

# Newsletter

Fall 2009

## PAYING A SPOUSE FOR ADMINISTRATIVE SERVICES MAY NOT BE PENSIONABLE EMPLOYMENT FOR CPP PURPOSES

Author: Milan Legris, LL.B., LL.M., Senior Tax Associate, Taylor Leibow LLP

Under the Canada Pension Plan (CPP), contributions from both the employer and employee are required where there is "pensionable employment." The CPP contribution rate in 2010 will remain at 4.95% (subject to a maximum dollar amount of \$2,163.15) for both the employer and employee.

For example: Assume that an employee will receive a salary of \$50,000 in 2010. The maximum pensionable earnings in 2010 are \$47,200 and there is a basic exemption amount of \$3,500. Accordingly, \$43,700 (\$47,200-\$3,500) of his/her salary is subject to CPP contributions at 4.95% (\$2,163.15). For the employer and employee, the combined contributions are \$4,326.30. For many small business employers, the CPP contribution cost can be significant.

Savings on CPP (the employer's portion) may be possible, if there is no pensionable employment. A recent Tax Court of Canada case (*A. Wyseman v. The Queen*) is helpful, as it reviewed services provided by one spouse (Mrs. Wyseman) to her spouse's business (Mr. Wyseman, a financial planner), and found that this was not pensionable employment. In ruling favourably for Mr. Wyseman, the court considered the following factors:

1. by written agreement, it was intended that Mrs. Wyseman was an independent contractor (not an employee), and
2. their conduct confirmed the independent relationship (and the view that Mrs. Wyseman carried on her own business). Observations of how Mrs. Wyseman provided her services included:
  - a. her freedom on when to perform the work (albeit with deadlines);
  - b. this was part-time work, and in addition to Mrs. Wyseman's other regular employment elsewhere;

- c. the limited duties for Mrs. Wyseman (i.e., specific tasks performed);
- d. her ability to carry out duties from home and not being available or performing additional duties at Mr. Wyseman's office; and
- e. there was a fixed payment amount for the services (regardless of the time to complete tasks).

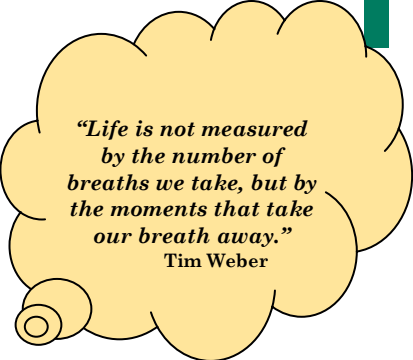
While Mrs. Wyseman was not an employee or engaged in pensionable employment, she would, of course, be responsible for CPP contributions on her self-employed earnings from performing the services. However, if Mrs. Wyseman earned more than the maximum pensionable earnings amount (for example, \$46,300 in 2009) from other employment, she would not have to pay any CPP on her self-employment earnings.

An additional benefit to this arrangement is income splitting. If Mrs. Wyseman was in a lower income tax bracket than Mr. Wyseman, she would pay less personal tax on her additional self-employment earnings than Mr. Wyseman would have had he not paid her for performing the services.

This case serves as an example of how taxpayers, and particularly family businesses, can structure their affairs to not only minimize EI and CPP costs, but also income split and reduce the overall family income tax burden. If you have questions about how this case may apply to your circumstances, you should speak with your tax advisors for assistance.

### Inside this issue:

<b>Paying a Spouse for Administrative Services may not be Pensionable Employment for CPP Purposes</b>	<b>1</b>
<b>More on Claiming Moving Expenses</b>	<b>2</b>
<b>Snowbird or Business Travel to the US - Making Sure You Are Canadian!</b>	<b>3</b>
<b>Quick Tax Facts</b>	<b>4</b>



*"Life is not measured by the number of breaths we take, but by the moments that take our breath away."*  
Tim Weber

### Special points of interest:

- **Maximum RRSP limits:**  
2009 - \$21,000  
2010 - \$22,000
- **The Harmonized Sales Tax (HST) comes into effect in Ontario and British Columbia on July 1, 2010.**
- **Personal tax instalments:**  
- December 15, 2009  
- March 15, 2010  
- June 15, 2010  
- September 15, 2010

## MORE ON CLAIMING MOVING EXPENSES—MOVING FOR A CHANGE TO FULL-TIME WORK CAN BE AN ELIGIBLE RELOCATION EXPENSE

Author: Milan Legris, LL.B., LL.M., Senior Tax Associate, Taylor Leibow LLP

As the end of 2009 approaches, Canadian taxpayers should begin to think about their deductible expenses for the year. Where a taxpayer satisfies the requirements of an “eligible relocation,” he or she will be entitled to claim the related moving expenses. A description of qualifying moving expenses and the rules on their deduction can be found in our Summer 2009 newsletter.

In light of current economic conditions, many Canadians are undergoing work and employment changes. For some individuals, these changes will mean relocating to take up new work and employment that may also involve changing from part-time to full-time work and employment.

A recent tax decision in favour of a taxpayer highlights the importance of carefully reviewing the circumstances of an individual’s move associated with a change of employment. The decision in the case of *Gelinas v. R.* dealt with an employee moving her residence to take up work that was with the same employer (a hospital), but now on a full-time basis (from part-time) within a different department.

In order to allow the taxpayer’s deduction for her moving expenses, her move had to come within the tax rules’ definition of an “eligible relocation.” An eligible relocation must satisfy the following three criteria:

- be a move that allows a taxpayer to be employed at a location in Canada;
- the taxpayer’s old and new residences have to be in Canada; and
- the distance between the old residence and new work location must be at least 40 kilometers greater than the distance between the new residence and new work location.

In the *Gelinas* case, the only question to be decided was whether the first criterion was satisfied, namely whether the taxpayer was employed at a

location in Canada. The position taken by the tax authorities was that the taxpayer was already employed at the hospital (albeit part-time), and that already being employed there did not require the taxpayer to move in order to work full-time.

In deciding to allow the taxpayer’s claim for expenses as work related, the court considered the circumstances of the move:

- more round trips to work would be required when full-time;
- the new position was at a location in Canada; and
- it was a different position for the taxpayer – now full-time, in a different department, and on a different floor.

The court was also careful to consider and highlight that, contrary to the tax authorities’ position and certain other tax cases, there was no requirement for an “old” work location. In doing so, the court stated that the term “new work location” was not to be given special meaning, but related only to the required 40 kilometer greater distance of the old residence to the new work location. Accordingly, there was only a requirement that there be a work location in Canada, not an “old” work location.

This case highlights the need for taxpayers to always consider their specific circumstances when claiming expenses. If you have questions about the tax deductibility of expenses, you should speak with your tax advisor for assistance.

***Canadian taxpayers should begin to think about their deductible expenses for 2009.***

# SNOWBIRD OR BUSINESS TRAVEL TO THE US—MAKING SURE YOUR ARE CANADIAN!

Author: Ryan Ball, CA, Hergott Duval Stack, LLP, Chartered Accountants

**Business trips to Boston, New York and San Francisco.....40 days**  
**Winter home in Phoenix.....75 days**  
**Family vacation to Los Angeles.....you might be American!**

Thousands of Canadian taxpayers are making regular trips to the United States (US) for both business and personal reasons. Even though an individual remains a resident of Canada, files and pays Canadian income tax, it is likely that many regular travelers to the south have some US tax reporting requirements.

Assuming you are not a citizen of the US, the US income tax and reporting requirements depend on whether or not you are a resident of the US. (US citizens must file US returns, regardless of their residence.) Residents of the US are required to file returns and pay income taxes on their worldwide income. And, there are various information returns that many US residents are required to file with the Internal Revenue Service (IRS).

It is important to note that determining residency for income tax purposes is more encompassing than residency from an immigration perspective. The US has rules in the Internal Revenue Code (IRC) that attempt to determine whether or not individuals are resident for income tax purposes.

Individuals will be deemed resident of the US for tax purposes if they meet the “substantial presence test.” The “substantial presence test” requires an individual to examine the number of days present in the US for the current and two preceding years. An individual must add the current year days in the US to one-third of the preceding year days in the US and one-sixth of the second preceding year days physically present in the US. If the result is equal to or greater than 183 days (approximately 122 days per year), the substantial presence test is met and the individual is deemed to be a resident of the US.

Assuming the individual still ordinarily resides in Canada, both countries will have their hands out looking for tax filings. Therefore, steps should be taken to limit the required filings and exposure to penalties in the US. There are two ways to avoid having to file a US tax return and report income from

worldwide sources.

1. The closer connection exception is the simplest method. This exception is available to all individuals that are otherwise resident of the US because of the substantial presence test, physically present in the US for less than 183 days in the current year and have a closer connection and a tax home in another jurisdiction (i.e., Canada). To take advantage of this exception, individuals must file (on or before the individual’s US filing deadline) with the IRS a simple two-page form that identifies that the criteria have been satisfied. Filing the form means the individual is not a resident of the US for tax purposes.
2. If the closer connection exception is not available, reliance on our tax treaty with the US is the only alternative to filing taxes as a resident of the US. In order to get relief from US tax, the individual must disclose the treaty provision relied on with their US tax return. A consideration to relying on the treaty is that it only provides relief from tax obligations. It does not provide full relief from the requirements to file other information returns required by the IRS, such as ownership in Canadian bank accounts and Canadian corporations.

If you find yourself traveling to the US on a regular basis, it is possible that no additional taxes would result; however, the situation should be reviewed with your accountant to ensure you are aware of all of the required filings.

<u>Days in US per year</u>	<u>Filing recommended</u>
Less than 122	None...You are Canadian
More than 122: less than 183	File closer connection exception
More than 183	Tax treaty disclosure

## QUICK TAX FACTS

### CRA PRESCRIBED INTEREST RATES FOR FOURTH QUARTER OF 2009

The following interest rates are in effect from October 1 to December 31, 2009, and apply to amounts owed to the Canada Revenue Agency (CRA) and any amounts the CRA owes to individuals and corporations:

Interest rate charged on overdue taxes, Canada Pension Plan contributions, and EI premiums	5%
Interest rate paid on overpayments	3%
Interest rate used to calculate taxable benefits for employees and shareholders from interest-free and low-interest loans	1%

### CRA SELF-SERVE STAMPING MACHINES

Self-serve stamping machines are now available during regular office hours in all of the Tax Services Offices to provide receipts for documents delivered in person. Introduced in April 2009, now when taxpayers drop off original documents to the CRA and need proof of delivery, they can simply bring a photocopy and stamp it using a self-serve stamping machine.

### INDIVIDUALS AND BUSINESSES CAN NOW PAY TAXES ONLINE USING “MY PAYMENT” SERVICES

The CRA recently launched a new online service called My Payment, which allows individuals and businesses to make secure online payments to the CRA from their bank accounts.

The My Payment service became available in October 5, 2009, to taxpayers with online banking capabilities at financial institutions that offer Interac® Online (currently BMO Bank of Montreal, Scotiabank, TD Canada Trust, and the RBC Royal Bank.).

For more information, or to use this new service, go to <https://apps.cra-arc.gc.ca/ebci/fppp/mypymnt/pub/entry.do>.

### CRA “KIDDIE TAX” AUDITS

There is a special tax on certain income received by minors (other than dividends on publicly-traded securities). Often referred to as the “Kiddie Tax,” the special tax on split income is calculated at the highest marginal tax rate and the basic personal credit cannot be claimed against it.

Recently, this has become an area of audit focus for the CRA and letters are being sent out requesting either form T1206, “Tax on Split Income” or an investment income summary from the financial institution or broker showing that the income reported was received from publicly-traded securities. If the information is not provided, CRA will reassess the return for this tax.

If you have received such a letter from the CRA, please speak with your tax advisor.