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Tax Notes

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The Civil Penalties – Six Years On

There's an old vaudeville joke that goes something like this: One guy says to the other, "No time to talk, I'm busy keeping the tigers out of Times Square". The other guy says, "Don't be silly, there aren't any tigers in Times Square". The first guy says, "I'm doing a great job, aren't I?"

More than half a dozen years since our first articles on the civil penalties were written,[1] I feel kind of like that guy. As long-standing readers of this column are well aware, we railed about the spectre of a runaway bureaucracy imposing dozens – maybe hundreds – of civil penalty prosecutions. We kvetched about the position in which professionals would find themselves: torn between duties/loyalties to clients, and the fear of the big financial penalties inherent in these rules – topped only by the devastating loss of reputation such proceedings might bring.

Years have gone by – and it turns out there have been only a handful of files in which the civil penalties have been raised. Does this mean we were overly alarmist, or is it because of our ranting? I guess I'll never know for sure whether it is we who kept the tigers out of Times Square.

No Nukes (So Far)

The civil penalties were designed to allow the government to attack things like aggressive valuations on art donation schemes, tax opinions that don't hold water, and so on. But a survey of my colleagues (including our Canada-wide Meritas Tax Group) revealed very little sign[2] that the CRA has been inclined to use the civil penalties to attack these sorts of schemes in any systematic way.[3] The whole point of the civil penalties in this area is that they are like a nuclear weapon; but it doesn't look like the CRA is anxious to drop the bomb. Until it does, these rules will do nothing to deter rough tough promoters.

Meek tax advisors are another story. In recent years, I have found that the practice of many practitioners has changed. Whereas, not so long ago, they were willing to go to great lengths to advance their clients' positions, many have become much more cautious. Usually, some gentle probing reveals in short order what they are worried about.

Inside

As a lawyer, I am trained to do just about everything in my power to advance a client's position. To an accountant, there should be little difference. The duty to a client is so clear that it only needs to be implied in some of the rules of conduct: the client's interests are paramount. But from the beginning, there was concern that the civil penalties would pit practitioners against their clients. There are more and more signs that this is coming to pass, and that practitioners are concerned that by "pushing too hard" for a client, they may be putting themselves in harm's way.

It may be the case that many general practitioners have difficulty understanding just what it takes to trigger the penalties. Some practitioners seem to think that, from the standpoint of the civil penalties (as well as opening up the normal reassessment period), any mistake could trigger them.[4] While there is, of course, no case law as yet on the civil penalties themselves, the issues are similar to the 50% gross negligence penalty under subsection 163(2). The subsection 163(2) cases usually involve falsifications of expenses, non-reporting of income and the like, rather than matters of judgement (such as ill-founded claims for capital gains status or aggressive technical interpretations). What it takes to trigger the civil penalties is indifference to compliance with the Act, or a willful, reckless or wanton disregard for the tax laws. While there has been some waffling on the point over the years, the current Information Circular[5] acknowledges that the Department of Finance intended these penalties to apply to "egregious" situations. It goes on to state that the legislation is not intended to apply to differences of interpretation or opinion where there is *bona fide* uncertainty (e.g., the issue is not well-settled in jurisprudence) as opposed to where the position taken is obviously wrong, unreasonable, and/or contrary to well-established case law.

If a filing position is tenable, the CRA should not be looking to impose the penalties. Of course, things are never this easy: a possible filing position may be "closer to the line"; the detriment to the client may be only a possibility. A busy practitioner does not have the time or (often) the training to consider distinctions between ordinary and gross negligence. If practitioners decide to err on the side of self-preservation, can you really blame them? (While I could say that, in view of the paramountcy of client interests, they may be going too far, this sort of "preaching" would be a cheap shot.) Of course, these situations – i.e., involving tricky balancing between a client's welfare and self-preservation – are among the reasons why I opposed the civil penalties so vociferously to begin with.

Box Score

At the moment, I think it is fair to say that, if you are a "decent" practitioner, you should worry as much about being hit by a truck as drawing the penalties. A chat with a CRA official revealed the following cumulative "box score" on the civil penalties:

- penalties applied – 6 files;[6]
- ongoing audits – 5 files;
- new cases – no decision as to whether to assess – 3 files;
- assessments rejected – 9 files.

A plugged-in colleague who attended a recent session with government officials on the subject tells me that none of the files recently under review relate to sophisticated plans developed by aggressive tax planners. So far, the civil penalty assessments largely relate to fairly egregious situations where it is difficult to find sympathy with the persons assessed. That's it. The result of half a dozen years under the system.

There is some reason to believe that the CRA will become more aggressive over time. But will the police state I originally feared come to pass? The civil penalty regime hits from the ground up: reading between the lines, I would think that the attacks thus far are focused on pretty low-level practitioners. But what may be emerging is a very different game plan: to strike from the top down, with more and more heat on big firms, perhaps due to pressure on the CRA emanating from south of the border. Just like they go after celebrities, the IRS game plan is to scare off smaller players by showing that they can bring down "big game" with nine-figure reassessments. If this approach comes to Canada – and there are increasing signs that it will – throwing the book at some schmuck for bogus cab receipts may be just a sideshow.

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TAX NOTES

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Notes:

[1] By my colleague Brian Nichols and I.

[2] There is probably one exception; but I have heard that "bad blood" had a role in how the CRA approached the situation.

[3] Apart from the situation mentioned in the note above, no one was aware of any attempt to impose the civil penalties in situations such as bogus tax opinions, or aggressive but sophisticated tax structures.

[4] From this, internal logic might dictate that all accounting must be in accordance with GAAP, even if a Notice to Reader engagement. I do not believe that this is the case.

[5] IC 01-1.

[6] With respect to this item, the CRA referred to it as "preparer penalties". I am not sure that the interpretation should be literal; however, as discussed later, it may be.

Draft Legislation – Distribution Tax on Income Trusts and Partnerships

Reproduced below is Department of Finance News Release No. 2006-086, dated December 21, 2006, the release of draft legislation to implement the distribution tax on income trusts and partnerships that was announced on October 31, 2006. CCH has prepared SPECIAL REPORT No. 023H, which contains the draft legislation, explanatory notes, and the News Release. Copies of the SPECIAL REPORT may be ordered by calling the CCH Customer Satisfaction Hotline at (416) 224-2248. Outside the Greater Toronto Area, call toll free at 1-800-268-4522.

The Honourable Jim Flaherty, Minister of Finance, today released draft legislative proposals to implement those aspects of the Government's Tax Fairness Plan dealing with income trusts and other flow-through entities.

The Tax Fairness Plan responds to the tax imbalance created by publicly-traded trusts and partnerships, while also providing meaningful tax relief to Canadian pensioners, seniors and businesses in Canada.

The key elements of the Plan as it relates to income trusts and other flow-through entities are:

- A distribution tax to be applied on certain distributions and allocations from publicly-traded trusts and partnerships as set out in the Notice of Ways and Means Motion adopted with a strong majority in the House of Commons on November 7, 2006.
- For trusts and partnerships that begin trading after October 31, 2006, the tax will apply beginning with their 2007 taxation year.
- Existing publicly-traded trusts and partnerships will not be subject to the new measure until their 2011 taxation year (assuming those trusts and partnerships adhere to the guidelines on "normal growth" set out in the guidelines distributed by the Department of Finance on December 15, 2006).

"Canada's New Government is taking these important steps to restore balance and fairness to Canada's tax system," said Minister Flaherty. "If corporations don't pay their share of taxes, this tax burden will be shifted onto the shoulders of hard-working individuals and families. This draft legislation conforms with the announcement I made on October 31st, and we intend to proceed with our Tax Fairness Plan as presented."

The Government is seeking constructive commentary on the technical aspects of the draft legislative proposals to implement the Tax Fairness Plan as presented and conforming with the Notice of Ways and Means Motion adopted on November 7, 2006.

Interested parties are invited to provide comments on the draft legislative proposals regarding the distribution tax by January 31, 2007. Following this comment period, the Government intends to introduce legislation to implement all components of the Tax Fairness Plan, including the $1,000 increase to the age credit amount for seniors, pension income splitting, which will enable Canadian residents to split up to one-half of certain pension income with their resident spouse or common-law partner, and a further reduction in the general corporate income tax rate to 18.5 per cent in 2011.

Please send your comments to:

Tax Policy Branch
Department of Finance
140 O'Connor Street
Ottawa, Ontario
K1A 0G5

Designation of Eligible Dividends

Reproduced below is a Canada Revenue Agency release, dated December 20, 2006, concerning the requirement for the shareholder notification of eligible dividends as set out in new subsection 89(14) contained in Bill C-28.

Canadian resident individuals who receive eligible dividends in 2006 and subsequent years will be entitled to a higher gross-up and dividend tax credit. Corporations have to designate each eligible dividend that they pay, and notify shareholders in writing that the dividend is eligible. A corporation must make every effort to notify shareholders of an eligible dividend. The following are general guidelines for corporations to follow.

A. Notification of Shareholders

For the 2006 Year

All Corporations

For 2006, we will accept designations based on identification of eligible dividends on the T3 and T5 slips. Other acceptable methods are posting a notice on the corporation's website, and in corporate reports or shareholder publications.

For 2007 and Subsequent Taxation Years

Public Corporations

For 2007 and subsequent taxation years, for public corporations, we will accept that notification has been made if, before or at the time the dividends are paid, a designation is made stating that all dividends are eligible dividends unless indicated otherwise. Acceptable methods of making a designation are posting a notice on the corporation's website, and in corporate quarterly or annual reports or shareholder publications. We will consider that a notice posted on a corporate website is notification that an eligible dividend is paid to shareholders until the notice is removed. Similarly, a notice in an annual or quarterly report that an eligible dividend has been paid is considered valid for that year or quarter, respectively. Alternatively, if a public corporation issues a press release announcing the declaration of a dividend, a statement in the press release indicating that the dividend is an eligible dividend will be sufficient proof that notification was given to each shareholder.

All Other Corporations:

For 2007 and subsequent taxation years, for all corporations other than public corporations, the notification requirements of proposed subsection 89(14) must be met each time a dividend is paid. Examples of notification could include identifying eligible dividends through letters to shareholders and dividend cheque stubs, or where all shareholders are Directors of a corporation, a notation in the Minutes.

Shareholders Whose Mailing Address is Outside the Country

Notification of a designation must be given to all shareholders who receive a dividend, including those whose mailing address is outside the country, and even if Part XIII tax is withheld from the payment. The address of record is not conclusive proof of residency.

A dividend received by a non-resident shareholder cannot qualify as an eligible dividend. If a corporation pays a dividend to a non-resident shareholder that would otherwise be an eligible dividend if paid to a resident shareholder, there is no impact on the eligibility of the dividends paid to other resident shareholders of the corporation.

B. Designation of Portion of Dividend Paid on Class of Shares

All shares of a particular class of shares have the same attributes and therefore, a designation of eligible dividends must include all the shareholders of that class. A designation will not be accepted in respect of the portion of the dividend paid to certain shareholders of a class of shares.

A designation will not be accepted if a corporation designates a fraction of a dividend paid to each shareholder to be an eligible dividend. However, because the legislation is retroactive to dividends paid before the announcement of the new measure, we will allow dividends to be designated as two separate dividends for all dividends paid in 2006. In addition, where a corporation designates two separate dividends, an ineligible dividend and an eligible dividend, these two separate dividends can be paid in one cheque.

C. Dividends Received by Trusts

Trusts will generally not know for some time whether dividends received by them in 2006 are eligible dividends. Where a trust has received from a corporation an amount of dividends paid in 2006 and that corporation has not, before the trust's deadline for issuing its own T3 slips, notified shareholders (using one or more of the methods described in section A above) of whether the dividends are eligible dividends, then the trust can make reasonable assumptions in determining whether to identify those dividends as eligible dividends. However, the trust accepts responsibility to re-issue proper T3 information slips and T3 returns promptly if the assumption proves to be inaccurate, except for amounts that are less than $100.

Many mutual fund trusts have a December 15 year-end. Dividends received by such trusts in the portion of their 2006 taxation year from December 16 to December 31, 2005, will not qualify as eligible dividends. Such trusts can use a reasonable method to estimate the amount of such dividends, e.g., 1/24 of all dividends received by the trust in its 2006 taxation year. Dividends paid by a corporation in the 2005 calendar year (and, therefore, not eligible dividends) should have been reported by the corporation before the end of February 2006. In filing their T3 returns for 2005, trusts with Dec 15 years-end would be expected to have already determined (as part of filing their 2005 T3 returns) what portion, if any, of such reported dividends paid in 2005 were received in the last two weeks of 2005. These dividends received in the last two weeks of 2005 would have been held-over for reporting in their 2006 T3 returns and the trust would be expected to have a record of these amounts.

D. Dividends Received by Partnerships

Partnership law and the relevant partnership agreement dictate that dividends are allocated to the partners. If the dividends and partners meet the conditions in subsection 89(1) of the *Income Tax Act*, then a partner's share of such dividends would be eligible dividends received by that partner. Therefore, each partner's share of a dividend received by a partnership is considered, for the purposes of all provisions relating to an eligible dividend, to be a dividend received by the partner.

Report Setting Out Recommendations on Savings Measures To Help Children with Severe Disabilities

On December 12, 2006, the Department of Finance released the report it received from an expert panel that was set up to recommend ways in which parents of children with severe disabilities could establish long-term financial security for their children. This report has been posted on CCH Tax PROTOS®,[1] CCH's News Tracker and the Department of Finance Web site. Printed copies are available by contacting Distribution Centre, Department of Finance, Room P-135, West Tower, 300 Laurier Avenue West, Ottawa, Ontario K1A 0G5; phone: 613-995-2855; fax: 613-996-0518.

Recommendations in the report include establishing a Registered Disability Savings Plan (RDSP) to be loosely based on Registered Education Savings Plan provisions in the *Income Tax Act*. The plan would also include a Disability Savings Grant component, similar to the Education Savings Grant model and administered by the Department of Human Resources and Social Development. Eligibility for an RDSP would be based solely on eligibility for the disability tax credit in section 118.3. Maximum contributions to an RDSP would be $200,000 for the lifetime of the beneficiary. Only one plan could be established for an individual but contributions could be made by anyone. The amount of the Disability Savings Grant would be based on family income. Where family taxable income is equal to or less than $72,756, the grant would be $1500 on contributions of $500 by any contributor in any year and $2000 on the next $1000 contributed in any year. Where family taxable income is over $72,756, the grant is $1,000 for the first $1,000 of contributions in any year. No Disability Savings Grants would be paid after the beneficiary is 49 years of age. The report also recommends establishing a Canada Disability Bond program, based on the Canada Learning Bond provisions again administered by the Department of Human Resources and Social Development.

Flexibility in Requirements for Employee Deductions?

Longtin v. The Queen, 2006 DTC 3254 (Tax Court of Canada)

The Tax Court of Canada decision in *Longtin* considered whether salary paid to the taxpayer's wife as his assistant was deductible from the taxpayer's income, even though the taxpayer was not required to retain an assistant as an express or implied term of his employment. The taxpayer relied on paragraph 8(1)(*f*) and subparagraph 8(1)(*i*)(ii) to support the deduction, which the Tax Court allowed on appeal.

The appeal concerned the 1997 and 1998 tax years, during which the taxpayer was employed as a salesperson by a pulp and paper supplies business. His duties required him to be on the road over 200 days per year. He was responsible for the western Canada region and his duties included supervising the sales and service persons in the region as well as calling on customers and looking after collections. For each of 1997 and 1998, the taxpayer was paid a base salary of $100,000 plus a commission of $50,000. For 1997, he deducted employment expenses of $49,531, including $26,900 claimed as salary to his assistant. A similar deduction was claimed for 1998.

An office was necessary for the taxpayer to perform his duties and the taxpayer retained his wife as his assistant. Her responsibilities included taking care of phone calls, managing the bills, e-mailing and faxing material to the taxpayer while he was on the road and organizing work-related social functions in the couple's home. She estimated that she did 20 hours of work per week for which she was paid $2,000 per month plus a bonus at Christmas.

The issue for the Court was whether the salary the taxpayer paid to his wife was deductible under either paragraph 8(1)(*f*) or subparagraph 8(1)(*i*)(ii) of the Act.

Paragraph 8(1)(*f*) provides a deduction from income for certain sales expenses of commissioned employees. Generally, in order to qualify for the deduction, the salesperson must be required to pay his or her own expenses, be ordinarily required to carry on the duties of the employment away from the employer's place of business, be paid in whole or in part by commissions, and not have received a tax-free travel allowance. The expenses must have been for the purpose of earning income from the employment and must not have exceeded the amount of commissions received.

Subparagraph 8(1)(*i*)(ii) provides, in part, that a taxpayer may deduct amounts paid as salary to an assistant provided the taxpayer was required by the contract of employment to make the payment.

Both paragraph 8(1)(*f*) and subparagraph 8(1)(*i*)(ii) require the taxpayer to file, with the taxpayer's return of income for the year, a prescribed form, Form T2200, *Declaration of Conditions of Employment*, signed by the taxpayer's employer certifying that the conditions set out in the applicable provision are met in the year in respect of the taxpayer.

The taxpayer claimed to have satisfied all of the conditions under both paragraph 8(1)(*f*) and subparagraph 8(1)(*i*)(ii). With respect to the latter provision, he argued that his contract of employment implicitly or explicitly required him to pay for the services of an assistant and the prior case law supported the deduction of payments, despite the fact that the employment contract not specifically require such a payment. Although his employer had indicated on Form T2200 that the taxpayer was not required to hire an assistant, the taxpayer claimed the form did not accurately reflect the situation.

The Crown claimed that paragraph 8(1)(*f*) was not satisfied, as the taxpayer's contract of employment did not require him to pay his own expenses. The Crown argued that subparagraph 8(1)(*i*)(ii) was also not satisfied as the taxpayer's contract of employment did not require him to pay for an assistant, and that Form T2200 was at least *prima facie* evidence of this.

Justice Margeson allowed the appeal and held that the taxpayer was entitled to deduct the expenses under both paragraph 8(1)(*f*) and subparagraph 8(1)(*i*)(ii). He found, as a fact, that the taxpayer was required to pay his own expenses and this was all that paragraph 8(1)(*f*) required. The Court's conclusion on subparagraph 8(1)(*i*)(ii) was more interesting. Justice Margeson found that the taxpayer satisfied the conditions for deductibility even though under the contract of employment the taxpayer was not required to have an assistant. The Court held that the condition of the provision is that the taxpayer's contract for employment require the taxpayer to pay the salary to the assistant and that there is no need under subparagraph 8(1)(*i*)(ii) for the contract of employment to require the taxpayer to have an assistant.

There is ambiguity in the wording of subparagraph 8(1)(*i*)(ii) as to whether the employee's employment contract must require the employee to have an assistant and to pay the salary of the assistant, or whether the employee's employment contract need only require the employee to be responsible to pay for an assistant should the employee decide to engage an assistant. Courts have interpreted subparagraph 8(1)(*i*)(ii) both ways (see, for example, *Schnurr* (2004 DTC 3531), and *Williams* (2004 DTC 3549)). For now, it appears that the decision in *Longtin* is useful authority for the proposition that a taxpayer's employment contract need not require the taxpayer to have an assistant in order for a payment to an assistant to be deductible under subparagraph 8(1)(*i*)(ii) – it is sufficient if it requires the taxpayer to pay the salary to the assistant if the taxpayer decides to engage one. However, the matter appears not to be settled given that the Tax Court of Canada in a more recent decision (*Sauvé* (2006 TCC 528)), has again viewed subparagraph 8(1)(*i*)(ii) as requiring that an employee's contract of employment must require the employee to hire an assistant in order for the employee to deduct salary paid to the assistant.

– Judith Ann Gorman, McCarthy Tétrault LLP

2.2% Indexation Factor for 2007

Reproduced below is a CRA Fact Sheet, released on December 20, 2006, that sets out a 2.2% indexation factor for 2007 income tax thresholds, personal credit amounts, the Canada Child Tax Benefit and the Goods and Services Tax Credit.

> Each year since 2000, personal income tax amounts have been indexed to inflation using the Consumer Price Index data, as reported by Statistics Canada.
>
> Changes to tax bracket thresholds and non-refundable credits will take effect as of January 1, 2007. Adjustments to the Canada Child Tax Benefit (including the National Child Benefit supplement and the Child Disability Benefit) and the Goods and Services Tax Credit will take effect as of July 1, 2007, to coincide with the beginning of the "program year" for these benefits.
>
> The following chart compares the indexed amounts for the 2006 and 2007 tax years and reflects an indexation adjustment of 2.2% in 2007.

Indexed Personal Income Tax Parameters

	2006	2007
	($)	
Personal Amounts and Bracket Thresholds		
Basic personal amount[1]	8,929	8,839
Spouse or common-law partner amount[1]	7,581	7,505
Net income threshold[1]	759	751
Taxable Income at which 22-per-cent bracket begins	37,178	36,378
Taxable Income at which 26-per-cent bracket begins	74,357	72,756
Taxable income at which 29-per-cent bracket begins	120,887	118,285
Credit Amounts to Reflect Needs		
Infirm dependant amount	4,019	3,933
Net income threshold	5,702	5,580
Caregiver amount	4,019	3,933
Net income threshold	13,726	13,430
Disability amount	6,890	6,741
Amount for children with disabilities	4,019	3,933
Allowable child care and attendant care expenses	2,354	2,303
Maximum adoption expense amount	10,445	10,220
Medical expense tax credit – 3 per cent of net income ceiling	1,926	1,884
Maximum refundable medical expense supplement	1,022	1,000
Minimum earnings threshold	2,984	2,919
Family net income threshold	22,627	22,140
Age amount[2]	5,177	5,066
Net income threshold	30,936	30,270
Old Age Security repayment threshold	63,511	62,144
Goods and Services Tax Credit (GSTC)[3]		
Adult maximum	237	232
Child maximum	125	122
Single supplement	125	122
Phase-in threshold for the single supplement	7,705	7,539
Family net income at which credit begins to phase out	30,936	30,270
Canada Child Tax Benefit[3]		
Base benefit	1,283	1,255
Additional benefit for third child	90	88
Additional benefit for children under 7 years[4]	–	249
Family net income at which base benefit begins to phase out	37,178	36,378
National Child Benefit (NCB) Supplement[3]		
First child	1,988	1,945
Second child	1,758	1,720
Third child	1,673	1,637
Family net income at which NCB supplements begins to phase out	20,883	20,435
Family net income at which NCB supplement phase-out is complete	37,178	36,378
Child Disability Benefit		
Maximum benefit	2,351	2,300
Family net income at which benefit begins to phase out	37,178	36,378
Child Special Allowance (CSA)		
CSA base amount	3,271	3,200

[1] The basic personal amount is indexed using a deemed base of $8,639. The spouse or common-law partner amount is indexed using a deemed base of $7,335, while the net income threshold is indexed using a deemed base of $734. The resulting amounts are then increased by $100 for the basic personal amount, $85 for the spouse or common-law partner amount, and $8.50 for the net income threshold. The deemed base amounts and other increases were specified in Budget 2006.
[2] On October 31, 2006, the Minister of Finance proposed an increase in the age amount from $4,066 to $5,066 for 2006.
[3] The GSTC and the Canada Child Tax Benefit (including the National Child Benefit supplement and Child Disability Benefit) are paid on a benefit-year cycle beginning in July.
[4] The under 7 supplement is being phased out beginning in the 2006-07 benefit year.

Recent Cases

De facto director personally liable for unremitted corporate source deductions for one year only

The taxpayer was a chartered accountant. The Minister assessed him vicariously as a corporate director for unremitted source deductions owing by a corporation (the "Lynx"). The taxpayer's position was that (a) he was never a director of the Lynx, (b) if he was a director of the Lynx, he exercised due diligence at all times, and (c) the Lynx's unremitted source deduction liability for 1998 and 1999 was less than the amount for which the taxpayer had been vicariously assessed.

The taxpayer's appeal was allowed in part. *De facto* as well as *de jure* directors can be held vicariously liable under section 227.1 of the Act for unremitted corporate source deductions. The role played by the taxpayer in the Lynx's affairs and the responsibility assumed by him in the management of its activities led to the conclusion that, at all material times, he was acting as its *de facto* director. The absence of representations to third parties that he was so acting was not determinative. The taxpayer, as a person involved in the decision-making process, was fully aware that the Lynx's source deduction remittances were not being made during 1998. However, he could not have foreseen that one of the people financing the Lynx had decided, in June 1999, not to advance further funds. Therefore, there was little that he could have done to prevent the Lynx from defaulting on its source deduction remittances for 1999. He had acted with due diligence during 1999, but not during 1998. Also, there was no basis for concluding that the Minister's calculation of the Lynx's tax liabilities was incorrect. The Minister was ordered to reassess the taxpayer on the basis that he was not personally liable for the Lynx's unremitted source deductions for 1999.

Hatrell, 2006 DTC 3548

Deduction for salaries to taxpayer's children disallowed

The taxpayer was a self-employed commission agent. In reassessing the taxpayer for 2001 and 2002, the Minister disallowed the deduction of salaries allegedly paid by her to her children. The taxpayer appealed to the Tax Court of Canada.

The taxpayer's appeal was dismissed. The alleged salary payments were deposited by the taxpayer into a bank or mutual fund account in trust for her children. However, they remained in the taxpayer's control at all material times, and could only be released with her signature. Therefore, at law, they were never paid to the taxpayer's children, and were not deductible.

Bradley, 2006 DTC 3535

Fees for after-school gymnastics classes were deductible child care expense

In assessing the taxpayer for 2004, the Minister disallowed, as a child care expense deduction, the cost of enrolling the taxpayer's daughter in after-school gymnastic classes. The taxpayer appealed to the Tax Court of Canada.

The taxpayer's appeal was allowed. The essential task was to determine the primary reason for enrolling the taxpayer's child in the classes (see *Bailey v. The Queen* (2005 DTC 673) (T.C.C.)). The taxpayer's purpose for enrolling her daughter in the classes was to provide after-school child care arrangements to enable the taxpayer to accommodate her own employment obligations. The expenses incurred for the classes were therefore deductible as a "child care expense" under subsection 63(3) of the Act. The Minister was ordered to reassess accordingly.

Jones, 2006 DTC 3531

Amounts paid for retirement home accommodations not eligible for medical expense tax credit

In reassessing the taxpayer for 2002, the Minister disallowed, as a medical expense tax credit, all but $10,000 of the $61,836 paid by him to a retirement home ("Renoir") for the accommodation of himself and his wife. The taxpayer appealed to the Tax Court of Canada.

The taxpayer's appeal was dismissed. The taxpayer did not require or receive special facilities or personnel for the care of his handicaps. His situation, therefore, did not fall within the parameters of paragraph 118.2(2)(*e*) of the Act. He was not entitled to deduct the full $61,836 as a medical expense tax credit for 2002.

Shultis, 2006 DTC 3533

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