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Marmer Penner Inc. Newsletter

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Can RRSP Contribution Room Be Property?

Years ago, we received correspondence from opposing counsel asking where the value of our client’s RRSP “head room” was indicated on his 69K (the predecessor of today’s Form 13.1). “Head room” was her terminology for unused RRSP contribution room. For those unfamiliar with the RRSP contribution rules, one is limited to a maximum RRSP contribution limit annually. Unused amounts may be carried forward indefinitely. So, if a taxpayer has not maximized his annual contributions, he will have unused contribution room. The advantage of having RRSP contribution room is the ability to gain an immediate income tax deduction and shelter some income for quite a bit of time. In a simplified example, two spouses are completely identical financially in every aspect except that one has maximized her RRSP contributions annually so she has no unused RRSP contribution room at date of separation. Conversely, her spouse has $100,000 of unused RRSP contribution room. At his 53.5% marginal tax bracket, he can catch up on his RRSP contributions in the next few years and save $53,500 in tax by investing that $100,000 inside his RRSP.

Does this unused room have a fair market value? The answer is definitely “No” because of the definition of fair market value, which is:

> *The highest price available in an open and unrestricted market between informed and prudent parties, acting at arm's length and under no compulsion to act, expressed in terms of cash*.

Unused RRSP contribution room cannot be sold from one taxpayer to another so it cannot have a fair market value. There are several other non-transferable assets however, such as employee stock options or a trust interest, which are commonly included in net family property despite not having a fair market value. In these cases, the courts have accepted “value-to-owner” as the appropriate definition of value.

In trying to value a trust interest, we might ask: “What would a young Bronfman or Thomson pay not to have his trust interest taken away?” If the trust interest provides a steady income stream or a capital entitlement, there are ways to determine its value to the beneficiary.

So, is there an economic value to this unused RRSP room? It sure looks like it. Ask yourself the question “If all else is equal, would you rather have $100,000 of extra RRSP contribution or not?” A prudent taxpayer with capital available to contribute would surely answer in the affirmative. If there was a market for RRSP contribution room, do you think wealthy investors would pay to buy others’ unused room? We think so. This is an unusual economic asset but it may have the attributes of other “property” which may be properly included in the calculation of net family property not unlike certain income tax losses. But, would a court believe that it should be properly includable in net family property? Who knows?

We wish to congratulate James Savelli for passing the CICBV entrance exam and joining the fraternity of chartered business valuators. Welcome to the fold, James Savelli, CA, CBV!