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Marmer Penner Newsletter

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“WHEN IS A BUSINESS EXPENSE NOT A BUSINESS EXPENSE?”

According to subsection 19(2) of the *Child Support Guidelines* (“the *Guidelines*”), the reasonableness of an expense deduction is not solely governed by whether the deduction is permitted under the *Income Tax Act*. This should come as a relief to one particular Mrs. Singleton should her husband ever be required to pay support.

John Singleton was a partner in a law firm. He wished to borrow \$300,000 to buy a house. However, he wished to make the interest on his loan deductible. Interest on loan to purchase a personal residence is generally non-deductible.

Singleton withdrew \$300,000 from the capital account of his law firm and used the money to purchase a home. He then went to the bank and borrowed \$300,000 and used that money to repay his capital account at the law firm. Singleton reasoned that tying the loan to the partnership capital would make the interest deductible.

Canada Customs and Revenue Agency (CCRA”) denied Singleton’s claims of interest expense. Singleton appealed to the Tax Court of Canada which sided with CCRA. Singleton then appealed to the Federal Court of Appeal which set aside the lower court’s ruling that the interest was non-deductible. CCRA took the case to the Supreme Court which sided with Singleton.

The Tax Court of Canada originally found the money was not borrowed for business purposes because the purpose of the loan was to buy a home. They said that all the transactions Singleton undertook were related and therefore they should be considered as one transaction. The Federal Court of Appeal disagreed and found the interest was deductible because the direct use of the funds was to refinance his capital account in the partnership.

As a result of the Supreme Court decision, the tax courts are bound to accept this type of tax planning as legitimate tax planning. However, family law practitioners are not bound by this. Just as other discretionary business expenses may be added to a payor's income pursuant to the *Guidelines*, so could Mr. Singleton's interest expense.

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Marmer Penner Inc. is pleased to announce the addition of a new associate. Paul Mandel, B.Sc., MBA, CA•CBV has over five years of experience in the areas of business valuation and litigation accounting, with both an international accounting firm and a regional valuation firm.

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. Please feel free to visit our website at www.marmerpenner.com.