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2004 PERSONAL INCOME TAX RETURN CHECKLIST

69(1)

Appendix A provides a *checklist of information* that will be needed to complete your *2004 Personal Income Tax Return*.

PERSONAL TAX

69(2)

COMMON-LAW PARTNER

A “*common-law partner*” status must be *disclosed* when filing a personal income tax return.

This means a person who *co-habits* in a *conjugal relationship* and has so cohabited throughout the previous *twelve month* period *or* is the *parent* of a child of whom the taxpayer is a parent.

Also, persons that have been cohabiting in a conjugal relationship are *deemed to continue* to be in a “common-law partner” status unless they are *living separate and apart* for at least *ninety continuous days* because of a breakdown of their conjugal relationship.

Two persons living in the *same house* may



be tempted to file on the basis that they are “*single*” - just roommates - to avoid losing certain benefits such as the GST credit, provincial tax credits, child tax benefit, etc.

CRA may challenge this “*single status*”. The taxpayers must show that they are *not* in a *common-law relationship*. *Seven factors* indicative of a *common-law relationship* are:

1. shared shelter,
2. sexual and personal behaviour,
3. one partner performs services on behalf of the other,
4. participation in social activities together,
5. societal perception,
6. economic support, and
7. the couple’s attitude toward any children they have together.

MEDICAL EXPENSE - RENOVATIONS

In a September 1, 2004 *Tax Court* of Canada case, the Court permitted a *medical expense* for \$10,531 on home *renovations*.

The taxpayer’s *spouse had meningitis* and was confined to a wheelchair. To remain in the family home she needed 24-hour care. Therefore, the taxpayer incurred the \$10,531 to provide *living accommodations* for his *mother-in-law* so that she could provide care to his spouse. The costs also include amounts for a *room* on the *main*

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floor for his *disabled spouse*.

Also, in a September 17, 2004 *External Technical Interpretation*, CRA agreed that a person who had suffered a stroke and was disabled was entitled to a *medical expense* for certain *renovations* to his house to allow *access, mobility, or functionality* within the home.

OLD AGE SECURITY

In a September 7, 2004 *External Technical Interpretation*, CRA remind taxpayers that there will be a *clawback* if the net income exceeds *\$59,790*.

OAS payments will be subject to a “*withholding*” on the *potential clawback*. For example, OAS payments in *January to*

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June, 2005 are subject to withholding based on the net income in the **2003 Return**; July to December, 2005 - based on the 2004 Return. Therefore, if the 2005 income will be less than that in 2003 and 2004, an application to have this withholding **reduced** could be made to CRA.

CAREGIVER CREDIT

In a July 12, 2004 **Tax Court** of Canada case, the taxpayer **lived** periodically with her **elderly parents** in their apartment in 2002 and, at the end of the year, one of the parents lived with her **prior** to entering a **nursing home**.

The Court permitted the **caregiver credit** on the basis that Mrs. V was providing **in-home care** for her mother.

Editor's Comment

The **income threshold** for the elderly parent at which point the credit is reduced is \$12,921 for 2004.

EMPLOYMENT INCOME

69(3)

TRAINING TRUST FUND

In a July 29, 2004 **CRA Document**, CRA note that "**Training Trust Funds**" generally fall under the **non-taxable categories** for employer-provided **training** outlined in **Income Tax Technical News No. 13**.

STOCK OPTIONS

In an August 13, 2004 **External Technical Interpretation**, CRA note that where a corporation agrees to sell its shares to an employee, the employee generally includes in **employment income** a taxable benefit equal to the **fair market value** of the shares acquired minus the **amount paid**. However, where an employee **pays** an amount for the shares that is **not less** than the **fair market value** of the shares at the time the **agreement to issue the shares is established**, a deduction in computing taxable income of **50% of the benefit** is permitted.

Also, there is a **50% deduction** in computing taxable income, and a **deferral** of the employment income until the share is sold, if the employee is an arm's length employee of a **Canadian-controlled private corporation** and holds the shares for **two years**.

GARNISHMENT

An **employer** may be required by **law** to enforce a **garnishment, family support, maintenance order or wage assignment**.

For example, CRA may issue a **Requirement to Pay Notice** with respect to an employee. This Notice remains **in effect** until the CRA liability is paid in full or, until CRA releases the employer from the obligations.

If an employer has **more than one order** with respect to an **employee, legal advice** should be obtained as to "who gets what".

In some jurisdictions the employer is permitted to deduct an **administrative fee** from the funds they forward to the Court. (Alberta, Manitoba, Newfoundland, Labrador, Northwest Territories, Nunavut, Ontario, Prince Edward Island, and the Yukon Territory)

BUSINESS/PROPERTY INCOME

69(4)

SALARIES TO FAMILY MEMBERS

In a September 2, 2004 **Tax Court** of Canada case, the taxpayer's **salaries** to his sixteen/seventeen-year old **son** in 1999 and 2000 of \$4,279 and \$4,090 respectively were **disallowed** by the Court because:

1. There was **no evidence of cheques being made** for those amounts - just an indication by the father that he had bought items for the son which were reflected in the salary.
2. **Hours** of work were **not kept**.
3. The son **did not report** the amounts in **income**.

The Court noted that business transac-

tions between related persons must have their **"i's" dotted** and their **"t's" crossed**.

For salaries to be allowed to family members, the amounts must be **paid in a normal manner** and **specific duties and hours worked** should be documented.

In a June 23, 2004 **Tax Court** of Canada case, salaries of \$12,000 and \$3,500 paid to a sixteen year old and twelve year old **child** were **disallowed** for reasons including **no evidence of actual payment or reporting**.

In a July 16, 2004 **Tax Court** of Canada case, the Court reviewed a number of expenses which had been deducted in carrying on the **Watkins products for sale** business. One of the items **allowed** as a deduction by the Court was a salary of **\$25 per month** to their 12 year old son and **\$15 per month** to their 7 year old daughter for assisting them in various business functions. The Court was satisfied that the remuneration was **paid and reasonable**.

KEEP RECEIPTS

In a September 20, 2004 **Tax Court** of Canada case, the taxpayer was reassessed by CRA for the 1993, 1994 and 1995 years to **disallow** most of the interest expense, entertainment expense, business use of residence, and farm expenses.

Taxpayer Loses

The **Tax Court** also disallowed the expenses and noted that the taxpayer **did not keep receipts**.

The best evidence would have been an invoice, a cancelled cheque, a receipt or other proof of payment. Instead, only schedules in the handwriting of the Appellant with his oral explanation were provided.

TAX REGISTRATION

Registrations for a **new** business or part-



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nership may be done over the internet at www.businessregistration.gc.ca.

OUT-OF-COUNTRY TRAINING COSTS

In an October 20, 2004 *External Technical Interpretation*, CRA notes that where training in respect of a business is taken to *maintain, update or upgrade* an already existing skill or qualification, the related costs (course fees, travel, food, beverages and lodging) are *deductible* as a current *business expense*. However, the *food and beverage* portion may be restricted to the *50% deduction* in Section 67.1.

MARRIAGE BREAKDOWN

69(5)

CHILD SUPPORT - COMMENCEMENT DAY

In a July 13, 2004 *Tax Court* of Canada case, the taxpayer signed a Separation Agreement *in 1988* which required a \$225 per child per month child support payment.

After May 1, 1997, the taxpayer moved from Manitoba to British Columbia. A *new Order* of the Income Security Division in British Columbia retained the Manitoba Order but had a *top-up* of the child support from \$225 per month to \$425 per month.

Taxpayer Loses!

The Tax Court noted that the *deduction is lost* because a new or amended agreement was made *after April 1997*.



SPOUSAL SUPPORT

In the August 23, 2004 issue of the *Globe and Mail* it was noted that the Federal government is proposing to release *Federal Guidelines* for negotiating income-sharing agreements between *divorced couples*.

The Guidelines include *formulas* for calcu-

lating reasonable settlements. Factors such as the *length of the marriage* and the presence of *dependent children* are included. For example, if a couple married for twenty years has no dependent children and the *man* is earning a salary of *\$90,000* and his *wife* is earning *\$30,000*, the *spousal support* figure that the man would pay his ex-wife ranges between 1.5% and 2.0% of the difference (\$60,000) times the number of years the couple were married. This is between \$18,000 and \$24,000 a year or \$1,500 to \$2,000 a month.

The payments continue to be *tax deductible* to the payor and *taxable* to the recipient.

Unlike the *child support guidelines* which do have the *effect of law*, the spousal guidelines are *just a starting point* in negotiations.

SPOUSAL SUPPORT

It was noted in the *National Post* on September 27, 2004 that the *British Columbia Court of Appeal* was asked to *cancel or reduce* Mr. L's Court-ordered \$2,250 per month spousal support to his 57 year old former wife on the basis that she had *not made reasonable attempts* to obtain employment.

The Court *rejected the Appeal* on the basis that Ms. L's *family and medical problems* were exacerbated by the *breakdown* of her marriage. Ms. L's inability to achieve financial self sufficiency resulted, (at least in part) from the emotional devastation as well as from her age, a lingering back problem, and a string of death and illnesses in her close family.

PAYING FOR CHILD'S MASTERS DEGREE

It was noted in the July 15, 2004 issue of the *National Post* that the *Ontario Superior Court* held that divorced parents of a 25 year old daughter must pay for her *Masters Degree*.

In the past, it has been *common* for Judges to require divorced parents to pay for a

child's *first post-secondary degree*. However, this case found that where the parents are highly educated and have high expectations for their child, the costs for the Masters Degree are also required to be paid.

The daughter took the Masters Degree at a university in the United States at a cost of \$127,000. The Court noted that the parents should only be required to pay the *equivalent costs* for a degree *in Canada*, which the Court determined to be \$40,000 (\$22,800 for the father and \$17,200 for the mother based on their respective incomes).

ESTATE PLANNING/CHARITIES

69(6)

CHARITY REIMBURSEMENTS

A person who *incurs expenses* while volunteering for a charity could consider having the *expenses* reimbursed by the charity. The volunteer could then *donate the amounts* back to the charity. This will provide a *tax credit* for the donation. It is important to *cross cheques*.

PUBLIC BENEFIT

Organizations that want to be *registered as a "Charity"* must have purposes directed to the *"public benefit"*.

On September 30, 2004, CRA issued a *27-page Guide* "Consultation on Proposed Guidelines for Registering a Charity: *Meeting the Public Benefit Test*".

CANADA PENSION PLAN (CPP)

In a Government of Canada *Income Security Program* seminar it was noted that:

1. In applying to collect a person's *CPP*, it is possible to *drop out* certain years:
 - (i) periods of CPP disability,
 - (ii) periods during which children were raised up to age 7,



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(iii) 15% of the lowest earning years in your contributory period.

See the “*Canadian Retirement Income Calculator*” at www.hrdc.gc.ca.

2. CPP credits may be *divided upon divorce*, legal annulment or separation of spouses or common-law partners. The *applicant’s* ex-spouse or ex-partner is to be *notified* of the request in writing. For divorces after January 1, 1987, there are *no time barriers* for applying.
3. Spouses or common-law partners may apply to *share CPP entitlements* if they are both at least *age 60*.
4. *Disability CPP benefits* must be applied for *in writing*. The person must have a *severe and prolonged disability* including a condition which *prevents* the person from doing any *work* on a regular basis.

SPOUSAL TRUST

Assets may be *rolled over* on death to a *Spousal Trust* which is a Trust created in the Will under which the taxpayer’s *spouse or common-law partner* is *entitled* to receive all of the *income* of the Trust that arises before the spouse’s or common-law partner’s death and, *no person* except the spouse or common-law partner may, before their death, receive or otherwise obtain the use of any of the *income or capital* of the Trust.

In a *second marriage situation*, persons that wish to ensure that their assets will eventually go to their children, not their new spouse’s children, upon their new spouse’s death, may wish to establish a *Spousal Trust* in which the *new spouse* receives all the *income* during his/her life but, there can be *no encroachment on capital* until the spouse’s death at which time, the *capital* will go to *beneficiaries* chosen by the deceased taxpayer, such as his/her children.

Expert legal advice is needed here.

GIFT FROM AN ESTATE

In a June 11, 2004 *External Technical Interpretation*, CRA reviewed a situation where, prior to the death of Brother A, *Brother B* took care of his *personal needs* and managed his finances.

Brothers B, C, D and E are the beneficiaries of Brother A’s Estate. Brothers C, D and E agree that the *Estate* should pay Brother B for the *care provided to Brother A*.

CRA agreed that this payment is a *non-taxable gift* to Brother B from the Estate.

RRSP/RRIF TESTAMENTARY TRUSTS

In a June 20, 2003 *Technical Interpretation*, CRA notes that where a taxpayer *designates a Trust* as the *beneficiary* of his/her *RRSP or RRIF* upon *his/her death*, if this is a *testamentary* instrument provided for in the Will, then the transfer of the property would be considered as occurring as a “*consequence of death*”. Therefore, the recipient Trust would be a “*Testamentary Trust*” eligible for *advantageous tax implications* such as filing Trust returns using the regular marginal income tax rates.

TAX SHELTER DONATION ARRANGEMENTS

On November 25, 2004 CRA introduced a *Fact Sheet* which notes that CRA is aware that donation arrangements continue to be promoted using *Trusts and leveraged cash donations*. CRA’s position is that the 2003 Income Tax Act changes will *significantly reduce* tax benefits.

FARMING

69(7)

CAPITAL GAIN EXEMPTION

To qualify for the *\$500,000 capital gain exemption* on “*qualified farm property*” bought *after June 17, 1987*, a *gross-revenue test* must be met. *Two years* while the property was owned the *gross revenue*

of the individual, spouse, child or parent of the individual from the *farming business* carried on in Canada in which the property was *principally used*, and in which such a person was *actively engaged on a regular and continuous basis*, must exceed the person’s income from all other sources.

The person meeting the *gross-revenue test* need not be the person who owns the property. For instance, it may be the *spouse, child or parent* of such a person.

Alternatively, where the land was acquired *before June 18, 1987*, the land will qualify where it was used by the individual, the spouse, child or parent principally in the course of carrying on the *business of farming* in Canada, *either* in the year the property is *disposed of*, or in *at least five years* during which it was owned by such a person.

GST

69(8)

LAND SALE

In an August 20, 2004 *Tax Court* of Canada case, the *vendor* sold *land and a building* to the “Heart of Trail Society” for \$100,000. The Society advised the vendor that they were *registered for GST*. Therefore, the vendor *did not charge GST* on the basis that the *purchaser would self-assess*.

However, the *GST Registration* of the Society had been *cancelled* prior to the sale.

Vendor Loses!

The Court noted that *even though* the *Vendor was misled* by the fraudulent statement made by the agent for the Society, the Act is clear. The Court found that the Vendor is responsible for the *\$7,000 of GST* plus a *penalty* of \$1,140 and *interest* of \$604.

DIRECTOR LIABILITY

Directors may be held *personally liable* for *unremitted GST* and *source deductions*

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unless they exercised *due care and diligence* or the assessment is *more than two years* after the person has ceased to be a director.

In an August 13, 2004 *Tax Court* of Canada case, the taxpayer ran a Tim Horton franchise which *did not remit GST*. CRA assessed penalties and interest of \$37,430 which were *not objected to* by the corporation. Upon being *assessed personally*, the *directors* did not argue "*due diligence*" but *did argue* that the amount of \$37,430 was incorrect. This was based on a rough calculation done by their accountant totaling \$14,190.

OOPS - Taxpayer Loses!

Even if the assessment is *incorrect*, if it is *not objected to* by the company, the directors are still *personally liable*.

Editor's Comment

Always object to incorrect GST assessments even if the corporation is insolvent.

NON-PROFIT ORGANIZATIONS

In September, 2004, CRA introduced a 20-page *Guide RC4081* which discusses *who* should register, *exemptions* for non-profit organizations, *special issues*, *input tax credits*, public service bodies' *rebates*, *simplified accounting methods*, and *real property* implications.



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.

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WEB TIPS

69(9)

FINDING INFORMATION FOR/ABOUT SENIORS

www.seniors.gc.ca

You will find federal information about *senior programs, initiatives, forms* and *contact* information at this website.

Subjects covered include care for seniors, computers and education, end of life, financial and legal, health, housing, seniors' networks, travel and leisure, veterans, work and volunteering.

Also, check out the "*My Province or Territory*" section on the left hand toolbar of the page for information that is *specific to your province*.

LIFE EXPECTANCY CALCULATOR

If you would like to see *how long* you will have an opportunity *to be a senior*, check out this site:

www.livingto100.com

Most people realize that eating, exercising and living in an unpolluted environment can increase your life expectancy, but do you know by how much? Also, did you know that something as small as *flossing your teeth could add two years to your life*?

This website gives an *estimated life expectancy* based on one's habits, genetics, health and environment. The user simply fills out the *41 question multiple response worksheet* and is then presented with an expected age and an explanation of the

results.

STARTING A NEW BUSINESS

www.vpspro.com

This website contains a *12 step planner* that looks at numerous items that need to be considered when starting a new business. *Various reports* can be obtained including *3 year financial projections, cash flows, and project costs*.

GOOGLE DESKTOP SEARCH

<http://www.google.ca/about.html>

Have you wondered how those Internet search engines like Google can search millions of websites and in a *split second* return thousands of site matches ... while it can take over 100 times as long to use your computer's search button to find lost files?

Google has just developed a desktop tool that not only *searches your computer for files*, but *searches inside of files* (MS Word, Excel, PowerPoint etc.). Not only does it search for files but it also *returns a list of relevant websites* that you have recently visited. The fun doesn't stop just there - the tool can *also search your email!* At the moment, this last feature works best with users of MS Outlook but is still extremely useful for other users.

When downloading the file, please note that it takes a while for the engine to fully catalogue your files. However, this is done while you are not using the computer. Once the files are catalogued, you are ready to get split second responses.

APPENDIX A

2004 PERSONAL INCOME TAX RETURN CHECKLIST

INFORMATION REQUIRED INCLUDES:

1. All **information slips** such as T3, T4, T4A, T4A(OAS), T4A(P), T4E, T4F, T4PS, T4RIF, T4RSP, T5, T10, T2200, T2202, T100, T101, T600, T1163, T1164, TL11A, T5003, T5007, T5008, T5013, T5018 (Subcontractors) and corresponding provincial slips.
2. Details of **other income** for which no T slips have been received such as:
 - other employment income (including stock option plans and Election Form T1212),
 - business income,
 - partnership income,
 - rental income,
 - alimony, separation allowances, child maintenance,
 - pensions,
 - interest income earned but not yet received - example Canada Savings Bonds, Deferred Annuities, Term Deposits, Treasury Bills, Mutual Funds, Strip Bonds, Compound Interest Bonds
 - professional fees,
 - director fees,
 - scholarships, fellowships, bursaries,
 - replacement properties acquired.
3. Details of **other expenses** such as:
 - employment related expenses - Provide Form T2 200 - Declaration of Conditions of Employment,
 - tools acquired by apprentice vehicle mechanics,
 - business and employment purchases like vehicles, supplies, etc.,
 - interest on money borrowed to purchase investments,
 - investment counsel fees,
 - moving expenses - including costs of maintaining a vacant former residence,
 - child care expenses,
 - alimony, separation allowances, child maintenance,
 - safety deposit box fees,
 - accounting fees,
 - pension plan contributions,
 - film and video production eligible for tax credit,
 - mining tax credit expenses,
 - business research and development,

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APPENDIX A (continued)

- clergy residence deduction information, including **Form T1223**,
 - disability supports expenses (speech, sight, hearing, learning aids for impaired individuals and a t-tendant care expenses).
4. Details of **other investments** such as:
- real estate or oil and gas investments - including financial statements,
 - labour-sponsored funds,
 - Registered Education Savings Plans.
5. Details and **receipts** for:
- Registered Retirement Savings Plan (RRSP) contributions,
 - professional dues,
 - tuition fees - including mandatory ancillary fees, and Forms T2202, TL11A and TL11D,
 - charitable donations (including publicly traded securities),
 - medical expenses (including medical related modifications to new or existing home and travel e xpenses),
 - political contributions.
6. Details of **capital gains and losses** realized in 2004.
Also, new rules now permit **rollovers** for **foreign share spin-offs** and various **foreign share reorganizations**.
7. Details of previous **capital gain exemptions** claimed, **business investment losses** and **cumulative net investment loss accounts**.
8. Name, address, date of birth, S.I.N., and province of **residence** on December 31, 2004.
9. **Marital/common-law status** and spouse/partner's income, S.I.N. and birth date.
10. List of **dependents** - including their incomes and birth dates.
11. If you or one of your dependents was in full time attendance at a **college or university**, details concerning name of institution, number of months in attendance, tuition fees, income of dependent, Form T2202.
12. Are you **disabled or are any of your dependents** disabled? Provide Form T2201 - disability tax credit certificate. This also includes extensive therapy such as kidney dialysis and certain cystic fibrosis therapy. Also, the **transfer rules** include relatives such as parents, grandparents, child, grandchild, brothers, sisters, aunts, uncles, nephews or nieces.
13. Details regarding residence in a prescribed area which qualifies for the **Isolated Area Deduction**.
14. Information regarding **child tax credit** receipts.
15. Details regarding **RRSP - Home Buyers' Plan** withdrawals and repayments; **RRSP - Lifelong Learning Plan** repayment.
16. Receipts for 2004 income tax **installments** or, payments of tax.
17. Copy of 2003 personal tax **returns**, 2003 Assessment **Notices** and any correspondence from Canada Revenue Agency (CRA).
18. 2004 **Personalized Tax information** which CRA may have sent you.

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APPENDIX A (continued)

19. Do you want your **tax refund or credit** deposited directly to your account in a financial institution? Yes/No.
To start direct deposit, or to change banking information, attach a void personalized cheque or your branch, institution and account number.
20. Details of **carry forwards** from previous years including losses, donations, forward averaging amounts, registered retirement savings plans.
21. Details of **foreign property** owned at any time in 2004 including cash, stocks, trusts, partnerships, real estate, tangible and intangible property, contingent interests, convertible property, etc..
22. Details of **income** from, or **distributions** to, **foreign entities** such as foreign affiliates and trusts.
23. Details of your **Pension Adjustment Reversal** if you ceased employment and were in a Registered Pension Plan or a Deferred Profit Sharing Plan. (T10 Slip)
24. If you provided **in-home care** for a **parent or grandparent** (including in-laws) 65 years of age or over, or an infirm **dependent relative**, a federal tax credit may be available.
Also, the caregiver may claim related **training costs** as a medical expense credit.
25. Interest paid on qualifying **student loans** is eligible for a tax credit.
26. **Retroactive lump-sum payments**
Individuals receiving qualifying retroactive **lump-sum payments** over \$3,000 may be allowed to use a special mechanism to compute the tax.
27. Changes in **family circumstance** that could affect the **Goods and Services Tax Credit**, such as births, deaths, marriages, reaching the age of 19 years, and becoming or ceasing to be a resident in Canada.
28. **Children born** on or after **January 1, 2004** to low or middle income parents may be entitled to a **Canada Learning Bond** of **\$500** in the initial year and **\$100** per year until age 15. Please ask us for details.

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