



GIVENS^{LLP}

CHARTERED PROFESSIONAL ACCOUNTANTS

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This publication is a high-level summary of the most recent tax developments applicable to business owners, investors and high net worth individuals. Enjoy!

Tax Tidbits

Some quick points to consider...

- On June 19, 2022, individuals suffering from **Type 1 diabetes** became automatically entitled to the **disability tax credit**. This change is **retroactive** to 2021.
- The **Tax Gap**, which measures the difference between what is actually collected and the taxes that would be paid if all obligations were fully met, is between **\$18.1 billion and \$23.4 billion**.
- On June 23, 2022, legislation was passed which would allow the **full and immediate expensing of many capital assets** purchased on or after April 19, 2021.
- CRA is currently reviewing how and when **crypto asset holdings** need to be **disclosed** on form T1135.

Poker Playing: Hobby or Business?

In a June 21, 2022 French **Tax Court of Canada** case, **CRA assessed** the taxpayer's **poker winnings** from 2010 to 2012 as business **income**. In 2010, the taxpayer **won almost \$9 million** in the No Limit Hold'em Championship (The Main Event) at the World Series of Poker. His **net winnings** that year were **about \$5 million**. In **2011 and 2012**, the other two years under review, his **net winnings** were about **\$400,000 and \$100,000** respectively. These amounts were not in dispute, and details of amounts deducted were not included in the case.

The **taxpayer argued** that he played poker as a **hobby**. He cited Paragraph 1.15 of **Folio S3-F9-C1** (Lottery Winnings, Miscellaneous Receipts, and Income (and Losses) from Crime) to support his view that his **winnings** should **not be taxable**. That document provides the following **four factors** that would be considered in determining whether **gambling** was a **business**:

- the **degree of organization**;
- **special knowledge** or inside information that the taxpayer possesses that allows the **element of chance** to be **reduced**;
- the **intention** to gamble for **pleasure** or as a **profitable livelihood**; and

Shared Custody Arrangements: Impact of School Closures

In an April 21, 2022 **Tax Court of Canada** case, the Court reviewed **whether** the taxpayer and her former spouse were **shared-custody parents** of their **three children** for the period from **January 2019 to June 2021** for the purpose of the **Canada child benefit (CCB)**. In shared-custody arrangements, each individual will **get half of the payment** they would have received had the child lived with them full time.

While the Minister initially fully paid the CCB to the taxpayer, the Minister later concluded that she and her former spouse were shared-custody parents and that each was entitled to half.

Parents are considered **shared-custody parents** if they meet **three tests**:

- they must **not** be **cohabitating spouses** or common-law partners;
- they must **reside with the child** either **at least 40%** of the **time** in the **month** or on an **approximately equal basis**; and
- they must each **primarily fulfil** the responsibility for the **care** and **upbringing** of the child **when the child resides** with them.

Taxpayer wins, mostly

The Court noted that **entitlement to CCB** is determined on a **child-by-child** and then **month-by-month basis**.

The **youngest child (V)** was **not** old enough to **attend school** during the period in question, and therefore, **V's care** during the day on weekdays fell entirely to the **taxpayer**. As such, the former spouse could not meet the 40% test for any months. The taxpayer was **entitled** to the **full CCB** in respect of **V**.

The **two other children (N and C)** were attending school and reviewed together on a **month-by-month basis**.

While the Court found that the taxpayer was a **shared-custody parent** for **two time periods** (September to November 2019 and January to February 2020), it found that she had **full custody** for the **remaining periods** (with full CCB entitlement) as the former spouse did not meet the 40% criteria. The Court provided comments on several periods as follows:

- **January to June 2019** – for the three months after the separation, the former spouse had **unstable housing**, and it was clear he did not meet the 40% test. While there was inconsistent testimony for April to June 2019, the Court found it more likely than not that the former spouse did not meet the 40% test.
- **July to August 2019 and 2020** – N and C spent the days during the **summer holidays** with the **taxpayer** (and not at school), meaning that the former spouse did not meet the 40% test.
- **December 2019 and March 2020** – N and C would **not** have been at **school** for a considerable time during these months (**Christmas** and **spring break**) and **spent this time** with the **taxpayer**, resulting in the former spouse not meeting the 40% test.
- **April to June 2020** – the **COVID-19 pandemic closed schools**, forcing N and C to spend the **weekdays** with the **taxpayer**, resulting in the former spouse not meeting the 40% test.
- **September 2020 to June 2021** – the taxpayer **began homeschooling N and C**, resulting in the taxpayer spending all weekdays with N and C. The former spouse did not meet the 40% test.

The Court found that the **former spouse met the 40% test for September to November 2019 and January to February 2020** after reviewing the schedules where N and C were at school on the weekdays. The Court also found that the **former spouse was primarily responsible** for the **care and upbringing** of N and C **when they resided with him**. The Court observed that during this period, the former spouse maintained a **secure environment** for N and C to live with him, that he looked after their **hygienic needs** and that he **provided guidance and companionship**. While it was clear that the taxpayer fulfilled more responsibilities than the former spouse, it still found that the former spouse was primarily responsible for N and C when they were with him.

ACTION: In situations where both parents have partial custody of the children, records of the child's activities should be kept to support the amount of time spent with each parent.

The preceding information is for educational purposes only. As it is impossible to include all situations, circumstances and exceptions in a newsletter such as this, a further review should be done by a qualified professional.

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If you have any questions, give us a call! **1-844-382-7337**