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2012 TAX PLANNING THIRD QUARTER

PERSONAL TAX

CHILDREN'S ARTS TAX CREDIT (CATC)

In a May 24, 2012 Technical Interpretation, CRA notes that an optional annual fee paid to a fund organized by the Music Parents Society as an optional school trip, would be an eligible CATC if the membership in the Organization is not part of a school's curriculum, the membership lasts eight or more consecutive weeks, and more than 50% of the activities that the Organization offers to children include a significant amount of artistic, cultural, recreational or developmental activities.

FEES PAID TO A MONTESSORI SCHOOL

In an April 12, 2012 Technical Interpretation, CRA notes that if an educational institution offers a full-day kindergarten program, the fees payable for that program are not deductible as a child care expense (CCE).

However, if an educational institution provides a separate or additional program of child care as well as a half-day or alternate-day kindergarten program, the part of the fees related to the separate child care program may qualify as a CCE.

BUSINESS/PROPERTY INCOME

PER DIEM MEAL ALLOWANCE

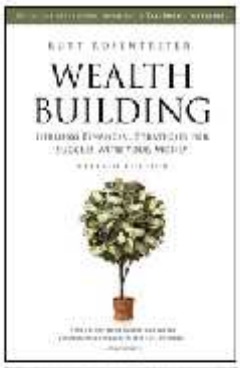
In a March 28, 2012 Technical Interpretation, CRA noted that an employer-provided meal allowance will not be taxable where the following conditions are met:

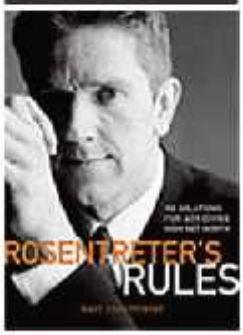
- the allowance is a reasonable amount;
- the allowance is received for travelling away from the municipality and the metropolitan area where the employer's establishment, at which the employee ordinarily worked or to which the employee ordinarily reported is located; and
- the travelling is done in the performance of the duties of an office or employment.

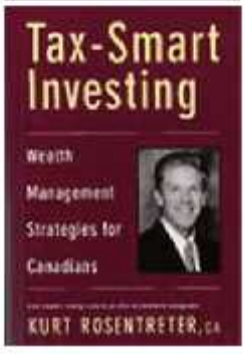
CRA's current administrative policy provides that in some circumstances, employer-provided travel (including meal) allowances paid in respect of travel within a "municipality" or "metropolitan area" can be excluded from income.

CRA notes that, as a general rule, an employer can use the overtime meal allowance of $17 as a reasonable amount per meal.

Kurt's National Best Selling Books







CRA GIFTS AND AWARDS PROGRAM

In a May 10, 2012 Technical Interpretation CRA notes that under certain conditions, gifts and non-cash awards received by an employee may not be a taxable benefit.

However, the policy does not apply to gifts and awards in cash or cash reimbursements by the employer of any property purchased by the employee, or a service paid by the employee, is a cash equivalent. This is also the case for a property or service chosen by the employee but purchased by the employer (unless the number of goods or services that can be selected is very limited).

Similarly, CRA generally considers that where an employee can earn points and exchange them for items of a catalogue, this is not covered by the tax-free policy on awards and gifts.

BUSINESS/PROPERTY INCOME

REAL ESTATE AGENT

In a March 19, 2012 Technical Interpretation, CRA notes that if a real estate agent can show that rebates in the form of gifts or cash offered to clients were for the purpose of gaining or producing income from his/her business (to increase sales, for example) the payment of the rebate would likely be deductible in computing income.
However, CRA notes that it would probably not be deductible if it was paid to a non-arm's length customer on the basis that it would be regarded as a personal expense.

ONLINE TRADING

In a March 29, 2012 Tax Court of Canada case, the issue was whether CRA was correct in disallowing the taxpayer's claim for business losses on his online share trading activities for the 2001, 2002, 2003 and 2004 taxation years on the basis that they were on account of capital.

Taxpayer Wins!
The Court noted that:

1. The Appellant has met his onus of showing he was engaged in an adventure in the nature of trade.
2. The CRA was correct in arguing that the taxpayer lacked the special knowledge necessary to make him a "trader", however, the telling feature of the Appellant's conduct is the feverish nature of his trading activities.
3. The Court noted that if the tables were turned and he had managed to make the profits he dreamed of, the Court could not for one moment imagine CRA characterizing his activities as being consistent with an intention to acquire the shares as a long-term capital investment.
4. Whenever the Appellant did have some funds, he was back online trading.

SKI CONDOMINIUM - RENTAL LOSSES

In a February 27, 2012 Tax Court of Canada case, the taxpayer bought a unit in a condominium building at a ski resort near Collingwood, Ontario and stated that she purchased the unit in part because she wanted to ski, but the main interest was the possibility of earning rental income.
The Court generally allowed the rental losses claimed and noted that:

1. It was not unreasonable for the Appellant to believe that the rental of the unit would not only pay the carrying costs, mortgage payments, property taxes and other fees but, also make some profit.
2. It is important to determine whether the taxpayer has an activity carried out in a commercial manner.

A determination by the CRA should not be used to second-guess the business acumen of the taxpayer. It is the commercial nature of the activity to be assessed, and not the taxpayer's business acumen.

Therefore, the losses were allowed as a deduction with the exception that some of the expenses were capitalized (capital cost allowance was allowed).

SELF-EMPLOYED VS. EMPLOYEE

In a May 30, 2012 Tax Court of Canada case, the issue was whether the child care provider was an employee (contract of service) or self-employed (contract for services).

The Court found that the child care provider was an employee and noted that the work was executed under a contract of service because of its regularity, continuity and permanent work; supervision; the beginning and end of work decided exclusively by the payer; the lack of autonomy of the guardian; and exclusivity.

Also, the form of compensation, the power to intervene and/or unilateral control held by the payer and inequality in a contractual relationship all indicated an employment relationship. The parties were not equal in negotiations.

Therefore, the parents were required to remit Employment Insurance (EI) on behalf of their employee and, the employee was entitled to apply for EI.

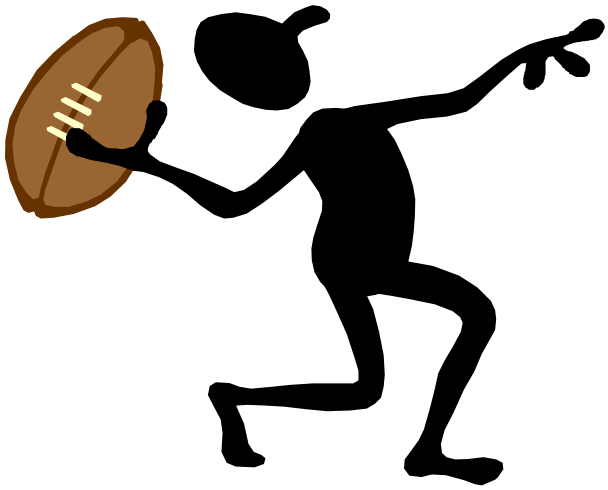
ESTATE PLANNING

NON-PROFIT ORGANIZATIONS (NPO) - SPORTS ORGANIZATION

In a March 30, 2012 Technical Interpretation, CRA notes that the taxable income of an Organization that is a Club, Society or Association is exempt from tax for a period throughout which the Organization meets all of the following conditions:

- it is not a charity;
- it is organized and operated exclusively for social welfare, civic improvement, pleasure, recreation or any other purpose except profit; and
- it does not distribute, or otherwise make available for the personal benefit of a member or shareholder, any of its income, unless...

In this case, CRA was advised that the Association earned income from a variety of sources including sponsorships and advertising rights, both throughout the year and previously. The Association had a large increase in income which resulted in a significant increase in Members' equity. The increase in Members' equity has remained steady since that time. In each year under review, the Association recorded a surplus which was distributed evenly to the Members' accounts.



CRA noted that Paragraph 149(1)(l) does not mean that an Organization cannot earn a profit; it can, but the profit must be incidental and must result from activities undertaken to support the Organization's not-for-profit objectives. The earning of profit cannot be, or become, a purpose of the Organization.

In this case, the Organization provided financial assistance to its Members out of surplus derived from third parties. CRA noted that these amounts do not appear to be incidental in relation to the overall income and scope of operations, particularly when it appears that the Association is generating a surplus on a regular basis. Additionally, all of this income was received from third parties and was actively pursued through the use of an agency.

CRA concluded that the Association was likely operating for a profit purpose (together with its not-for-profit purposes) and its NPO status is in jeopardy.

LEVERAGED CHARITABLE DONATION PROGRAM

In a May 15, 2012 Ontario Superior Court of Justice case, the Plaintiff made donations of $1 million and $100,000 to the Program (Defendant) in 2002 and 2003 respectively. CRA reassessed the 2002 and 2003 tax returns by disallowing the charitable tax credits and requiring him to pay the tax owing plus interest.
It is argued by the Defendant that the Plaintiff's class-action suit is beyond the time limits because his claim became statute-barred on June 19, 2008 under the Limitations Act, 2002 (Ontario).

Plaintiff Wins
The Court dismissed the Motions introduced by the Defendants for summary judgments dismissing the Plaintiff's claim which was one of several class proceedings before the Court brought on behalf of taxpayers who participated in this "leveraged charitable donations program".

DID YOU KNOW

ONTARIO SURTAX

On April 23, 2012, Ontario Premier Dalton McGuinty announced that Ontario will introduce a temporary 2% surtax on individuals earning more than $500,000 a year.

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