *Tax Court* of Canada case, the taxpayer claimed *charitable donations* of \$9,000, \$9,500, \$10,100 and \$10,000 for the years 1990 to 1993 on the basis that *art* was purchased



and *donated* to charities. However, evidence indicates that the taxpayer *never saw the paintings*, never had them in his possession and *did not choose the charitable organizations* that were to receive the donations.

#### Taxpayer Loses

*CRA* was *successful* in *disallowing the charitable donation tax credits* for *all* the years, including the years thought to be *statute-barred* because the Court found that there was a "*misrepresentation* attributable to neglect, carelessness or willful default".

#### ESTATE FREEZE

When a *parent* owns the shares of a corporation, he/she may wish to *freeze the value* of their *shares* in favour of children who will subscribe for *future growth common shares*, perhaps through a *Trust*. This *could reduce tax* on the death of the parents.

CRA Ruled positively on an *Estate Freeze* in a 2006 *Advance Income Tax Ruling*.

#### DESIGNATED BENEFICIARIES

In a May 4, 2004 *Ontario Superior Court* case, the issue involved *who* was entitled to the *life insurance* and *assets* in the deceased person's *RRSP* - the *designated beneficiary* or the *Estate*.

In this case, Mr. and Ms. G entered into a *Separation Agreement* in 2004 in which *Ms. G released* her entitlement to all assets as part of the settlement of all claims between them. However, Mr. G *died before* he *changed* the designated beneficiary on his RRSP and life insurance policy.

The *Court* determined that *Ms. G* was entitled to *receive* the assets in the *RRSP* and the *life insurance proceeds* on the basis that the Separation Agreement *did not revoke* Ms. G's rights as the *named beneficiary* in both the RRSP and the insurance policy.

There have been *other cases* where the rights of a *named beneficiary* have been *revoked* because of a *proven intention* of the deceased, but this *did not occur* in this case. Therefore, if the intention is to have the RRSP and insurance not go to your former spouse, it is important to *change the beneficiary*.

## LOANS FOR VALUE

The *marginal tax rate system* permits taxpayers who can *redirect income to lower income* family members to enjoy considerable tax benefits as a family unit. Unfortunately, the *attribution rules* often frustrate income splitting with *spouses* and *minor children* or grandchildren.

However, the *attribution rules do not apply* to transfers where the recipients of investment capital *pay fair value* for the funds they receive such as through *properly structured loans*.

The loan must *bear interest* at a rate no lower than the *CRA prescribed rate* at the date the loan is advanced (9% until September 30, 2006); and

the interest for every year must be *paid* no later than *January 30* of the following year.

The *borrower* (commonly a *Trust* for minor children or grandchildren) can then *invest the borrowed funds* and earn income. Because the borrowed funds are used to earn income, the borrower is enti-

led to *deduct the interest* incurred as a carrying charge. To the extent the *return* on their investments *exceeds the interest*, the difference will be taxable to the lower-income borrower. Of course, the lender must report the interest received each year.

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## MARRIAGE BREAKDOWN

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### 75(7)

#### LEGAL FEES - CHILD SUPPORT

In a March 9, 2006 *Tax Court* of Canada case, the taxpayer had *custody* of the *younger child* and, his *former spouse* had *custody* of the *older child* after the marriage separation. Upon applying the *Federal Child Support Guidelines*, the amount that *he had to pay her* based on his income exceeded the amount that she had to pay him. Therefore, the *net amount* payable by him for child support was \$185 per month. CRA *disallowed* his *legal fees* related to the child support.

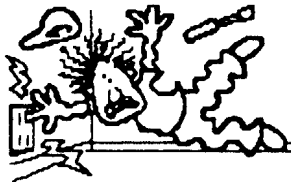
#### Taxpayer Wins!

The \$8,265 of *legal fees paid* by the taxpayer with respect to *his claim for child support* from his former spouse was considered *deductible* even though, he had to pay a net amount to her. The Court noted that the *purpose* in incurring the *legal fees* was in part to *establish his entitlement to support for one child*. Legal fees incurred to establish entitlement to child support are *deductible*.

#### COMMENCEMENT DATE - CHILD SUPPORT

*Child Support Orders* made *after April, 1997* do *not* permit a *deduction*

to the payor, or *income* to the recipient because the "*Commencement Day*" is after April, 1997. Also, pre-May, 1997 Agreements that are changed after that



date may also have a "*Commencement Day*" after April, 1997 thereby converting the status of the child support from deductible/taxable to *non-deductible/non-taxable*.

In a March 16, 2006 *Tax Court* of Canada case, Daniel was *required to pay child support* in a marriage breakdown situation to his former spouse under a *July 14, 1993 Agreement*. Therefore, this was a *pre-May, 1997 Agreement* and the child support payments were *deductible*.

However, on *November 23, 1998* the Agreement *was changed* with respect to overall *custody* and child support *amounts*. The Court found that Amendment was a *new Agreement*. Therefore, it had a *Commencement Day* after April, 1997 and the *child support* payments were *no longer deductible*.

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## GST

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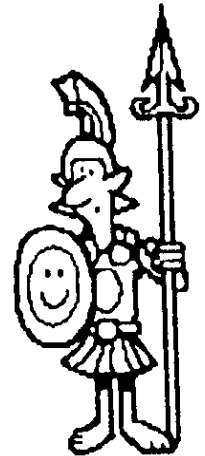
### 75(8)

#### GST/HST WEB REGISTRY

As part of their obligations under the GST/HST, *Registrants* are required to *ensure* that *Input Tax Credits* are claimed only where suppliers are *registered* for GST/HST. Previously, the sole means available to verify this was to contact Canada Revenue Agency.

The February 23, 2005 Federal Budget proposed a publicly accessible *web-based GST/HST Registry*. This has *now been activated* and the link is:

<https://www.businessregistration-inscriptionentreprise.gc.ca/ebci/brom/registry/registryPro>



[mpt.en.jsp](#)

This could also be valuable for *real property transactions* where a vendor needs to confirm that the *purchaser is registered* so that the vendor will not be required to collect GST/HST on the sale.

## EXPORTS

Most *exported services* are subject to a *GST rate of 0%*. However, the taxpayer *may claim Input Tax Credits* as the supplies are *zero-rated*, not tax exempt.

GST/HST *Memoranda Series 4.5.1 Exports* - Determining Residence Status - includes a *sample declaration* that may be provided by a *purchaser* to a vendor with respect to their *non-resident status*.

## LAWYERS' DISBURSEMENTS

In May, 2006, CRA released *Policy Statement P-209R* which addresses *lawyers' disbursements* for GST/HST purposes.

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## WEB TIPS

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### 75(9)

#### EMAILING LARGE FILES (UP TO 1 GIGABYTE)

If you have ever tried to *email a file* or document larger than 10 MB, you might have found your email provider *reject the message* because of messaging size limitations.

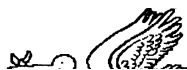
One way to avoid this is to *use a free "drop and deliver" service*. One simply goes to one of the websites listed below, *upload the document*, and then *enter the email address of the intended recipient*. A message will then be sent to the recipient containing a link. He/she would *follow the link and download the file directly* to his/her computer.

[YouSendIt.com](#)

[DropSend.com](#)

[rapidshare.de](#)

As a note, please



be aware that in almost any Internet based data transfer, even in direct emails, there is the possibility that your *message* may be *compromised*.

## FINDING LOCATIONS, DIRECTIONS, AND PHONE NUMBERS – GOOGLE LOCAL RESULTS

Having a meeting at a restaurant you've never been to? Need directions to a printer? Trying to contact a paint shop?

If you are trying to do any of these things, there are a couple of options one could use: look in a phone book, check 411.ca, or search for the company/restaurant's website. However, there is *one option* that in most cases works even better.

Go to *google.ca*, and enter both *the organization's name* (or parts of it) and *the name of the city* it is in. (do this all within the same search box - ex: Search "Boston Pizza Toronto" *Note: if you live in a smaller town, or one that has a name which is common to other countries (i.e. Kingston, London etc.) you will need to include the province as well (Boston Pizza Kingston, On).*

In most cases, a section will appear at the top of the results entitled "*local results*" (usually a little compass icon will accompany this section). Within this section you will see a *listing of all the organizations within the city* which fulfill your search parameters. Each of the items listed includes the *organization's full-name*, its *address*, and its *phone number*.

If you click on the listing that you want, you will then be directed to a *map of its location*. Within this page one may select the "*directions*" option. A window will pop up asking for your starting location. After entering this detail, almost instantly a report will appear *listing the distance, estimated time of travel, written directions*, and a picture of the *route map*. *Note: when entering in the starting location, always use the postal code (it will save you time and frustration).*

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## DID YOU KNOW...

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### 75(10)

#### U.S. REAL ESTATE SALES BY CANADIANS

Canadians that *sell U.S. real estate* at a profit will be subject to *U.S. Federal* and, perhaps, *U.S. State tax*.



From the *proceeds of disposition* you are entitled to *deduct your cost base* which includes any *permanent improvements*. You also may deduct sale expenses such as real estate taxes, interest, insurance and maintenance.

Some other things to consider include:

1. There is a 10% *U.S. withholding tax* that applies at the time of sale as a *prepayment of the income tax*.

A vendor may be *exempt* from the *withholding tax* (but not the income tax) if the *buyer certifies* that they will use the property as a *residence* and the selling price *does not exceed \$300,000*. Also, a *Form 8288-B* may be submitted to the IRS to authorize a reduction in the withholding tax *below 10%*.

2. A *U.S. income tax return* to report the sale is due *by June 15* of the following year (April 15 if you had wages subject to U.S. withholding). The U.S. withholding tax is shown as a payment on that return.
3. *State taxes* also must be considered.
4. A United States *Taxpayer Identification Number* will be needed.

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.