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Marmer Penner Inc. Newsletter

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Recent Income Tax Cases

Two recently reported income tax cases have family law implications. In the first case, *Szuch* (2005 DTC 675), the taxpayer was required to pay child support in 2002 pursuant to an earlier court order. While he may have been permitted to deduct the support, the taxpayer did not seek to deduct these amounts. Instead, he preferred to claim a spousal equivalent credit for one child. The *Income Tax Act* does not permit such a credit to be claimed for a child for which the taxpayer is paying child support. The taxpayer hoped that by not claiming the deduction, the \$6,482 credit would be available. A non-refundable personal credit generally saved an Ontario taxpayer 22.05% in 2002 so this credit was worth \$1,429 to the taxpayer. If the taxpayer earned between \$35,000 and \$63,000 in taxable income, he would need to have paid about \$400 per month in child support for that one child to have saved an equivalent amount of tax.

The court of appeal denied the taxpayer the ability to claim the credit on the grounds that the *Income Tax Act* does not deny the credit if the taxpayer deducts child support paid for that child. The credit is denied if the taxpayer is required to pay child support for that child, regardless of whether those amounts are paid or deducted.

The second case (*Healey* 2005 DTC 683) relates to the Canada Child Tax Benefit (“CCTB”) as opposed to income tax. In November 2001, Ms. Healey moved out of the family home, in which her children continued to reside with her husband, Mr. Barker. The Minister of Revenue continued to make CCTB payments to Healey after November 2001. These were automatically deposited into Healey and Barker’s joint account and were used primarily by Barker. According to the Minister, Healey was no longer entitled to these payments and was required to repay these amounts. Healey argued that Barker “scooped” these amounts and since he was now entitled to the payments, there was no repayment required as everybody had received what they were entitled.

The court of appeal denied Healey’s claim and she was required to repay the Minister. Presumably, even though Barker had made use of the cheques payable to Healey, he was also entitled to his own claim for CCTB. This is an important reminder that wives (to whom the CCTB cheques are generally sent) must inform the Minister when they are no longer a custodial parent.