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2010 PROVINCIAL BUDGETS

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Number 176

Budget season is upon us once again. To date, the following provinces/territories have presented their 2010 Budgets. Highlights of budget measures that relate to payroll are reproduced below. As other provinces/territories issue their Budgets, they will be added to the list.

Alberta

The 2010 Alberta Budget of February 9, 2010, presented by Finance and Enterprise Minister Ted Morton contained no new taxes or tax increases.

New Brunswick

The 2010 New Brunswick Budget was presented December 1, 2009 and is reproduced in the "Budgets & New Developments" section at ¶180,174.

Northwest Territories

The 2010 Northwest Territories Budget of January 28, 2010, presented by Finance Minister J. Michael Miltenberger contained no new taxes or tax increases but did address the review of the Northwest Territories tax system.

Review of the Northwest Territories Tax System

In October 2009 we held a second roundtable on these longer-term tax and fiscal issues and also invited the public to give us their ideas.

Inside

We heard support for a long term focus on investments in our future as a territory, including support for proactive investments to encourage reduced fuel use and the exploration of cost-effective energy alternatives. We heard an openness to support changes in the tax mix to better balance the tax burden, provided there was a corresponding creative search for opportunities to diversify the NWT economy and address our high cost of living. These ideas will guide longer term work on the tax and fiscal structure of the NWT. Proposals for significant change to the NWT tax system will require considerable research and analysis and further consultation before any changes are brought forward and implemented. This work will be undertaken in the upcoming fiscal year.

Hot News Items

CRA Reporting Requirements for Retiring Allowances Paid in 2009 and Beyond

In the December issue of *PaySource*, No. 174, we reported on changes to the reporting requirements for retiring allowances. Currently, both the eligible and non-eligible amounts of a retiring allowance are reported in Boxes 26 and 27 on the T4A. As of January 2011, (for the 2010 reporting year), the reporting of retiring allowances will be moved from the T4A to the the T4. New Codes 66 – Eligible retiring allowance and 67 – Non-eligible retiring allowance will be added to the T4 for the 2010 reporting year.

The Canada Revenue Agency has issued instructions on when to report retiring allowances on the current T4A and when to use the T4 for upcoming reporting of retiring allowances.

Retiring Allowances Paid in 2009

For retiring allowances paid in 2009 and reported before January 1, 2011: Use current T4A , Boxes 26 and/or 27.

If the retiring allowance paid in 2009 is reported on or after January 1, 2011: Use new T4A, Codes 026 and/or 027.

Retiring Allowances Paid in 2010

For retiring allowances paid in 2010 and beyond and reported on or after January 1, 2011: Use T4, Codes 66 and/or 67.

If the retiring allowance paid in 2010 is reported before January 1, 2011: Use current T4A, Boxes 26 and/or 27*

* The newly designed T4A will only be available for use as of January 1, 2011. If you are filing your 2010 returns prior to January 1, 2011 (e.g., the business has closed its doors), the old T4A would be used, even for reporting retiring allowances.

Amending the Reporting of Retiring Allowances Effective January 1, 2011

If you are amending the reporting of retiring allowances paid in 2009 or earlier, use the newly designed T4A with new footnote codes 026 and/or 027.

If you are amending the reporting of retiring allowances paid in 2010 and beyond, use the T4 with the new codes 66 and/or 67.

Prince Edward Island Employment Standards Amendments

Bill 2, the *Employment Standards Act, 2009*, (now S.P.E.I. 2009, c. 5), which was previously summarized in *PaySource*, No. 173 was amended in Committee prior to receiving Royal Assent on December 9, 2009.

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The Committee amendment changes entitlement to sick leave. An employee who has been employed by the same employer for a continuous period of at least five years, will be entitled to one day of paid sick leave per year in addition to any unpaid leave that the employee is entitled.

The amendments are subject to proclamation and are not yet law. Subscribers will be notified when the Bill becomes law.

Need To Know

Minimum Wage

The new minimum wage rates are located in the "Employment Standards" section of *PaySource* at ¶5710, and ¶5831.

Northwest Territories

The Government of Northwest Territories has announced a two-phased increase to its general minimum wage rate, which is currently set at $8.25 per hour.

Effective April 1, 2010, the minimum wage will increase to $9 an hour and effective April 1, 2011 the minimum wage will increase to $10 an hour.

These are the first general minimum wage rate increases in the Northwest Territories since December 28, 2003.

Recent Cases and Rulings

An Employee Cannot Agree To Waive the Overtime Provisions of the *Employment Standards Act*

• • • **British Columbia** • • • Stastny worked for Dependable Turbines as a machinist from 1987 until he was dismissed in July 2007. During his employment, Stastny was laid off a number of times due to a lack of work, but he was always rehired on the same terms and conditions. When he was working for the company, Stastny regularly worked more than 40 hours a week without overtime pay. Upon Stastny's dismissal, Dependable Turbines initially alleged that he was terminated for stealing tools, but this allegation was withdrawn before trial. He brought a wrongful dismissal action claiming damages for wrongful dismissal, and for overtime pay that he did not receive.

The action was allowed. Despite the numerous layoffs, Stastny was considered to have been a 20-year employee of the company at the time of termination, since he was always hired back in fairly short order after each layoff. As a result, Stastny was entitled to 15 months' reasonable notice. An employee cannot agree to waive the overtime provisions of the *Employment Standards Act*, which require an employee to be paid one and a half times his or her regular wage for the hours worked beyond 40 in one week. By paying Stastny regular wages for the additional hours he worked, Dependable Turbines accepted the benefit of that work, and were required to follow the requirements of the legislation regarding overtime wages. Stastny was entitled to unpaid overtime wages for the six years prior to the date of dismissal. Given the allegations of theft against Stastny, which were made by the employer in an effort to avoid severance pay, Stastny was also entitled to aggravated damages of $1,000.

Stastny v. Dependable Turbines Ltd., (B.C.S.C.), 2010 CLLC ¶210-004.

Failure To Return to Work Following Leave Resignation Not Termination

• • • **Saskatchewan** • • • Addison began working for Sport Chek on July 12, 1999, and was promoted to sales manager/footwear in January 2000. On March 31, 2006, Addison suffered chest pain, and was diagnosed with anxiety and depression. He went on medical leave, and applied for short-term disability. While Addison was on medical leave, a meeting was held with Sport Chek regarding Addison's sick leave and issues relating to a recent inventory which revealed that a number of hockey sticks were missing. Addison advised his employer that he would resign, but wanted to complete his sick leave benefits first for personal reasons. Subsequently, the employer advertised for Addison's position. Addison received sick leave benefits until June 25, 2006, at which point the benefits were terminated because Addison failed to provide the required medical information to the insurance company. On August 24, 2006, his employer determined that Addison was no longer receiving short-term disability benefits and was eligible to return to work, but Addison informed them that he did not want to return to work. After failing to show up for work on September 11, as required by the employer, Sport Chek determined that Addison had resigned, and paid him his outstanding vacation pay. Addison brought a claim for wrongful dismissal, alleging that he had been fired at the meeting with his employer.

The claim was dismissed. Addison was not terminated at the meeting in April. He continued to be entitled to receive his short-term disability benefits. When Addison was informed that he was required to return to work in September and he failed to show up for work, Addison effectively resigned.

Addison v. The Forzani Group Ltd., (Sask. Q.B.), 2010 CLLC ¶210-006.

Senior Manager Gets 18 Months' Notice for Termination as Part of Business Stoppage

• • • **Ontario** • • • Leonard worked in management at Canac for 16 years. When Canac experienced a business slowdown, it stopped manufacturing in Canada. Canac notified Leonard in September 2008 that it would stop its business operations at the end of the year and that his position was to be eliminated on November 9, 2008. Leonard was paid the balance of his entitlement to group benefit continuation and termination pay but he did not accept the severance proposed by Canac. Leonard brought a wrongful dismissal action.

The action was allowed. There was no complaint with Leonard as an employee. He was simply terminated because of the financial state of the company during an economic downturn. Leonard was 67 years old at the time that he was terminated. Employees in senior management positions are entitled to more than the minimum established by the *Employment Standards Act*. In addition, Leonard had a limited likelihood of gaining other employment with similar compensation because of his age. Therefore, given the 16 years of experience he had with the company, Leonard was entitled to 18 months' reasonable notice.

Leonard v. Kohler Canada Co. Carrying on business as Canac Kitchens, (Ont. S.C.J.), 2010 CLLC ¶210-007.

Taxpayer Was Not Employed at Remote Location or Special Work Site

The taxpayer's employer (the "Employer") obtained a hydro-related construction project. Although the project site was at Toulustouc, Quebec, the Employer decided that its accounting functions related to the project would be performed at its head office at Betsiamites, Quebec. The taxpayer was employed at Betsiamites in an administrative capacity under a four-year contract, and one of his responsibilities was the Employer's accounting functions. During the period, the taxpayer lived initially at Baie-Comeau, and later at Ragueneau, which was closer to Betsiamites than Baie-Comeau. In reassessing the taxpayer for 2003 and 2004, the Minister added to his income: (a) $5,000 that was paid to him by the Employer in the last year of the contract of employment; (b) standby charges of $4,704 for 2003 and $2,352 for 2004 for the use of an automobile; and (c) automobile operating cost benefits of $2,688 for 2003 and $1,428 for 2004. The taxpayer appealed to the Tax Court of Canada.

The taxpayer's appeal was allowed in part. The taxpayer maintained his own self-contained domestic establishment and was not employed at a remote location. The Employer's head office at Betsiamites, where the taxpayer was employed, was not a special work site. The taxpayer's argument that the $5,000 in dispute was an exempt amount received for board and lodging at a special work site, and for transportation to and from a remote location, was therefore untenable. Therefore, the taxpayer could not exempt this $5,000 amount from his income under the special work site and remote location provisions in s. 6(6) of the Act. The automobile made available for the taxpayer's use had initially been rented by the Employer for $700 per month, and later for $600 per month. In 2003, however, the Employer replaced the leased vehicle with one acquired for the taxpayer's use at a cost of $13,500. Therefore, the standby charges to be included in the taxpayer's income had to be reduced to $2,713.12 for 2003 and $1,360.80 for 2004 to reflect the foregoing findings. The Minister was ordered to reassess accordingly.

Bourget, (Tax Court of Canada), 2009 DTC 1387.

Source Deductions – Teacher's Salary Rights

The issue considered by the CRA involved teachers of a school board being remunerated on the basis of 194 school days worked during the year but having their remuneration for such days spread out over the full year and paid every two weeks. Each payment was thus inferior to the teacher's salary right accumulated year-to-date. For example, if a teacher with an annual salary of $45,116 started the school year on September 2 and then had to go on maternity leave on January 16, she would have worked 88 days and received 10 pays as of January 16. She would have accumulated salary rights of $20,465.28 but received only $17,352.31 in salary. The employer would therefore have to pay her the difference of $3,112.97 upon her departure for maternity leave. The CRA was asked to comment on the nature of the $3,112.97 for the purpose of determining the source deductions applicable.

The CRA confirmed that the $3,112.97 payment should be treated as regular remuneration, not as a special pay-

ment, for the purpose of calculating the teacher's income tax deductions at source. The salary right would simply constitute the salary that a teacher would be entitled to receive but would not have received because of the special arrangement between the school board and its teachers. For more details on how to calculate income tax deductions at source, you may refer to the CRA Guide "T4001 Employers' Guide – Payroll Deductions and Remittances" and to the CRA Web site at http://www.cra-arc.gc.ca/tx/bsnss/tpcs/pyrll/clcltng/ncmtx/mthd/menu-eng.html. Although special rules are available if an employer makes a special payment to an employee, the CRA considers that the $3,112.97 paid to the teacher is not a special payment and should be treated as regular remuneration.

Technical Interpretation, Business and Partnerships Division, December 7, 2009, Document No. 2009-0344691E5.

Duties of a Temporary Nature – Special Work Site

The CRA was asked whether employees who are required to be at a special work site for two to three years would still be considered to be performing duties of a temporary nature under subsection 6(6). Further, the CRA was asked for its view on the interpretation of the "36-hour" requirement in paragraph 6(6)(*a*).

Canco contracted to build a project at a special work site, and the work was expected to take 3.5 years to complete. Certain Canco employees would work at the site for two to three years or longer.

The CRA stated that, generally, the value of employer-provided board and lodging or transportation to and from a work location is to be included in the employee's income. However, paragraphs 6(6)(*a*) and (*b*) exclude from an employee's income the value of employment benefits received or a reasonable allowance for expenses (board, lodging, transportation) incurred in respect of a special work site. Generally, the exclusions are available only where the work is of a temporary nature (subject to some additional requirements).

"Temporary" is not defined in the Act. The CRA's view is that "temporary" would not apply to a period longer than two years. However, this is a general rule and there are other factors that could indicate that the work was of a temporary nature, including: (i) whether the employee's substantive position is maintained at another work location, (ii) whether the employee can be readily reassigned to another work location in or outside Canada, and (iii) the employee's ties to the jurisdiction in which he/she maintains a personal place of residence (i.e., does the employee receive social benefits in the jurisdiction, file tax returns in the jurisdiction).

In respect of the 36-hour requirement in paragraph 6(6)(*a*), the CRA did not directly respond but provided only an example of how the 36-hour requirement could be satisfied (i.e., the employee was at the special work site for two nights, returned home for a night, then returned to the special work site for two more nights).

Income Tax Rulings Directorate, Business and Partnerships Division, December 8, 2009, Document No. 2009-0335751E5.

Reasonable Automobile Allowances

The CRA was asked for its views on whether an automobile allowance paid by an employer to its sales employees would qualify as a reasonable allowance for the purposes of subparagraph 6(1)(*b*)(v).

The particular employees were required to use their own automobiles for employment-related purposes and the employer paid them a flat automobile allowance per week. At the end of each year, each employee was required to provide to the employer the actual employment-related mileage and personal mileage for the year in order to determine whether the allowance was reasonable.

The CRA stated that reasonableness of any motor vehicle allowance is always a question of fact. Subparagraph 6(1)(*b*)(v) excludes from income reasonable allowances for travel expenses received by an employee from his/her employer. Subparagraph 6(1)(*b*)(x) states that a motor vehicle allowance will not be reasonable if it is not based solely on the number of kilometres for which the vehicle is used in the course of performing employment duties. Further, subparagraph 6(1)(*b*)(xi) deems a motor vehicle allowance not to be reasonable where the employee is paid a vehicle allowance and is reimbursed for automobile expenses (subject to a narrow exception for supplementary business insurance or toll or ferry charges). The CRA considers the per kilometre limits in section 7306 of the Regulations to be reasonable for the purpose of paragraph 6(1)(*b*).

The CRA stated that, where a vehicle allowance is in excess of a reasonable per kilometre rate, the excess would be considered to be for the employee's personal use or for other employment-related travel expenses. In such a case, the entire allowance would be included in the employee's income pursuant to paragraph 6(1)(*b*). The employee may be eligible for employment expense deductions under paragraphs 8(1)(*f*), (*h*) or (*h*.1).

The CRA suggested that, where certain conditions are met, at the end of the year the employer could pay an amount it owes on account of a shortfall between the allowance actually paid and the reasonable per kilometre rate based on the actual kilometres driven by the employee. Alternatively, where the allowance is greater than the reasonable per kilometre rate, the employee must repay the excess. The CRA stated that the employer cannot simply report the amount of the excess on the employee's T4 slip.

Income Tax Rulings Directorate, Business and Partnerships Division, December 18, 2009, Document No. 2009-0320531E5.