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■ Bulletin #127

Child support tax implications

Seeking a change to a child-support order or agreement without first advising your client about the tax implications can expose you to a negligence claim. To give accurate tax advice, keep in mind the revisions to the tax rules that apply to child support effective May 1, 1997.

If the parties had no written agreement or court order in place before May 1, 1997, there are no tax consequences to either the party paying or the party receiving the child support. The payments are neither included in the recipient's income nor deductible by the payer.

If the parties' written agreement or court order pre-dates May 1, 1997 and there has been no variation to child support, then the payments continue to be included in the recipient's income and deductible by the payer, unless both recipient and payer have filed an election to have child support not taxable and not deductible (Form T1157).

The key is whether there has been a 'change' to any pre-May 1, 1997 child support agreement or court order. If so, the payer loses the deductibility of the child support payments and may pay a net amount which is more than the parties originally anticipated under the old tax regime.

'Child support' is defined as any support amount not identified in the written agreement or court order as solely for the support of a spouse or the natural parent of the child. So if a written agreement or court order is varied to increase or decrease amounts payable or to include payments to third parties, this is considered a change in child support unless the amount is clearly identified as solely for the support of a spouse or the natural parent. Canada Customs and Revenue Agency (CCRA, formerly Revenue Canada) has stated it will not consider cost-of-living adjustments to pre-May 1, 1997 child support agreements or orders a 'change.'

It's important to explain and discuss tax implications with your clients and get instructions before making any agreements or applications to vary child support in any way. In some cases, the application of the new child support guidelines may result in increased child support payable to the recipient in any event, which might negate any impact the loss of the deduction has on the payer.

From Colleen Beatty, Alberta Lawyers Insurance Association

■ Bulletin #128

Virus control tips

If you've been bit by a virus or are trying to avoid one, you may want to explore these web sites:

1. CERT (Computer Emergency Response Team) Coordination Center, www.cert.org, publishes various security alerts, and provides services to sites that have been the victims of attack.
2. IBM's 'Anti-virus Online' site, www.av.ibm.com, tells about viruses and hoaxes, and how to respond to them. This site's 'Hype Alerts' and 'Virus Alerts' may tell you whether a bizarre message you received is real.

Some virus prevention tips from the experts:

- Make sure your anti-virus software includes visual basic script (.vbs) files when scanning.
- Do not open attachments or download files from unknown sources.
- Be sure that your macro virus protection feature is selected in Microsoft products.
- Do not open attachments or download files, even from sources that you know, if the text sending the attachment or file looks unusual or suspicious. (Several recent viruses targeted Microsoft products, particularly Outlook. These viruses were able to enter a person's 'contacts' program and begin sending e-mails to everyone listed in the database. Examples include 'Melissa' and 'I Love You.')
- Never download an executable (.exe) file from an untrusted source.
- Do not open e-mail attachments that contain executable (.exe) files or visual basic script (.vbs) files.
- Make sure your computer boots first from C, then A, to minimize exposure to boot-sector viruses on floppy disks.
- Backup often so that you can restore your files if your computer is affected.
- If you use Microsoft products, investigate and install the security patches offered for Outlook, and follow Microsoft's advice on security settings and practices.
- If you use Microsoft Word, be certain that you maintain the recommended security settings for both e-mail and word processing.
- Install anti-virus software and keep it updated.

Suggestions from The Oregon State Bar Professional Liability Fund

■ Bulletin #129

Clients who are promoting an investment

When potential clients are promoting an investment and want you to receive into trust the investment funds their investors contribute, beware! You should only accommodate carefully selected clients in this way. When you do, be sure that any representations or materials your client gives to potential investors makes clear that you act only for your promoter-client and not for the investors. The clients' material should encourage investors to get independent legal advice.

Ensure, too, that everyone understands the conditions that apply to use of the money. Under what circumstances can the money be given to your promoter-client or otherwise used? You should communicate directly to the investors asking them to acknowledge both the circumstances under which trust funds can be used and your advice that they get independent legal advice.

■ Bulletin #130

New real estate process for western provinces

Western Canada has a new protocol for conveyancing. The Western Law Societies Conveyancing Project — a joint initiative of the law societies of British Columbia, Alberta, Saskatchewan and Manitoba — was initiated to respond to changes in the residential real estate and conveyancing marketplace.

The project introduces a re-engineered conveyancing practice designed to expedite the residential mortgage process for lenders, to ensure consumers have continued access to independent legal advice, and to preserve the integrity of the land title system and surveys in western Canada. The changes, while not mandatory, should help streamline the residential conveyancing process.

Each jurisdiction has developed a conveyancing protocol which details the practice changes for that province. The changes will:

- allow for the release of mortgage proceeds and other funds on closing (in Alberta, Saskatchewan, and Manitoba)
- enable lawyers to satisfy the unique security requirements of lenders without obtaining a current real property report
- provide a short-form report to lenders

To help its stakeholders make the most of these practice changes, the project has developed continuing legal education courses, a brochure for lenders called *Enhanced Legal Services for Lenders*, and a brochure for realtors called *Quick and Efficient Real Estate Closings*.

Each Law Society's insurer was integrally involved in this initiative and has approved the new protocol and the practice changes which it describes.

More information on the protocol can be found on each Law Society's web site.

■ Bulletin #131

Using scanned documents

Counsel at one of the major lenders have expressed concerns about solicitors scanning mortgage documents into their computer systems rather than completing the documents the lender provides with its letter of instructions. Recently, the lender audited the mortgages in its files and discovered many were completed using, not the lender's forms, but forms that had been scanned into the solicitors' computer systems. This creates difficulties when the lender changes its standard mortgage documents but solicitors continue to use the old scanned forms rather than the revised forms the lender provides. In some instances, lenders have suffered a loss because the solicitor failed to use revised mortgage documents.

Residential mortgage lending is dynamic, so lenders do revise standard mortgage forms from time to time. Even when their instructions advise solicitors that the documents have been amended, solicitors may not read in detail the notes and instructions that accompany the mortgage package. It's easy to overlook a new revision date and continue to use outdated documents. Solicitors need to be aware of the perils of relying upon scanned documents, and should add to their checklists for a mortgage transaction a step to ensure that the documents on their system are the same as the documents provided by the lender. The same care should be taken with scanned documents in any transaction where a standard form might have changed.

■ Bulletin #132

Do you use SupportWorks?

LawMaker Inc. has decided not to continue to develop or produce SupportWorks, a family law practice support program used to calculate and manipulate information about support obligations. Because of the changes in tax rates on January 1, 2001 it is no longer safe to use this program.

From Paul McLaughlin, Practice Management Advisor, The Law Society of Alberta