

# Canadian Tax Planners Newsletter

**January February 2007**

In this issue of the Canadian Tax Planners Newsletter, we shall review the most tax effective perks that can be provided to employees, plus an update on the following tax issues:

- CRA's unfortunate position on corporate remittances
- a technical blow has been dealt to employees attempting to claim a tax deduction for maintaining an office in their home
- tax credits for public transit passes
- offshore tax audits

## **CRA's Hard Line on Corporate Remittances**

According to press reports, the facts were as follows:

- an Alberta taxpayer was required to make a source deduction remittance of \$2,870,400
- the payment was hand delivered to a CRA office several days before the payment was due and it was stamped "delivered by hand"
- the cheque was deposited by CRA to their Receiver General account

The taxpayer remitted the correct amount to a CRA office several days before the amount was due. Although common sense would suggest that the taxpayer's action would not result in a tax issue, CRA took the following position:

- the taxpayer was assessed a penalty of \$287,040, which is 10% of the remittance that was made before it was due
- CRA sent a letter to the taxpayer demanding to pay up immediately or face legal action being taken without further notice

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This may appear unreasonable, but CRA's action was consistent with the law, although it did reflect a change in their administrative position. It is unclear whether or not this change in policy was effectively communicated to all taxpayers. What did the taxpayer do that was inconsistent with the law and resulted in a penalty being assessed in excess of ¼ million dollars? The law requires that certain tax payments must be made to a financial institution and since the taxpayer hand delivered the payment to a CRA office, a 10% penalty was assessed.

According to CRA's website, payroll remittances can be made as follows:

- electronically. This can be performed by remitting the source deductions through a financial institution's system or using CRA's E-PD7A system
- at a Canadian financial institution
- automatic teller machines
- by mail

The web site makes no mention of paying in person, but it does state that "threshold 2" remitters must make their payments at a Canadian financial institution." A "threshold 2" remitter is defined as employers, including those with associated companies, who had a total of \$50,000 or more of source deductions, two calendar years ago. It goes on to state that threshold 2 remitters must remit their deductions through a Canadian financial institution.

According to a CRA spokesperson, the section of the income tax act requiring businesses to make payments at a financial institution has been on the books since the early 1990's, but enforcement and the mandatory 10% fine only began last month.

The taxpayer acted within the spirit, but not the letter of law. It would be a positive step for tax administration in Canada if CRA would reverse the penalty and replace it with a warning. It is our view that \$287,040 appears excessive given the nature of the taxpayer's transgressions.

### **Office in the Home Deduction**

If employees work from their home and do not charge rent to the employer, they may be able to claim a deduction for the use of their residence on their tax return if they meet the following conditions:

- the office in the home must be the individual's principal place of business or be used on a regular and continuous basis for meeting clients, customers or patients
- the individual is required by his contract of employment to maintain an office
- the taxpayer has not been reimbursed for the expenses

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