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Marmer Penner Newsletter

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CANADA CHILD TAX BENEFIT – WHICH PARENT IS ENTITLED TO IT?

The Canada Child Tax Benefit (CCTB) is a tax-free monthly payment for children under the age of 18 and is intended to help families with the cost of raising their children. The CCTB is calculated for 12 month period beginning in July of one year and ending in June of the following year. The amount of the CCTB payments from July 2000 to June 2001 is based on the “adjusted income” of

the parents of the child(ren).

When parents separate, the CCTB may be an important consideration during custody and child support negotiations. For a separated parent with three children, the CCTB payments are not eroded until that parent’s adjusted income exceeds \$100,000. Provided certain other criteria are satisfied, Canada Customs and Revenue Agency

(“CCRA”) pays the parent who resides with the child and who primarily fulfils the responsibility for the caring and upbringing of the child. Generally when the female parent resides with the child, she is presumed to be the person who fulfils this responsibility. As a result, when the father and mother reside together, it is the mother who is normally paid the CCTB.

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 will be pleased to assist you with any matters that arise.

Where the parents have separated and each spends considerable periods of time with the child(ren) and each of the parent has applied for the CCTB, the CCRA will conduct a review to determine which parent qualifies for the CCTB. The review will attempt to determine whether the child(ren) actually resides with one parent and simply visits the other, or whether the child indeed resides with both parent. If it is determined that the child resides with both parents, then a determination is made to establish who is primarily responsible for the care and upbringing of the child. The existence of a court order is only one of several factors considered by CCRA.

Usually the review confirms that the parent who has custody of the child the majority of the time is the primary caregiver and therefore eligible to receive the CCTB. Where custody is shared equally and both parents satisfy the "resides with" and "primary care" requirements, the CCRA will pay one parent for six months and then rotate the payment to the other parent for the next six months. These rotational payments will begin with the parent who previously had not been the regular CCTB recipient, meaning the payments will usually commence with the father.

Should either of the parents be dissatisfied

with the results, the normal appeal rights which exist for other income tax matters apply.

In lieu of the rotational payments, the parents may mutually agree to and request one of the following alternate arrangements:

(1) where there are more than one child, payment of the CCTB to one parent for one or more of the children and payment of the CCTB to the other parent for the remaining child(ren); or

(2) payment of the CCTB to one parent only and the agreement that the other parent will then be able to claim the equivalent to spouse amount as a non-refundable credit.

This latter alternate arrangement only applies where the parent claiming the equivalent to spouse amount is not paying child support with respect to the same child.

It is the provisions of the Incomes Act that dictate to whom the CCTB is paid. Payment does not based on the rules of family law or/and other legal arrangements. Knowledge of the legislative

requirements, by both parents and their representatives, will avoid frustrations arising out of agreements to allocate or share the CCTB contrary to the rules in force by the CCRA.