

Marmer Penner Newsletter

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In Release Number 24 of the Income Tax Technical News dated October 10, Canada Customs and Revenue Agency ("CCRA") has announced it will permit the deduction of legal fees in situations where it previously had not permitted the deduction. Prior to this announcement, CCRA's position has been that legal fees incurred in establishing the right to spousal support are not deductible as these costs are on account of capital.

In 2001, Tax Court Madame Justice Louise Lamarre Proulx permitted a taxpayer, Ms. Raymonde Gallien, to deduct \$13,000 in legal expenses incurred in order to collect support from her husband. In its recent issue of the Tax Technical News, CCRA indicated:

"Following the decision in the case of Gallien v. the Queen, CCRA has reconsidered the above positions. As a result, we now consider legal costs incurred to obtain spousal support under the *Divorce Act* or under the applicable provincial legislation in a separation agreement, to have been incurred to enforce a pre-existing right to support. Consequently these costs are deductible pursuant to the comments in paragraph 18 of interpretation bulletin IT-99R5 (consolidated).

We also now accept that legal costs of seeking to obtain an increase in support or to make child support non-taxable under the guidelines are also deductible."

The announcement did not discuss taxpayers' ability to re-file prior years returns.

Family law practitioners may wish to advise their clients who receive support to discuss these matters with their income tax advisors.

This newsletter is intended to highlight areas where professional assistance may be required. It is not intended to substitute for proper professional planning. The professionals at Marmer Penner Inc. will be pleased to assist you with any matters that arise. Please feel free to visit our website at www.marmerpenner.com.