# Chapter III

# Income from Business or Property


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or undertaking of any kind whatsoever, and includes an adventure or concern in the nature of trade but does not include an office or employment.[2]

In most cases, it will be obvious when a business is carried on, but in some cases it is a complex and difficult question. In the case of self-employment, the self-employed taxpayer is generally considered to be carrying on a business which is a source of income.[3] A person will be considered to be self-employed where engaged to achieve a defined objective and given complete freedom as required to attain the end result. In addition, there must be a reasonable expectation of profit as a result of the activity being performed, as opposed to the furtherance of a hobby or interest. See also ¶5105.

## [¶3006] Property Income

"Income from property" is generally regarded as the return on invested capital where little or no time, labour, or attention is expended in producing the return. Income from property would normally include dividends, interest, rents and royalties, a right of any kind, a chose in action, and money. However, such receipts might constitute income from business if sufficient time and effort is expended in earning them. For example, if a taxpayer manages office or apartment buildings, the rents may constitute income from a business.[4] Income from a property does not include a capital gain or a capital loss from a disposition of that property.[5]

The term "property" is to be distinguished from the term "capital property" which means:[6]

(a) depreciable property; and

(b) any property other than depreciable property, the disposition of which would result in a capital gain or loss.

A capital gain or loss does not arise upon the disposition of:

(a) property, the sale of which would be taken into account in computing ordinary income such as inventory of a business;

(b) eligible capital property, meaning goodwill and other "nothings";

(c) cultural objects which help preserve the national heritage of Canada in certain circumstances;

(d) Canadian and foreign resource properties;

(e) life insurance policies; and

(f) a timber resource property.[7]

See page ii for explanation of footnotes.

[2] CCH ¶28,024; Sec. 248(1) "business".
[3] Interp. Bul. IT-504R2.
[4] Interp. Bul. IT-434R; Martin, 3 DTC 1199, Ginsberg, 53 DTC 445, No. 196, 54 DTC 468.
[5] CCH ¶4009; Sec. 9(3); Interp. Bul. IT-102R2, IT-479R.
[6] CCH ¶7850b; Sec. 54 "capital property".
[7] CCH ¶6050; Sec. 39(1).





The difference between the tax treatments of income from property and income from business will be important in situations involving: non-residents; capital cost allowance; the small business deduction and manufacturing and processing allowance; loss carryovers when there is a change of control; the foreign tax credit; and travelling expenses.

Income may arise as a return on property where a property is placed by a taxpayer at the use or disposal of another person.

It should be kept in mind that income from a business is earned income, while income from property is normally investment income. It should also be observed that certain provisions of the Act which are applicable in connection with a business do not apply where income from property is concerned, such as the deduction of travelling expenses incurred in the course of carrying on a business.

Income received as a return on real estate, mineral rights, or chattels is variously described as "rent", "royalty", or "share of profits". In the case of money loaned to another, the payment is usually described as "interest". The income from shares is ordinarily described as "dividends".

A disposition of an interest in land was characterized as income despite the taxpayer's claim that the acquisition was made for the development of a shopping centre. No soil tests were done, no tenants had been secured and no financing arranged.[8]

## [¶3010] Computation of Profit from a Business

The Supreme Court of Canada has laid to rest the paramount importance of accounting principles in the computation of profit from a business.[9] While conceding that accounting principles may be a useful tool for determining profit for tax purposes, the Supreme Court of Canada went on to hold that they are only interpretative aids which may assist in the ultimate goal of providing an accurate picture of the taxpayer's income. According to the Supreme Court, the following principles apply to the determination of profit for income tax purposes:

(1) The determination of profit is a question of law.

(2) The profit of a business for a taxation year is to be determined by setting against the revenues from the business for that year the expenses incurred in earning said income.

(3) In seeking to ascertain profit, the goal is to obtain an accurate picture of the taxpayer's profit for the given year.

See page ii for explanation of footnotes.

[8] Bahr, 96 DTC 1576.
[9] Canderel Limited, 98 DTC 6100, Toronto College Park Limited, 98 DTC 6088, Ikea Limited, 98 DTC 6092.



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(4) In ascertaining profit, the taxpayer is free to adopt any method which is consistent with:

(a) the provisions of the *Income Tax Act*;

(b) established case law principles or rules of law; and

(c) well-accepted business principles.

(5) Well-accepted business principles, which include but are not limited to the formal codification found in the Generally Accepted Accounting Principles (GAAP), are not rules of law but interpretative aids. To the extent that they may influence the calculation of income, they will do so only on a case-by-case basis, depending on the facts of the taxpayer's financial situation.

(6) On reassessment, once the taxpayer has shown that he or she has provided an accurate picture of income for the year, which is consistent with the Act, the case law, and well-accepted business principles, the onus shifts to the Minister to show either that the figure provided does not represent an accurate picture, or that another method of computation would provide a more accurate picture.

In the *Canderel* and *Toronto College Park* cases, *supra*, it was held that, regardless of the accounting treatment, for income tax purposes the expenses at issue (tenant inducement payments) were fully deductible in the year in which they were incurred. They did not have to be "matched" against future revenues under the matching principle of accounting, because matching was not shown to provide a more accurate picture of the taxpayer's profit.

## [¶3015] Dividends

A dividend paid to a taxpayer by a corporation resident in Canada on a share of its capital stock is required to be included in the taxpayer's income,[10] as is the amount of a dividend paid to a taxpayer by a corporation not resident in Canada on a share of its capital stock, or an amount in respect of a share owned by the taxpayer of the capital stock of a foreign affiliate.[11] Dividends that a taxpayer received from a foreign corporation, in the form of shares of the corporation's subsidiaries, were held to be "dividends in kind" and had to be included in her income.[12]

## [¶3018] Interest

Amounts received or receivable in the year as interest are to be included in income, but only to the extent that such interest has not been included in income for a preceding year. Thus, if interest is included in income in one

See page ii for explanation of footnotes.

[10] CCH ¶4356; Sec. 12(1)(*j*).
[11] CCH ¶4358; Sec. 12(1)(*k*).
[12] Yang, 2011 DTC 1156.





year on the accrual basis, that same interest will not be included in income in a subsequent year when it becomes receivable or is in fact received.[13]

If a payment of interest is made in the form of property or a right of any kind rather than in money, it would nevertheless be included in income. Any payment which discharges all or part of an interest obligation, whether paid by the principal debtor or by someone else on the principal debtor's behalf, must be included in income. In some cases, interest is, in effect, deemed to have been received (such as in the case of loans to non-residents[14] and accrued interest on certain debt obligations sold between interest-due dates).[15]

When a payment under a contract or other arrangement can reasonably be regarded as being partly a payment of interest or other payment of an income nature and partly a payment of a capital nature, the portion which can reasonably be regarded as interest or as being of an income nature is included in the income of the recipient.[16] See ¶3135.

Where a loan repayable at par is made at a discount, or if a loan is made at a discount or at par but is repayable at a premium, the lender will receive more in repayment than was loaned. Whether the discount or premium (bonus) is interest or a capital receipt will depend on the facts of the case.

For interest expense paid on borrowed money, see ¶3277; for situations where securities are sold between interest dates, see ¶3354; and for interest on policy loans, see ¶3282.

## [¶3021] Interest of Certain Taxpayers

The general rules discussed above (under which interest is included in income when it is received or receivable, depending upon the method followed by the taxpayer) are varied in the case of certain taxpayers.

Corporations, partnerships, unit trusts, or any trust of which a corporation or partnership is a beneficiary must include in income interest on debt obligations if it was previously not included in income.[17] This accrual rule does not apply to interest on an income bond or debenture, a small business development bond, or a small business bond, as interest on these instruments is deemed to have been received on taxable dividends.[18] In addition, the accrual rules do not apply to interest earned on a Net Income Stabilization Account (NISA), as this interest will be included in computing income.[19]

"Anniversary day"[20] is defined as the end of the day that is one year after the day of issue of the investment contract; every successive such day occurring at one year intervals; and the day on which an investment contract

See page ii for explanation of footnotes.

[13] CCH ¶4280; Sec. 12(1)(*c*); Interp. Bul. IT-396R.
[14] CCH ¶4732; Sec. 17.
[15] CCH ¶5142; Sec. 20(14).
[16] CCH ¶4700; Sec. 16(1).
[17] CCH ¶4380; Sec. 12(3).
[18] CCH ¶4680, ¶4681, ¶4698, ¶4699; Sec. 15(3), 15(4), 15.1(1), 15.2(1).
[19] CCH ¶4393b; Sec. 12(10.2).
[20] CCH ¶4393d; Sec. 12(11) "anniversary day".



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is disposed of. For investment contracts acquired or materially altered after 1989, interest accrued on an investment contract up to each anniversary day of the investment contract must be included in income in the taxation year in which the anniversary falls.[21]

The term "investment contract" is defined to include any debt obligation except one whose investment income is already included in income at least annually.[22] This definition specifically excludes income bonds and debentures, small business development bonds or small business bonds, net income stabilization accounts, salary deferral arrangements, retirement compensation arrangements, employee benefit plans, foreign retirement arrangements, indexed debt obligations, and, after 2008, tax-free savings accounts (TFSAs).

In addition, any premium or discount taken upon a prescribed debt obligation (including one for which no interest is stipulated) is deemed to be interest and included in income regardless of whether the discount or premium would otherwise constitute "interest" as determined by the case law.[23]

### [¶3024] Canada Savings Bonds — Interest Deduction

A person who purchases a Canada Savings Bond under a payroll or monthly savings plan is, in effect, borrowing money for that purpose. Thus, interest charged on such loans is a deductible expense. The amount of interest paid may be determined by deducting the face value of the bonds purchased from the total of instalment payments or payroll deductions made.[24]

### [¶3025] Indexed Debt Obligations

The term "indexed debt obligation"[25] means a debt obligation that provides for an adjustment to the amount payable which is determined by reference to a change in the purchasing power of money. An example would be a security issued at less than market interest rates but carrying a condition that at maturity the investor will be paid a special amount in addition to interest and principal, to take into account a loss of purchasing power as represented by a change in the Consumer Price Index. Accordingly, an amount, prescribed by regulation, is taken into income by the holder and is deductible by the debtor if the purchasing power of money goes down. Similarly, if the purchasing power of money increases, an amount of interest is deemed to be payable by the holder and is deemed to be received or receivable by the debtor.[26]

Any amount required to be included in the holder's income as a result of a decrease in the purchasing power of money is added to the adjusted cost

See page ii for explanation of footnotes.

[21] CCH ¶4380a; Sec. 12(4).

[22] CCH ¶4393e; Sec. 12(11) "investment contract".

[23] CCH ¶4391a, ¶4391b; Sec. 12(9); Reg. 7000(1).

[24] Interp. Bul. IT-396R.

[25] CCH ¶28,136a; Sec. 248(1) "indexed debt obligation".

[26] CCH ¶4724; Sec. 16(6).





base of the investment. Similarly, the adjusted cost base of the holder's investment is reduced by the total of two amounts. One, the amount that is deemed to be interest payable by the holder on the investment arising from an increase in the purchasing power of money; and two, an amount that is received or receivable as interest arising from a decrease in the purchasing power of money and which was previously added to the adjusted cost base of the investment. Therefore, the adjusted cost base is increased where an amount is deemed to be received and receivable as interest by the holder when the purchasing power of money decreases. The adjusted cost base is decreased by any amount of this deemed interest that is actually received or receivable and that has been added to the adjusted cost base. It is also decreased by an amount that is deemed to be paid and payable as interest by the holder when the purchasing power of money increases. The above tax treatment of the index adjustment on indexed debt obligations does not apply to an indexed debt obligation that is impaired for part of the year and in respect of which a reserve is allowed.

### [¶3026] Proceeds of Disposition of Right to Receive Production

Proceeds of disposition of a right to receive production are to be included in the income of the vendor. The "right to receive production" is included in the provisions relating to "matchable expenditures". The deductibility of an otherwise deductible matchable expenditure incurred in respect of a right to receive production is restricted by prorating the deductibility of the amount of the expenditure over the economic life of the right. See ¶3254 for a full discussion of matchable expenditures.[27]

A vendor's proceeds of disposition was determined not to include the amount representing the assumption of a reforestation obligation in the sale of a sawmill, but rather a future cost that would decrease the purchase price.[28]

### [¶3027] Use or Production from Property

Any payment (except an instalment of the sale price of agricultural land) that is dependent upon the use of or production from property is to be included in income.[29] For example, where a woodlot owner or operator grants a person a continuing right to cut and take timber over a period of time and the consideration that the woodlot owner or operator receives is based on the volume of timber taken, the amount received is taxable.

Property includes not only real and personal property but also intangible property such as patents, franchises, copyrights, rights of action, and other rights of any kind.

See page ii for explanation of footnotes.

[27] CCH ¶4349, ¶4879d–¶4879uf; Sec. 12(1)(g.1), 18.1.

[28] Daishowa, 2013 DTC 5085.

[29] CCH ¶4342; Sec. 12(1)(g); Interp. Bul. IT-462.



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Amounts are included in a taxpayer's income only if the amounts were dependent upon use of or production from property. For example, amounts received from the sale of timber as part of a ranch-clearing operation were not dependent on use or production of property and were capital receipts.[30] It will, of course, be a question of fact to be determined in the light of all the circumstances in each case whether amounts received by a taxpayer are dependent upon the use of or production from property.

In some cases, amounts may be included in income because they are dependent upon production from property. These amounts would ordinarily include royalties that are based on production from oil wells, mines, clay deposits, timber limits, or other wasting assets.[31]

Other amounts will be included in income by reason of the fact that they are dependent upon use of property. Royalties received on the sale or licence of a patent or patent right would ordinarily be taxable for this reason since the amount received would depend on production of the patented article, which would in turn depend on the use of property, namely, the patent.[32] For the same reason it would appear that, if a business property is sold in return for payments which depend on the amount of profits from the business, the payments would be dependent on the use of the business property and would accordingly be included in the income of the vendor.[33]

On the other hand, where a contract calls for a fixed price that cannot be varied in any event but the timing of instalments of that fixed price is to vary depending on production or use, the income inclusion does not apply since it is only the timing of payments that is dependent on production or use and not the price itself.

If the amount of payments made under an agreement depends on the use of or production from property but may not exceed a stated maximum amount, the payments will nevertheless be included in the income of the recipient. However, where payments received are expressed to depend upon the use of or production from property but may not be less than a fixed minimum amount, the fixed minimum amount is not included in income since it must be paid in any event.[34] However, in such a case any payments made in excess of the fixed minimum amount will be so included since they will be dependent upon the use of or production from property.

The income inclusion of payments for production or use does not apply to an instalment of the sale price of agricultural land. The exception in respect of agricultural land does not include assets associated with the land, such as buildings, machinery, livestock, and crops. When an agreement based on production or use includes the sale of such assets with the land, a reasonable portion of the production or use payment that relates to such

See page ii for explanation of footnotes.

[30] Mel-Bar Ranches Ltd., 89 DTC 5189; Cromwell, 90 DTC 1335.
[31] Bartlett, 72 DTC 6293.
[32] 289018 Ontario Ltd., 87 DTC 38.
[33] Brosseau, 86 DTC 1412.
[34] Porta-Test Systems Ltd., 80 DTC 6046.





assets is included in computing income. Furthermore, this exception does not apply when mineral and petroleum rights of agricultural land, or land itself in addition to these rights, is either sold or leased and payments made to a vendor or lessor are based on production of a mine, or of an oil or gas well.

## [¶3033] Proprietor of a Business

An individual who is a proprietor of a business will include in income for a taxation year all business income for the fiscal period of the business ending in the calendar year, and all other income in the calendar year.[35]

In computing income or loss from a business or property, as well as for situations where an individual's income for a taxation year includes income from a business for a fiscal period which does not coincide with the calendar year, references to "taxation year" or "year" with respect to the business refers to the fiscal period of the business ending in the year.[36] See also ¶3552 *et seq.*

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## [¶3036] Damages — Business Contracts

Damages are often received for non-performance of business contracts and may be paid as a result of a voluntary agreement, an arbitration, or an action in a court of law. In any case, such damages are intended to place the recipient in the same position as he or she would have been had the contract been performed. Normally, the performance of a business contract will result in income and, accordingly, damages for non-performance will also be income. On the other hand, if a contract is of sufficient importance to constitute part of the company's business structure, compensation paid on its termination will be capital.

The following cases should prove to be of assistance in determining whether a damage award for non-performance of a business contract constitutes business income or a capital receipt:

(1) *Income.* Damages awarded to a taxpayer in connection with a trading matter, such as a breach of contract to purchase goods, constituted an income receipt. Damages obtained for infringement of a trademark were held to be taxable as income on the ground that they were in the nature of a refund of business profits that might have been earned by the recipient.[37] Similarly, a road-building contract was held taxable on compensation received from the Ontario Department of Highways for loss incurred on a construction contract because of a dispute between the Department and a railway and consequent suspension of the work for two years.[38] On similar grounds, a lump-sum received from a lessee to cancel a lease was regarded as a payment in lieu of future rent and was therefore taxable.[39] Where a compa-

See page ii for explanation of footnotes.

[35] CCH ¶4200; Sec. 11(1).
[36] CCH ¶4205; Sec. 11(2).
[37] Hart, 59 DTC 1134.
[38] Sutherland, 60 DTC 13.
[39] Monart Corp., 67 DTC 5181.

ny received an amount upon the cancellation of a contract for the transportation of supplies and building materials, the amount was determined to have been made to enable the company to absorb the loss as a normal incident; since the payment represented the surrender of future profit, the payment was income in nature.[40]

(2) *Capital receipt.* Where, on dissolution of an agency, $100,000 was paid in full settlement of the claim for damages for loss of rights, the amount was held to be a capital receipt, being regarded as compensation for loss of a capital asset of an enduring nature.[41] Also held to be a capital receipt was the amount received by the taxpayer from the taxpayer's former partners upon termination of the partnership as compensation for the taxpayer's rights in the partnership.[42] When the termination of a mail transportation contract materially crippled the structure of a delivery company's profit making apparatus, compensation paid was capital in nature and not taxable.[43]

### [¶3039] Compensation for Loss of Income or Property Used in a Business

When a natural disaster strikes, government assistance may be received in respect of the operation of a business, property held for the purpose of earning income, or a personal loss or expenditure. Generally, payments received by an individual from a government for personal losses and expenses incurred as a result of a disaster, including payments for temporary housing and meals during the disaster, are not included in income for tax purposes. As well, government compensation received for loss or damage to personal-use property does not ordinarily result in any tax consequences. However, assistance received in respect of capital property, whether business-related or personal, is ordinarily netted against the cost of the repairs made to that property, or, if it relates to the replacement of that property, it normally reduces the cost or capital cost of the property so acquired. When government assistance is received for damaged inventory (e.g., spoiled milk, destroyed or damaged trees), the amount will be included in income to the extent that the assistance does not reduce the amount of costs incurred related to that damage.[44]

### [¶3042] Compensation for Damage to Property

There is to be included in a taxpayer's income certain proceeds of insurance policies which are payable to the taxpayer in respect of damage to depreciable property. For the amount to be included in income, it must be expended on repairing the damage to the property within a reasonable time after the damage has occurred. If this is done, the amount to be included in the taxpayer's income in a particular year will be equal to the amount of the

See page ii for explanation of footnotes.

[40] Canadian National Railway Company, 88 DTC 6340.
[41] Parsons-Steiner, 62 DTC 1148.
[42] Blauer, 75 DTC 5075.
[43] Courrier M. H. Inc., 76 DTC 6331.
[44] Interp. Bul. IT-273R2.





insurance proceeds expended in that year on repairing the damage. Thus, in effect, the amount included in income will offset the amount deducted as an expense in the year for repairing the property.[45]

If the proceeds of an insurance policy or any part thereof in respect of damage to property are not expended on repairing the property within a reasonable time after the damage, the unexpended portion of the insurance proceeds is treated as the proceeds of disposition of depreciable property which would constitute a disposition of property, and may be subject to the provisions respecting recapture of depreciation.[46]

Proceeds received from business interruption insurance have been held to constitute income to the recipient.[47]

### [¶3045] Illegal Profits — Betting and Gambling

A taxpayer carrying on a business of an illegal nature (such as bookmaking, bootlegging, or prostitution) is taxable on the profits therefrom.[48] Normally, betting or gambling for mere pleasure or enjoyment will not constitute business and the profits therefrom will not be taxable.[49] Race track winnings are not taxable unless the taxpayer is engaged in the business of racing horses.[50] Similarly, gambling gains were held not to be taxable even where the bets were high and the gains substantial, as long as the gambling remained a hobby and was not organized and conducted as an enterprise of a commercial character.[51] It is possible that a person whose chief source of income is from such winnings might be considered as "carrying on a business" and hence the winnings would be taxable.

### [¶3048] Sale or Gift of Income-Earning Property

If income-earning property is sold by a taxpayer who is not in the business of dealing in such property, the sale price received by the taxpayer will normally be a capital gain rather than income. Following such a sale, the income earned on the property will be the income of the purchaser.[52]

In some circumstances, the attribution rules will apply where property is transferred, and the income will be attributed to the transferor rather than the transferee. This may occur in the case of a transfer by a taxpayer to the taxpayer's spouse or common-law partner,[53] or in the case of a transfer by a taxpayer to a person under the age of 18 years.[54] See Chapter II.

See page ii for explanation of footnotes.

[45] CCH ¶4340; Sec. 12(1)(f).
[46] CCH ¶4562e; Sec. 13(21) "proceeds of disposition".
[47] Seaforth Plastics Ltd., 79 DTC 5174.
[48] Smith, [1927] A.C. 193, No. 275, 55 DTC 439, Christensen, 84 DTC 6184.
[49] No. 230, 55 DTC 74, No. 469, 57 DTC 541, George, 64 DTC 516.
[50] Fraser, 64 DTC 5224.
[51] Morden, 61 DTC 1266.
[52] CCH ¶8150; Sec. 56(4).
[53] CCH ¶9516; Sec. 74.1(1).
[54] CCH ¶9518; Sec. 74.1(2).

## [¶3051] Accrual Income of Corporations, etc.

Corporations, partnerships, unit trusts, and trusts with a corporation or partnership as beneficiary must include an income element in respect of certain life insurance policies and annuity contracts on an annual basis.[55]

This accrual rule will not apply to an exempt policy which is defined in the Regulations.[56] The formulae in the Regulations are generally intended to provide exemption for those insurance policies which are primarily for insurance protection.

With respect to annual accrual of income on annuity contracts and life insurance policies acquired after 1989, the amount of the income inclusion is equal to the excess of the accumulating fund over the adjusted cost basis of the interest in the life insurance policy or the annuity contract insured, on the anniversary day. "Anniversary day" is defined as the day that is one year less a day after the issue date. Generally, the accumulating fund in respect of an annuity contract where the issuer is not a life insurer is the greater of the cash surrender value less the amount of any loan to the holder and the excess of the present value of future benefits over the present value of future premiums. In the case of a life insurance policy issued by a life insurer, the accumulating fund represents the reserve that the life insurer may claim in respect of the policy, which is similar to the accumulating fund of an annuity contract. The adjusted cost basis of a life insurance policy or annuity contract is increased for the income inclusion.

## [¶3057] Investment Tax Credit

A taxpayer must include the amount of an investment tax credit claimed (¶8340) to the extent that it has not been applied to reduce the cost of depreciable property, the undepreciated capital cost of the depreciable property, the deduction in respect of scientific research, the adjusted cost base of an interest in a partnership, the adjusted cost base of a capital interest in a trust, or the amount of cumulative Canadian exploration expenses.[57]

An income inclusion is required only for taxation years following the year in which the related investment credit is claimed. When a tax credit is carried back to a year preceding the year in which it was earned, the required income inclusion will not have to be made until the year following the year in which the property is acquired or the expenditure is made.

See page ii for explanation of footnotes.

[55] CCH ¶4420; Sec. 12.2.
[56] Reg. 304, Reg. 306, Reg. 308.
[57] CCH ¶4375a; Sec. 12(1)(t).





## [¶3060] Reinsurance Commissions

Reserves for a reinsurance commission paid by a reinsurer in the property and casualty insurance business are included in income.[58] A corresponding deduction is also provided.[59]

## [¶3063] Home Insulation or Energy Conversion Grants

A taxpayer is required to include in income the amount of any grant received under a prescribed program for home insulation or energy conversion in respect of property used principally for the purpose of gaining or producing income from a business or property.[60] Regulations prescribe the Canadian Home Insulation Program and the Canada Oil Substitution Program for the purposes of this provision.[61] Home insulation and energy conversion grants do not reduce the adjusted cost base of property or the capital cost of depreciable property.

## [¶3066] Scientific Research and Experimental Development (SR&ED) Deductions

If in any year the deductions applicable in determining the SR&ED allowance exceed the additions applicable, such excess is included in income.[62] This provision permits the recapture of amounts claimed as an SR&ED allowance in one year when a government grant is received in respect of that SR&ED in a later year. It may also apply where the investment tax credit in respect of scientific expenditure is claimed in a year in which there are no current scientific expenditures. SR&ED is further discussed at ¶3600.

## [¶3067] Fuel Tax Rebates

As a result of fuel tax rebates paid to transportation companies for aviation and diesel fuels pursuant to the *Excise Tax Act*, portions of the rebate are included in income. Where the fuel is not used for "eligible transportation services", the fuel tax rebate must be repaid and taxpayers claiming the rebate must reduce their loss carryforwards by 10 dollars for each dollar of rebate claimed. Accordingly, the "net" rebate is calculated, and 10 times the amount by which the net rebate exceeds the amount claimed as a fuel tax rebate loss abatement is brought into income.[63]

## [¶3068] Amateur Athletic Trust

A taxpayer must, in computing income, include amounts in respect of an amateur athletic trust to ensure that such amounts included in the income of the athlete are treated as income from a business or property.

See page ii for explanation of footnotes.

[58] CCH ¶4375; Sec. 12(1)(s).
[59] CCH ¶5128g; Sec. 20(1)(jj).
[60] CCH ¶5117, ¶8070; Sec. 12(1)(u), 56(1)(s).
[61] CCH ¶8072, ¶8073; Reg. 5500, Reg. 5501.
[62] CCH ¶4376ac; Sec. 12(1)(v); SR&ED Policy Document "Pool of Deductible SR&ED Expenditures Policy".
[63] CCH ¶4376j; Sec. 12(1)(x.1).



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to computer equipment that is eligible for the 55% CCA rate of Class 50 or the 100% CCA rate of temporary Class 52.[182]

## [¶4270] Motion Picture Films, Videotapes, Computer Software, and Electronic Equipment

### [¶4275] Certified Productions

A "certified production" is a film or videotape production certified by the Minister of Communications[183] to meet Canadian content requirements in respect of the work done to create it.[184] Under the tax shelter rules, where a certificate was so issued by the Minister of Communications, the investor's interest in a film or tape would nevertheless not be a certified production if:

(a) the interest was acquired after the day that is the earlier of:

(i) the day of the first commercial use of the film or tape, and

(ii) 12 months after the day the principal photography or taping is completed,

(b) the interest was acquired from a non-resident,

(c) the certificate has been revoked by the Minister of Communications because an incorrect statement was made in the furnishing of information for certification, or

(d) the company has not paid at least 5% of the capital cost in cash to the person from whom it acquired the film or tape.

Certified production acquired after 1987 and before March 1996 become Class 10(w) property and are depreciable at 30% declining balance,[185] but are not subject to the half-year rule when acquired.[186] All Class 10(w) property is placed in a separate class.[187] Certified productions also qualify for an additional allowance equal to the lesser of the undepreciated capital cost of the film and income net of expense and basic capital cost allowance for the year from all certified productions.[188] This additional allowance is not prorated for a short taxation year since it is already limited by income earned in the year.

Various certified productions acquired before 1988 qualified for a capital cost allowance of 100% (Class 12) subject after 1982 to the half-year rule in the year of acquisition.[189]

Any film or tape that is not a certified production and is not a commercial message (see ¶4280) or acquired for short-term rental (see ¶4281) is

See page ii for explanation of footnotes.

182 CCH ¶4937m; Reg. 1100(20.2).
183 CCH ¶4951b; Reg. 1104(2) "certified production".
184 CCH ¶4951j; Reg. 1104(10).
185 CCH ¶4981; Class 10.
186 CCH ¶4917; Reg. 1100(2).
187 CCH ¶4938e; Reg. 1101(5k).
188 CCH ¶4938a; Reg. 1100(1)(l).
189 CCH ¶4992; Class 12.





included in Class 10(s) (30%) and is subject to the half-year rule when acquired.[190]

In the 1995 federal Budget, the Minister of Finance announced that the entire CCA system for certified productions would be replaced with a system of refundable credits to prescribed corporations carrying on a Canadian film or video production business in Canada. The phase-out of the old system was accomplished with the denial of CCA for certified Canadian productions acquired after March 1996. The Canadian film tax credit (see ¶8685) is available only to these incorporated producers and is not available for flow-out to investors. Each film is now of a separate class. On December 12, 1995, it was announced that the depreciation on these films would be 30%, but an additional allowance is available on remaining capital cost to the extent of income for the year from the production.[191]

### [¶4280] Television Commercial Message

A "television commercial message" is defined as being a billboard or commercial message as defined[192] in the Television Broadcasting Regulations, 1987. These Regulations define a "billboard" to mean an announcement at the commencement or end of any program naming the sponsor, if any. The Television Broadcasting Regulations define a "commercial message" to mean any commercial announcement. Films or videotapes that qualify under these definitions are included in Class 12, 100% write-off, but are subject to the half-year rule in the year of acquisition.[193]

Any motion picture film or videotape that is neither eligible for Class 12 nor "a certified production" qualifying for the special treatment described at ¶4275, is depreciable at 30% under Class 10, subject to the half year-rule.[194]

### [¶4281] Videotapes and Laser Disks for Rental

A videotape acquired, or a laser disk acquired after December 12, 1995, for the purposes of short-term rental is a Class 12(r) item. For 1995 and later years, these items are exempt from the half-year rule, with the result that they can be written off 100% in the year of acquisition. Short-term rentals are rentals that are not expected to be made to any one person for more than seven days in any 30-day period.[195]

### [¶4282] Computers, Systems Software, and Ancillary Data Processing Equipment

Computers, together with systems software and ancillary data processing equipment, can fall within any of Classes 8, 10, 29, 39, 40, 43, 45, 50, and

See page ii for explanation of footnotes.

190 CCH ¶4981; Class 10.
191 Reg. 1100(1)(m).
192 CCH ¶4951b; Reg. 1104(2) "television commercial message".
193 CCH ¶4992; Class 12.
194 CCH ¶4981; Class 10.
195 CCH ¶4992; Class 12.



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52. Computer software that is not systems software is included in Class 12, 100% write-off, subject to the half-year rule in the year of acquisition. "Systems software" means a combination of programs, documentation, and data that allows the hardware to function in the use of other computer programs. That is, systems software generally refers to the operating system that enables the computer to run and directs and co-ordinates its different operations, including input and output between keyboard, CRT screen, printer, disk drives, and the other peripherals.[196] Systems software is classified as follows:

(1) Class 8 (20%), if it is acquired before May 26, 1976, or it is acquired after that date and before March 23, 2004, but either is, or is used principally as, electronic process control equipment, electronic communications control equipment, or data handling equipment not ancillary to general-purpose computer equipment;

(2) Class 10(*f*) (30%), if acquired before March 23, 2004, unless the asset is, or is used principally as, electronic process control equipment, etc. described in (1) as still being in Class 8;

(3) a separate class of Class 10, if acquired after April 26, 1993, and before March 23, 2004, as part of a package costing more than $1,000 on which an election described at ¶4283 has been made;

(4) Class 29, if qualified as manufacturing and processing equipment (see ¶4210) and acquired after May 8, 1972, and before 1988 (or 1990 under grandfathering rules);

(5) Class 39 (see ¶4210), if it is manufacturing or processing equipment acquired after 1987, and before February 26, 1992, which is process control or communications control equipment otherwise classified in Class 8, as described above;

(6) Class 40 (see ¶4210), if it is manufacturing or processing equipment acquired after 1987, and before 1990, which is general systems software otherwise classified in Class 10;

(7) Class 43 (30%), if it is manufacturing or processing equipment acquired after February 25, 1992, which is process control or communications control equipment otherwise classified in Class 8, as described above;

(8) Class 45 (45%), if acquired after March 22, 2004, and before March 19, 2007 (other than property acquired before 2005 in respect of which a taxpayer elects to have the property included in a separate Class 10);

(9) Class 50 (55%), if acquired after March 18, 2007, and not included in temporary Class 52 (see below); and

See page ii for explanation of footnotes.

[196] CCH ¶4951b; Reg. 1104(2) "systems software".





(10) Class 52 (100%) with no half-year rule, if acquired after January 27, 2009, and before February 2011. See ¶4220.

Ancillary data processing equipment is not a defined term, but presumably refers to peripheral equipment such as printers, monitors, separate drive units, modems, and perhaps even cables.

Classes 10(*f*), 45, and 52 exclude computer equipment that is principally, or is used principally, as:

- electronic process control or monitor equipment;
- electronic communications control equipment;
- systems software for electronic control or monitor equipment, or electronic communications control equipment; or
- data handling equipment (other than such equipment that is ancillary to general-purpose electronic data processing equipment).[197]

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In addition, the specified leasing property rule exemption for computers will be extended to computer equipment included in Class 45 or 50, other than individual items with a capital cost in excess of $1 million.[198]

The government has, since 1994, been pursuing a broad attack on tax shelters. One of the shelters which all its machinery seems unable to stem is investment in a shelter that acquires applications software for future development and is able to depreciate it over two years. In the government's view, a tax shelter is an investment where the tax benefits over the first four years equal or exceed the amount paid. Where tax shelter software is to produce leasing revenue, its depreciation may be limited to income from the project under the rules at ¶4300. On August 6, 1997, the CRA (then Revenue Canada) announced that it would extend those rules so that depreciation of any software (application or system) which meets its test of being a tax shelter investment will be limited to income from the software, even if the income will arise from sales rather than leases. That is, capital cost allowance on "computer software tax shelter property" cannot be used except to reduce the business income from that property to zero.[199] Where a taxpayer owns tax shelter software and other property of the same class, the tax shelter software must be kept in a separate class of the class, thus separating its recapture/terminal loss characteristics from other property in the class.[200]

## [¶4283] Electronic Office Equipment and Data Network Infrastructure Equipment

A taxpayer may elect to set up a separate class for one or more properties, each of which has a capital cost of at least $1,000, that is

See page ii for explanation of footnotes.

[197] CCH ¶4981; Class 10, Class 45, Class 52.
[198] CCH ¶4937ad; Reg. 1100(1.13).
[199] CCH ¶4937m; Reg. 1100(20.1), Reg. 1100(20.2).
[200] CCH ¶4940zia; Reg. 1101(5r).

- computer software, a photocopier, or electronic communication equipment (such as facsimile transmission devices or telephone equipment) normally in Class 8 (which will go into a separate Class 8); or
- if acquired before 2005, computer equipment and systems software therefore, including ancillary data equipment (see ¶4282), normally in Class 10(*f*) (and which will go into a separate Class 10). Such equipment, if acquired after March 22, 2004 and before March 19, 2007, will normally go into Class 45 (45% CCA rate). If acquired after March 18, 2007 and before January 28, 2009, it will go into Class 50 (55% CCA rate). If acquired after January 27, 2009 and before February 2011, it will go into Class 52 (100% CCA rate) and, as such, will not be eligible for the separate class election.[201]

The CCA rate for computer equipment and systems software acquired after March 22, 2004 and before March 19, 2007, had increased from 30% (Class 10) to 45%, and must be included in Class 45. The rate for those acquired after March 18, 2007 increased from 45% to 55%, and must be included in Class 50. The rate for those acquired by a taxpayer after January 27, 2009 and before February 2011 increased from 55% to 100%, for inclusion in Class 52, with no half-year rule. The separate class election is not available for equipment that qualifies for the 45%, 55%, or 100% rate. However, a taxpayer may elect to have the special election rule apply for equipment acquired before 2005.

The election is made by a letter attached to the taxpayer's tax return in the year the property is acquired. The taxpayer may elect to put one or more such assets into a separate class. Therefore, if five photocopiers each costing over $1,000 are purchased in a year, they can each be put in a separate Class 8 or all five can be put in one separate Class 8 or any combination thereof (such as two in one separate class and three in another). If another photocopier costing over $1,000 is acquired the following year, it cannot be included in one of the separate classes with the photocopiers of the previous year. Of course, an election can be made to include it in its own separate class. If no election is made, the property is added to the general Class 8 or Class 10 pool that otherwise would apply.

The property that is placed in the separate class will be depreciated at the normal Class 8 or Class 10 rate; however, when the property is disposed of, any remaining undepreciated capital cost will be deductible as a terminal loss. Any undepreciated capital cost remaining in each separate class five years after the property became available for use is to be transferred into the regular Class 8 or Class 10 pool.[202]

Data network infrastructure equipment and systems software for the equipment acquired that would otherwise be in Class 8 by default (20% CCA rate) will, if acquired after March 22, 2004, fall into Class 46 and be eligible for a 30% CCA rate. Generally, "data network infrastructure equipment" means network infrastructure equipment that controls, transfers, modulates, or directs data, and that operates in support of telecommunications applications such as email, instant messaging, audio- and video-over-Internet Protocol or Web browsing, Web searching and Web hosting, including data switches, multiplexers, routers, remote access servers, hubs, domain name servers, and modems.

See page ii for explanation of footnotes.

201 CCH ¶4940zh; Reg. 1101(5p).

202 CCH ¶4950h; Reg. 1103(2g).





## [¶4285] Rental Properties

### [¶4290] Rental Properties

The Regulations provide that, in certain circumstances, a taxpayer or partnership may not deduct capital cost allowance in respect of rental property to the full extent otherwise allowed by the rates set out in Schedule II.[203] The purpose of this restriction is to prevent certain taxpayers from using capital cost allowance to produce a loss from rental property which would reduce or "shelter" other income that would otherwise be subject to tax.

Except with respect to certain lease-leaseback agreements,[204] this restriction does not apply to:

(a) a life insurance corporation;

(b) a corporation whose principal business throughout the year was the leasing, rental, development, or sale, or any combination thereof, of real property owned by it; or

(c) a partnership or tiered partnership, each member of which was a corporation described in (a) or (b).[205]

"Rental property" is defined as a building or a leasehold interest in real property if the leasehold interest is property of Class 1, 3, 6, or 13 owned by the taxpayer or partnership and which is used in the taxation year principally for the purpose of gaining or producing gross revenue that is rent. The definition excludes a property leased to a lessee who undertakes to use the property to carry on the business of selling or promoting the sale of the taxpayer's goods or services. This would include property leased in connection with a franchise agreement. In addition, for taxation years prior to 1994, rental property does not include a building which is a multiple-unit residential building (MURB) within Class 31 or 32 (see below).[206]

See page ii for explanation of footnotes.

203 CCH ¶4926; Reg. 1100(11).

204 CCH ¶4928; Reg. 1100(13).

205 CCH ¶4926, ¶4927; Reg. 1100(11), Reg. 1100(12); Interp. Bul. IT-195R4, IT-371.

206 CCH ¶4930, ¶4930a, ¶4930b; Reg. 1100(14), Reg. 1100(14.1), Reg. 1100(14.2).

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A taxpayer could not deduct losses created by claiming CCA on several condominiums. Although he claimed to have acquired them for the purpose of reselling them to generate capital gains, they were in fact being used to produce rental income and were therefore "rental properties".[207] On the other hand, when a subsidiary's employees housed in the taxpayer's building had been previously employed by the taxpayer and market rents were not being charged, the taxpayer was held to rent the subsidiary space in its building as space for its own use as opposed to rental use.[208]

The total capital cost allowance deduction in respect of rental properties may not exceed the net rental income of the taxpayer from rental properties (before deducting capital cost allowance).[209] This net rental income is determined by adding together the rental income from properties owned directly (before capital cost allowance) and any share of rental income of a partnership from rental properties and then deducting rental losses from properties owned directly and any share of rental losses of a partnership from rental properties. In the case of a taxpayer who is not involved in a partnership that owns rental property, the incomes and losses (before capital cost allowance) from rental properties must be netted to determine the aggregate capital cost allowance that may be claimed in respect of classes of property that include rental properties. Assuming the taxpayer has net rental income from rental properties, he or she may then deduct capital cost allowance to the extent of such net income even if the deducting of this capital cost allowance will produce a loss with respect to a particular rental property.

The income derived from room rentals at the taxpayer's various hotels and motels (which comprised 80% of the income from each property) was truly rental income rather than income from services since any services provided in return for such rent were essentially of the type included in the price of a room, and all extra services were charged for separately. As a result, the CCA-generated losses could be absorbed by the taxpayer's rental income from his properties for the taxation years in issue.[210]

Capital cost allowance in respect of partnership property is deducted by the partnership in determining the income or loss that is allocated to the partners. Unless all the members of the partnership are life insurance corporations, or corporations whose principal business is the leasing, development, or sale of real property owned by it and who are not part of a lease-leaseback arrangement,[211] the partnership is subject to the general limitations described above. Thus the partnership may deduct capital cost allowance in respect of rental properties only to the extent that its income from rental properties exceeds its losses from rental properties. Capital cost allowance may not be

See page ii for explanation of footnotes.

[207] Sivasubramaniam, 2008 DTC 3886.
[208] Gulf Canada Resources Ltd., 93 DTC 5345.
[209] CCH ¶4926; Reg. 1100(11).
[210] Malenfant, 92 DTC 2081.
[211] CCH ¶4927, ¶4928; Reg. 1100(12), Reg. 1100(13).





deducted to produce an overall loss to the partnership from rental properties. Where a loss arises before deducting capital cost allowance, the partner's share is then taken into account in determining the net income of the taxpayer from rental properties for the purpose of determining the capital cost allowance that may be claimed by the taxpayer in respect of rental property owned directly by the taxpayer.

If each member of a partnership is a life insurance corporation or a principal business corporation as described above, the partnership will not be subject to the rental property limitations in claiming capital cost allowance, unless the partnership is part of a lease-leaseback arrangement.

While the Regulations restrict the capital cost allowance that may be claimed in respect of rental property, they also establish separate classes of property where properties would otherwise be in the same class by virtue of the descriptions set out in Schedule II.[212] These provisions establish separate classes for each rental property acquired after 1971 at a cost of $50,000 or more and certain leasehold interests in real property. Rental properties acquired prior to 1972 or acquired after 1972 at a cost of less than $50,000 will form a single class for capital cost allowance purposes.

*Example:*

J owns two rental properties. A summary of J's 2007 rental operation is as follows:

| | Building A | Building B |
|---|---|---|
| Rent | $24,000 | $15,000 |
| Allowable expenses other than CCA | 21,000 | 16,000 |
| Net rental income (loss) before claiming CCA | $ 3,000 | $(1,000) |

J can claim $2,000 of capital cost allowance for the year. The income of Building A is combined with the loss of Building B to determine the net income for reduction by capital cost allowance.

| 2007 | Building A | Building B |
|---|---|---|
| Opening UCC balance | $100,000 | $75,000 |

See page ii for explanation of footnotes.

[212] CCH ¶4940c - ¶4940e, ¶4940z; Reg. 1101(1ac), Reg. 1101(1ad), Reg. 1101(1ae), Reg. 1101(5h); Interp. Bul. IT-274R.

| | | |
|---|---|---|
| Less: CCA claim (maximum allowed) | | 2,000 |
| Capital cost allowance may be claimed on either of the buildings in separate classes even if it increases the rental loss from that particular building. If J plans to sell Building A in 2008, the capital cost allowance claimed on it could be recaptured. J therefore claimed the 2007 capital cost allowance on Building B. | $100,000 | $73,000 |

Where rental property is acquired by a taxpayer under certain circumstances, it will not be included in a separate class if it was rental property of the previous owner and was not required to be included in a separate class by that owner immediately before the sale or transfer.[213] The circumstances prescribed by the Regulations are:

(1) the acquisition of rental property through a type of corporate reorganization such as a "butterfly" transaction designed to de-merge the corporation;[214] or

(2) the acquisition of rental property from a person with whom the taxpayer is not dealing at arm's length.

For this purpose, persons who do not deal at arm's length do not include those who are deemed not to deal at arm's length by virtue only of certain rights or option agreements.[215]

Except for corporations exempt from the capital cost allowance restriction, rental property (other than property costing $50,000 or more which is in its own separate class) is prescribed to be in a separate class from non rental properties that would otherwise be included in the same class.[216]

A building qualifies as a MURB if a certificate has been issued by Canada Mortgage and Housing Corporation (CMHC), certifying that:

(a) the installation of footings or other base support of the building was commenced either after November 18, 1974, and before January 1, 1980, or after October 28, 1980, and before January 1, 1982;

(b) plans and specifications show that not less than 80% of the floor space of the building will be used to provide self-contained domestic establishments and related parking, recreation, service, and storage; and that actual experience with the building shows that at least 80% of the floor space is used for the purposes described in (2) above;

(c) in the case of a CMHC certificate issued after October 28, 1980, the certificate has been issued on or before the later of:

See page ii for explanation of footnotes.

[213] CCH ¶4940c, ¶4940d; Reg. 1101(1ac), Reg. 1101(1ad).

[214] CCH ¶7983, ¶7983a; Sec. 55(2), 55(3).

[215] CCH ¶28,354; Sec. 251(5).

[216] CCH ¶4940e; Reg. 1101(1ae).





(i) December 31, 1981, and

(ii) the day that is 18 months after the day on which the installation of footings or other base support of the building was commenced; and

(d) the construction of the building has proceeded, after 1982, without undue delay, taking into consideration acts of God, labour disputes, fire, unusual delay by common carriers or suppliers of materials or equipment, and accidents.

A MURB will fall within Class 31 (5%) or Class 32 (10%), depending upon when the installation of footings or other base supports was commenced and the class within which the building would otherwise fall.

A taxpayer who is an individual or a corporation that does not qualify for an exemption from the rental loss restrictions[217] may claim capital cost allowance on MURBs in excess of the taxpayer's net rental income from all rental properties and thus may use this capital cost allowance to produce a loss that will shelter income from other sources. It has been held that a single unit in a condominium can qualify as a MURB.[218]

Each MURB costing $50,000 or more forms a separate class of property.[219] Thus, on a sale of such building, there may be a recapture of capital cost allowance notwithstanding that the taxpayer owns other MURBs. MURBs costing less than $50,000 will form a single class of Class 31 or Class 32 properties.

## [¶4295] Leasing Properties

### [¶4300] Leasing Properties

The aggregate capital cost allowance in respect of a prescribed class of "leasing property" is limited to the net income for the year from renting, leasing, or earning royalties from leasing properties.[220] This rule is designed to prevent taxpayers from claiming capital cost allowance in order to increase or create a loss on leasing properties, which could be used to shelter other unrelated income.

Leasing property of a taxpayer or partnership is defined[221] as depreciable property of a taxpayer or a partnership acquired after May 25, 1976[222] which is used or is deemed to be used[223] principally for rental purposes *other than* a rental property or a certified feature film referred to in Class 12(n).

See page ii for explanation of footnotes.

[217] CCH ¶4927; Reg. 1100(12).

[218] Vaillancourt, 91 DTC 5408.

[219] CCH ¶5036; Reg. 1101(5b).

[220] CCH ¶4933; Reg. 1100(15); Interp. Bul. IT-443.

[221] CCH ¶4933b; Reg. 1100(17).

[222] CCH ¶4933c; Reg. 1100(18).

[223] CCH ¶4933ba; Reg. 1100(17.1).



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Regulations set out that rent is considered to be gross revenue derived from the right of a person or partnership, other than the owner of the property, to use or occupy the property and also includes revenue from ancillary services provided to the person or partnership.[224] The definition also excludes properties leased in the ordinary course of selling goods or rendering services under an agreement by which the lessee undertakes to use the property to carry on the business of selling or promoting the sale of the taxpayer's (or partnership's) goods or services.

Property acquired from a non-arm's length person or in connection with a divisive corporate reorganization (a "butterfly transaction") will also be exempt in certain circumstances. This would occur if the transferor had acquired the property before May 26, 1976, or if the property was a replacement for property which was exempt from the leasing property rules. Where a property that was not a leasing property is replaced by another property under the replacement property rules (discussed in ¶4460), then the replacement property also will not be a leasing property. A series of replacements continues to be exempt as long as the replacement property rules apply to each replacement.[225]

The depreciable property may be movable or immovable but must be used in the year principally for the purpose of gaining or producing gross revenue that is rent, royalty, or leasing revenue. If the depreciable property is not used for any purpose in the year in which it is acquired and its first use satisfies this principal purpose test, the property is deemed to have satisfied the principal purpose test in the taxation year in which it was acquired.

Corporations (including corporate partnerships) whose principal business is the leasing or rental property other than real property owned by it or the leasing or rental of such property, combined with the sale of property of the same general type and description, are exempt from the leasing property restrictions where their gross revenue in the year from such sources amounts to at least 90% of their gross revenue from all sources.[226]

## [¶4305] Specified Leasing Property

The specified leasing property rules[227] discourage the use of leases to transfer capital cost allowance deductions from the user of an asset to the person financing its acquisition.

To neutralize the tax consequences of substituting a lease for a loan, these rules recharacterize the lease to be a loan by the lessor, with the lease payments received being treated as blended payments of interest and princi-

See page ii for explanation of footnotes.

[224] CCH ¶4933bb, ¶4933bc; Reg. 1100(17.2), Reg. 1100(17.3).

[225] CCH ¶4933c - ¶4933e; Reg. 1100(18), Reg. 1100(19), Reg. 1100(20).

[226] CCH ¶4933a; Reg. 1100(16).

[227] CCH ¶4937a - ¶4937al; Reg. 1100(1.1) - 1100(1.3).





pal. The lessor's claim for capital cost allowance on the leased property is then restricted to the lesser of the amount of capital cost allowance that would otherwise be deductible and the amount of lease payments received, less a calculation of notional interest amount for the year. In other words, the specified leasing property rules put lessors in the same position as lenders who receive blended payments of principal (not taxable) and interest (taxable).

The restrictions imposed by these rules apply to all lessors, including principal business corporations[228] that make arm's length leases of specified leasing property for periods of greater than one year. These rules do not affect the lessee's position. See ¶4307.

In general terms, "specified leasing property" is defined as depreciable property, other than exempt property, that is:

(1) used principally to earn rental or leasing revenue;

(2) the subject of an arm's length lease with a specified term of more than one year; and

(3) subject to a lease of property with, at the time the lease was made, an aggregate fair market value in excess of $25,000.

However, the definition specifically excludes include intangible property such as systems software and other software, as well as certified feature films or certified productions.[229]

"Exempt property", which is protected from the specified leasing property rules, is defined as:

(a) general-purpose office furniture and equipment in Class 8 (including cellular phones and pagers) or general-purpose electronic and ancillary data processing equipment in Class 10(f), other than any individual asset having a capital cost in excess of $1 million;

(b) general-purpose electronic data processing equipment and ancillary data processing equipment, included in Classes 45 and 50 (if acquired after March 18, 2007, and not included in temporary Class 52), or 52 (if acquired after January 27, 2009, and before February 2011), other than any individual item of that type of equipment having a capital cost in excess of $1 million;

(c) furniture, appliances, television receivers, radio receivers, telephones, furnaces, hot-water heaters, and other similar properties designed for residential use;

See page ii for explanation of footnotes.

[228] CCH ¶4933a; Reg. 1100(16).

[229] CCH ¶4937ab; Reg. 1100(1.11).



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## [¶8118] Volunteer Firefighters and Search and Rescue Tax Credit

Volunteer firefighters may claim a 15% non-refundable tax credit based on an amount of $3,000, if they have performed at least 200 hours of eligible volunteer firefighting services for one or more fire departments.[111] Effective in 2014, this credit was extended to those who provide eligible volunteer search and rescue services, if they have provided at least 200 hours of either firefighting or search and rescue service.[112]

Eligible firefighting services are services provided to a fire department as a volunteer firefighter, which consist primarily of responding to and being on call for firefighting and related emergency calls, attending meetings held by the fire department, and participating in required training related to the prevention or suppression of fires.

Volunteer services performed for a particular fire department are not eligible if the firefighter also provides non-volunteer firefighting services to that department.[113]

Eligible search and rescue services are provided in the individual's capacity as a volunteer to an eligible search and rescue organization. The service consists primarily of responding to and being on call for search and rescue and related emergency calls, attending meetings held by the organization, and participating in required training related to search and rescue.[114] This credit is not available to an individual who provides search and rescue services in another capacity (not as a volunteer). The individual claiming this tax credit may have to obtain a written certificate from a team president, or an individual with equivalent authority, to certify the number of hours of service completed.[115]

An individual who claims either of these credits will not be allowed to claim the current tax exemption up to $1,000 for honoraria paid by a government, municipality, or other public body in respect of volunteer firefighting services.

If an individual performs services that are eligible for both the search and rescue and the volunteer firefighters credits, then the individual can claim either credit but not both.

## [¶8119] Tuition Credit

A student who is enrolled full-time or part-time at an educational institution may deduct a tax credit of the appropriate percentage (currently 15%) of eligible tuition fees where such fees are greater than $100.[116]

See page ii for explanation of footnotes.

[111] Sec. 118.06(2).
[112] Sec. 118.07(2).
[113] Sec. 118.06(1).
[114] Sec. 118.07(1).
[115] Sec. 118.07(3).
[116] CCH ¶18,415; Sec. 118.5(1); Income Tax Folio S1-F2-C2.





"Eligible tuition fees" are those paid to a post-secondary educational institution in Canada or (for individuals aged 16 and over at the end of the year), an institution certified by the Minister of Employment and Social Development as being an institution that develops or improves skills in an occupation. Also eligible for the credit are tuition fees paid to: (i) a university outside Canada if the student is in full-time attendance for courses of at least three (13 before 2011) consecutive weeks' duration and leading to a degree; and (ii) an educational institution in the U.S. for post-secondary level courses if the student lived in Canada near the border throughout the year and commuted to the school.

An individual may also claim as tuition fees certain ancillary fees and charges paid in respect of the individual's enrolment at a post-secondary institution, if the payment of these fees or charges is made to the institution and is required from all of the institution's full-time students or part-time students, depending on whether the individual is enrolled on a full-time or part-time basis.[117] However, mandatory fees or charges will not qualify for the tuition tax credit to the extent that they are levied in relation to a student association, property to be acquired by students, services not ordinarily provided at post-secondary institutions in Canada, or tax-exempt financial assistance to students, unless the assistance is, or would have been (but for the scholarship exemption), included in computing the student's income.[118] In addition, mandatory charges paid for the construction, renovation, or maintenance of a facility generally will not qualify for the credit, except to the extent that the facility is owned by the institution and is used to provide post-secondary level courses or services that, if charges were required to be paid by all of the institution's students for such services, would be eligible for the tuition tax credit.

Where ancillary fees paid in respect of an individual's enrolment at a post-secondary educational institution would qualify for the credit, but for the fact that the payment of those fees is not required from all of the institution's full-time or part-time students, as the case may be, an amount not exceeding $250 in respect of the fees may be included in computing the individual's tuition fee credit.

The list of eligible tuition fees also includes fees paid to an institution, association, or ministry for an examination required to obtain a professional status or to be licensed or certified to practice a trade or profession in Canada. The total of tuition and examination fees paid to an institution, association, or ministry for a year must exceed $100 to be eligible.

A student will not be allowed a tax credit for tuition fees if such tuition fees are paid by the student's employer and not included in the student's income or were part of an allowance received by the student's parent from the parent's employer and not included in the parent's income. Similarly,

See page ii for explanation of footnotes.

[117] CCH ¶18,421; Sec. 118.5(3).
[118] The latter inclusion concerning fees in relation to financial assistance is effective from 2012.



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tuition fees paid under a federal or provincial job training program, for which the individual is entitled to be reimbursed, are eligible for the credit only if the reimbursement is included in the individual's income. Fees paid on behalf of an individual or reimbursed to an individual under a federal program designed to assist athletes are not eligible for the credit unless such payment or reimbursement is included in computing income.

A student may transfer the unused portion of the tuition credit to a spouse or common-law partner, parent, or grandparent, or carry it forward for their own future use (see ¶8123). A student may also transfer part of the unused portion of the credit and carry forward the remainder. The amount that can be transferred is limited to the amount the student designates in writing and is further limited to the lesser of the total tuition, textbook, and education tax credits combined and $750 (transfer limit of $5,000 × 15%).[119]

## [¶8120] Full-Time Education Credit

An individual may also deduct from taxes payable a credit of 15% of $400 a month (i.e., $60 a month) for each month in the year that the individual was enrolled as a full-time student at a designated educational institution and enrolled in a qualifying educational program. This includes full-time post-secondary students enrolled in distance education programs or correspondence courses.[120] There is no full-time enrolment requirement for students who are disabled.[121] In order for the student to qualify for the education tax credit with part-time enrolment, the student must be eligible for the impairment credit (¶8145), or a medical doctor, optometrist, audiologist, occupational therapist, psychologist, speech language pathologist, or physiotherapist must certify [in writing] that the individual cannot be enrolled on a full-time basis because of the impairment. No credit will be allowed for any student unless the student's enrolment is proven by filing a prescribed form of certificate issued by the educational institution.[122]

A designated educational institution, for purposes of the education credit, is generally the same as described in ¶8119 for the tuition credit. A qualifying educational program is one that requires at least 10 hours per week of work and is at least three consecutive weeks in duration. The program must be at a post-secondary school level except in the case of courses to improve occupational skills certified by the Minister of Employment and Social Development. An educational program at a post-secondary level consisting principally of research will not be eligible for the education tax credit, unless that program leads to a college or CEGEP diploma, or a bachelor, master, or doctoral degree (or an equivalent degree).

See page ii for explanation of footnotes.

[119] CCH ¶18,437 - ¶18,438, ¶18,445, ¶18,447, ¶18,451; Sec. 118.61, 118.8, 118.81, 118.9.

[120] CCH ¶18,428; Sec. 118.6(2); Income Tax Folio S1-F2-C1.

[121] CCH ¶18,429; Sec. 118.6(3).

[122] Form T2202A.





Fees paid on behalf of a student who is enrolled in a certified vocational job training course will not qualify for the education tax credit unless the student has reached the age of 16 before the end of the year.

Generally, students cannot claim the education tax credit for a program for which they received a benefit, a grant, an allowance, or a reimbursement of their tuition fees. However, students can claim the credit even if they received salary or wages from a job that is related to their program of study, certain other kinds of payments, such as scholarships and student loans, or if they received and included in their income any financial assistance provided under the *Employment Insurance Act* (Part II) or the *Employment and Social Development Act*. As with the tuition and textbook credit, the unused portion of the education credit may be transferred to a spouse or common- law partner, parent, or grandparent or carried forward for future use by the student. A student may also transfer part of the unused portion of the credit and carry forward the remainder. The amount that can be transferred is limited to the amount that the student designates in writing and is further limited to the lesser of the total tuition, textbook, and education tax credits combined and $750 (transfer limit of $5,000 × 15%).

## [¶8121] Part-Time Education Credit

Part-time students are eligible for a partial credit equal to the appropriate percentage of 15% of $120 a month.[123] To be eligible, students must be enrolled in an educational program lasting at least three consecutive weeks and involving a minimum of 12 hours of courses per month. A specified educational program is essentially a qualifying educational program (described at ¶8120), except that the 10-hour-per-week course requirement is replaced by a 12-hour-per-month course requirement. The unused portion of the part-time credit may be transferred to a supporting person or carried forward for future use (see ¶8124).

## [¶8122] Post-Secondary Textbook Credit

Students may claim a tax credit in respect of textbooks for each month for which they qualify for the education tax credit. The credit is non-refundable, and for full-time students is calculated at 15% of $65 × the number of months during the year in which the student was entitled to claim the education credit as a full-time student. For part-time students, the credit is 15% of $20 × the number of months during the year in which the student was entitled to claim the education credit as a part-time student.[124] Disabled students will qualify for the full textbook amount of $65 per month, even if they are not enrolled on a full-time basis.[125]

See page ii for explanation of footnotes.

[123] CCH ¶18,427a, ¶18,428; Sec. 118.6(1) "specified educational program", 118.6(2).

[124] CCH ¶18,428d; Sec. 118.6(2.1).

[125] CCH ¶18,429; Sec. 118.6(3).

## [¶8123] Credit for Interest on Student Loan

A personal tax credit is allowed for interest paid in a year or in any of the previous five years on a loan made under the *Canada Student Loans Act* or a similar provincial statute.[126] This credit is not transferable. Only the student to whom the loan was made or who legally owes interest can claim the credit. However, to qualify, the interest may be paid by the student or a person related to the student.

Financial institutions and the Minister of Employment and Social Development Canada (or provincial government departments or agencies administering these loans) will provide taxpayers with statements indicating eligible interest payments. The credit applies to interest only, not repayment of principal. It does not apply to interest accrued but not paid or to any forgiven interest.

Effective for 2015, the credit for interest on student loans is extended to allow taxpayers to include interest paid on Canada Apprentice Loans under the *Apprentice Loans Act*.

## [¶8124] Carryforward of Tuition, Textbook, and Education Tax Credits

The combined tuition, textbook, and education credits that the student cannot claim in a year (because his or her income is too low) will automatically carry forward for future use by the student, unless the student has designated the unused portion to a spouse/common-law partner, parent, or grandparent. The student must use these carryforwards immediately in future years as sufficient income arises to absorb them. It is a first-in first-out system in which old credits must be used before new ones, and any new credits so blocked are added to the carryforward.

Technically, the amount that may be carried forward to future taxation years is determined by first, adding to the student's unused tuition, textbook, and education tax credits at the end of the previous year, the portion of the student's tuition, textbook, and education credits for the current year that is not needed to eliminate the student's tax payable for the current year. This total is then reduced by the amount of the tuition, textbook, and education tax credits carryforward that is deductible for the year.[127] The amount of the carryforward that is deductible for the year is equal to the lesser of the previous year's carryforward and the tax that would be payable for the year by the student if no tuition, textbook, and education tax credits were allowed.[128] Finally, this total is further reduced by the tuition, textbook, and education tax credits transferred for the year by the student to the student's spouse/common-law partner, parent, or grandparent.

See page ii for explanation of footnotes.

126 CCH ¶18,439; Sec. 118.62.

127 CCH ¶18,437; Sec. 118.61(1).

128 CCH ¶18,438; Sec. 118.61(2).





## [¶8125] Medical Expense Credit

The medical expense tax credit for 2015 is calculated as 15% of qualifying medical expenses that are in excess of the lesser of:

(a) $2,208; and

(b) 3% of the individual's net income.[129]

The expenses giving rise to the tax credit may be for the taxpayer, a spouse, a common-law partner, a child under 18, or other dependent relatives.[130] (as defined at ¶8095).

There is no longer a maximum limit for claiming expenses for other dependent relatives, so that eligible expenses for dependent relatives are only subject to the above minimum expense threshold, i.e., the lesser of 3% of the individual's net income and $2,208 in 2015.

The medical expenses must be paid either by the taxpayer or by the taxpayer's legal representative within any 12-month period ending in the year of claim. Where the individual has died in the tax year, the expenses must be paid within any 24-month period that includes the date of death. Receipts must be filed with the taxpayer's return to support the claim for a medical expense credit.

The Act lists certain items (which are included as medical expenses for purposes of calculating the credit), and is updated periodically to add certain items.[131] So that the Act will not become unwieldy by additions to the list, it is provided that certain devices and equipment, when prescribed by a medical doctor or practitioner, and as prescribed by Regulation, will be considered medical expenses. There is no restriction that eligible medical expenses be paid for treatment in Canada. Premiums paid to a private health services plan are eligible medical expenses.[132]

Expenses incurred for purely cosmetic purposes (including related services and other expenses such as travel) are not eligible for the medical expense tax credit.[133] This exclusion of purely cosmetic procedures generally includes surgical and non-surgical procedures purely aimed at enhancing one's appearance, such as liposuction, hair replacement procedures, botulinum toxin injections, and teeth whitening. A cosmetic procedure, including those identified above, will continue to qualify for the credit if it is required for medical or reconstructive purposes, such as surgery to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease.

See page ii for explanation of footnotes.

129 CCH ¶18,370; Sec. 118.2; Income Tax Folio S1-F1-C1.

130 CCH ¶18,314, ¶18,372; Sec. 118(6), 118.2(2).

131 CCH ¶18,372, ¶18,374; Sec. 118.2(2); Reg. 5700.

132 CCH ¶18,372; Sec. 118.2(2)(q); Interp. Bul. IT-339R2.

133 CCH ¶18,372f; Sec. 118.2(2.1).

An individual is allowed to claim as a medical expense an amount that is included in the taxpayer's income from employment in respect of a medical expense that is paid or provided by the taxpayer's employer. Medical expenses — for which the taxpayer, the taxpayer's legal representative, or the patient (if the patient is not the taxpayer) has been or is entitled to be reimbursed — do not qualify for the credit unless the reimbursement is included in income. In order for the expense to be eligible for the medical expense tax credit, any reimbursement must be included in income and not be deductible in computing taxable income.[134]

## [¶8130] Types of Expenses Qualifying for Credit

To qualify as eligible medical expenses for purposes of computing the credit (see ¶8125), the Act provides that payments are to be made on behalf of the taxpayer, the taxpayer's spouse/common-law partner, or the taxpayer's dependant as follows:[135]

(1) *Payments for medical practitioners, hospitals, etc.* Payments are eligible if made to a medical practitioner (as defined below), dentist, pharmacist, nurse, optometrist, or to a public or licensed private hospital in respect of medical or dental services provided to the taxpayer, the taxpayer's spouse/common-law partner, or any dependant. "Medical practitioner" encompasses not only a medical doctor but also the following medical professionals as long as they are authorized to practice according to the laws of the jurisdiction where the expenses are incurred: an osteopath; a chiropractor; a naturopath; a therapeutist (or therapist); a physiotherapist; a chiropodist (or podiatrist); a Christian Science practitioner; a psychoanalyst who is a member of the Canadian Institute of Psychoanalysis or a member of the Quebec Association of Jungian Psychoanalysts; a psychologist; a qualified speech-language pathologist or audiologist such as, for example, a person who is certified as such by The Canadian Association of Speech-Language Pathologists and Audiologists (CASLPA) or a provincial affiliate of that organization; an occupational therapist who is a member of the Canadian Association of Occupational Therapists; an acupuncturist; a dietitian; a dental hygienist; and a physiotherapist.

(2) *Payments for a full-time attendant or care in a nursing home.* Such payments are made as remuneration for one full-time attendant, other than the taxpayer's spouse/common-law partner or a person under 18 years of age; or as payment for the full-time care in a nursing home for an individual who has "one or more severe and prolonged impairments in physical or mental functions". An impairment is prolonged if it has lasted, or is expected to last, for a continuous period of at least 12 months. An impairment is severe if the individual is markedly restricted in performing one basic activity of daily living or would be so restricted were it not for extensive therapy

See page ii for explanation of footnotes.

[134] CCH ¶18,382; Sec. 118.2(3).

[135] CCH ¶18,372; Sec. 118.2(2); Income Tax Folio S1-F1-C1.





(i.e., averaging at least 14 hours per week) in order to sustain a vital function. An individual whose ability to perform one basic activity of daily living and is not "markedly restricted" will still qualify if the individual's ability to perform more than one basic activity of daily living is significantly restricted, and the cumulative effect of those multiple restrictions is equivalent to a marked restriction in one basic activity of daily living. In other words, an individual may have multiple restrictions, none of which is in itself a marked restriction in performing one basic activity of daily living and still qualify for the credit if the cumulative effect of those multiple restrictions is tantamount to the individual's ability to perform a basic activity of daily living being markedly restricted. The marked restrictions must be present together, all or substantially all of the time.

The Tax Court defined remuneration paid to "one full-time attendant" as the total remuneration paid to any number of attendants in the relevant period provided the total remuneration so claimed only covered the services of one attendant at any given time.[136] The basic activities of daily living are speaking, hearing, walking, elimination (bowel or bladder functions), feeding (which does not include preparing food due to dietary restrictions, or obtaining food), dressing (which does not include obtaining clothing), and "mental functions necessary for everyday life". The expression "mental functions necessary for every day life", includes memory, problem solving, goal setting and judgment (taken together), and adaptive functioning. General activities such as working, housekeeping, or a social or recreational activity are not considered to be basic activities of daily living (see ¶8145).[137] If a taxpayer is so impaired and does not take into account any amount paid to a full-time attendant or to a nursing home in computing his or her medical expense credit, the taxpayer may be entitled to a disability tax credit under the rules discussed at ¶8145. Accordingly, in these circumstances, a taxpayer may have an option to make a claim under this provision including items (4) and (5) below or under the rules set out at ¶8145. A medical doctor, an optometrist for a sight impairment, an audiologist for a hearing impairment, an occupational therapist for a mobility impairment, a psychologist for an impairment with respect to mental functions necessary for everyday life, a speech language pathologist for a speech impairment, or a physiotherapist for an impairment with respect to an individual's ability in walking, must certify the extent of the impairment on a prescribed form.[138]

(3) *Payments for part-time attendant care.* Payments made as remuneration for attendant care up to a maximum of $10,000 ($20,000 in the year of death) may qualify as eligible medical expenses. The attendant must be 18 years of age or over and must not be the individual's spouse/common-law partner. The taxpayer must file receipts showing the Social Insurance Number of the attendant, if the receipt is issued by an individual. Unlike for expenses noted in items (2), (4), and (5), the medical expense credit under

See page ii for explanation of footnotes.

[136] Wakelyn, 71 DTC 35.

[137] CCH ¶18,405; Sec. 118.4(1).

[138] CCH ¶39,296; Form T2201.



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this provision may be claimed in conjunction with the credit for mental or physical impairment, described at ¶8145. After suffering severe disabilities from a car accident, the taxpayer had to hire a cleaning company to do the housecleaning tasks that she could no longer do. These costs constituted "remuneration for attendant care" and qualified for a medical expense tax credit.[139]

(4) *Payments for an attendant in one's home.* Such payments are made as remuneration for a full-time attendant for an individual (the "cared-for person") in a self-contained domestic establishment where such person lives. The cared-for person must be certified [in writing] by a qualified medical practitioner as likely to be dependent upon others for a long period of indefinite duration by reason of mental or physical infirmity. Note that this provision refers to "infirmity" which, unlike "impairment", is not a defined term in the Act. The CRA's view is that a person is infirm if the person is incapable of being gainfully employed for a considerable period of time due to the infirmity.[140] The attendant cannot be the individual's spouse or common-law partner or a person under the age of 18. Each receipt filed with the Minister to prove payment to the attendant must contain the Social Insurance Number of the person who issued the receipt.

(5) *Training courses.* Reasonable expenses incurred to train an individual to care for a relative having a mental or physical infirmity may qualify as eligible medical expenses. To qualify, the relative must live with the individual or must be dependent on the individual for support. It is the CRA's view that a person is infirm if the person is incapable of being gainfully employed for a considerable period of time due to the infirmity.

(6) *Payments to a nursing home for full-time care.* These are payments made to a nursing home for the full-time care of an individual who is, and will, as far as can be foreseen, continue to be, dependent on other people for personal needs and care because of impaired mental capacity. A qualified medical practitioner must have certified [in writing] that this is the case.

(7) *Payments to schools and institutions.* Such payments are made to a school, institution, or other place that is equipped to provide care and training to persons who are physically or mentally handicapped, for the care, or the care and training, of an individual. The individual's condition and special requirements must be certified [in writing] by an appropriately qualified person.

(8) *Payments for transportation by ambulance.* These are payments made for transportation by ambulance to or from a public or licensed private hospital for the patient.

(9) *Payments to a commercial service for transportation to obtain medical services.* Payments made to a commercial service providing transportation

See page ii for explanation of footnotes.

[139] Zaffino, 2007 DTC 1178.

[140] Interp. Bul. IT-513R.





to obtain medical services for a patient and for one attendant may qualify, provided that the distance exceeds 40 kilometres and the medical services could not be obtained locally. A medical practitioner must certify [in writing] that the patient is incapable of travelling alone in order for the transportation costs of the attendant to qualify. Where a person engaged in the business of providing transportation services is not readily available, the taxpayer may deduct a reasonable amount in respect of the operation of a vehicle used for the above purpose, such amount being deemed to have been paid to a person engaged in the business of providing transportation services.[141] The CRA interprets "vehicle" to mean any type of conveyance by which a person can be transported by land or water, or through the air, including a vehicle owned by a taxpayer or a member of the taxpayer's family.[142]

(10) *Payments for travelling expenses to obtain medical services.* Such payments are made for reasonable travelling expenses incurred in respect of a patient and, if the patient is certified [in writing] as being incapable of travelling alone, one individual who is the patient's attendant, to obtain medical services not available locally in a place that is not less than 80 kilometres from the locality where the patient was dwelling. Where those travelling expenses are paid for or are provided by an employer and are included in the taxpayer's income from office or employment, the taxpayer is deemed to have paid the expenses. Thus the taxpayer-employee will be entitled to claim the medical expense credit in respect of those expenses.[143]

(11) *Payments for artificial limbs, medical equipment, etc.* These are payments made for or in respect of an artificial limb, an iron lung, rocking bed for poliomyelitis victims, a spinal brace, crutches, a brace for a limb, iliostomy or colostomy pad, truss for hernia, artificial eye, laryngeal speaking aid or an aid for hearing, a wheelchair, an artificial kidney machine [and phototherapy equipment for the treatment of psoriasis or other skin disorders, or an oxygen concentrator] for the patient.

(12) *Payments for items related to incontinence.* Such payments are for or in respect of all products such as diapers, disposable briefs, catheters, catheter trays, tubing or other products required by the patient for incontinence caused by illness, injury, or affliction.

(13) *Payments for vision care.* Such payments are made for eyeglasses or other devices for the treatment, or correction of a defect of vision, for the patient, as prescribed by a medical practitioner or an optometrist qualified to practice under the laws of the place where the expenses were incurred.

(14) *Payments for certain medical requirements.* These are payments for an oxygen tent and oxygen administering equipment, or for insulin, oxygen,

See page ii for explanation of footnotes.

[141] CCH ¶18,384; Sec. 118.2(4).

[142] Income Tax Folio S1-F1-C1.

[143] CCH ¶18,382; Sec. 118.2(3).



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liver extract injectable for pernicious anemia, or vitamin B12 for pernicious anemia for use by the patient, as prescribed by a medical practitioner.

(15) *Payments for trained animals.* Such payments are for an animal which has been trained to guide or assist a blind or profoundly deaf person, or an animal specially trained to assist an individual who has a severe and prolonged impairment that markedly restricts the use of the individual's arms or legs or has severe autism, severe epilepsy, or severe diabetes. Such expenses include:

(a) the cost of the animal, provided that it is purchased from a person or organization, one of whose main purposes is training such animals;

(b) the costs involved in caring for the animal, including food and veterinary bills;

(c) travelling costs of the patient to and from a special training facility; and

(d) board and lodging for the patient, if required to live away from home because the patient is attending, on a full-time basis, a school that trains persons with physical disabilities in handling such animals.

(16) *Payments for arranging transplants.* These are payments for expenses incurred to arrange a bone marrow or organ transplant. These expenses include legal fees and insurance premiums, as well as the travelling expenses and room and board (other than the expenses outlined in items (8) and (9) above) for the donor and the patient and an accompanying person for each.

(17) *Payments for renovations or alterations to one's home.* Such payments are made for reasonable expenses relating to renovations or alterations to the dwelling of the patient who lacks normal physical development or who has a severe and prolonged mobility impairment (e.g., confined to a wheelchair) to enable the patient to gain access to, or to be mobile or functional within the dwelling, provided that such expenses would not typically be expected to increase the value of the dwelling and would not typically be incurred by a person with a normal physical development or without a severe and prolonged mobility impairment.

(18) *Payments for rehabilitative therapy.* Such expenses include training in lip reading and sign language incurred to adjust for the individual's hearing or speech loss. Remuneration paid for developing an individualized therapy plan for a patient suffering from a severe and prolonged impairment provided certain conditions are met.

(19) *Payments for sign language interpretation services or real-time captioning services.* Fees for sign language interpretation services and fees for real-time captioning services provided to an individual who has a speech or hearing impairment may qualify, if the fees are paid to a person engaged in the business of providing such services.





(20) *Payments for note-taking services.* The cost of note-taking services used by individuals with mental or physical impairments and paid to persons engaged in the business of providing such services may qualify, if the need for these services is certified in writing by a medical practitioner.

(21) *Payments for the cost of voice recognition software.* Payments for the cost of voice recognition software used by individuals with a physical impairment may qualify, if the need for the software is certified in writing by a medical practitioner.

(22) *Payments for reading services.* Payments for reading services used by individuals who are blind or who have a severe learning disability and made to persons engaged in the business of providing such services may qualify, if the need for these services is certified in writing by a medical practitioner.

(23) *Payments for deaf-blind intervening services.* Payments for deaf-blind intervening services used by individuals who are both blind and profoundly deaf may qualify, if the payments are made to persons engaged in the business of providing such services.

(24) *Payments for drugs purchased under Health Canada's Special Access Program and medical marijuana.* Payments for drugs purchased under Health Canada's Special Access Program and medical marijuana may qualify. To be an eligible expense, medical marijuana will have to be purchased from either Health Canada or a designated grower, by an individual authorized to use the drug for medical purposes under Health Canada's Medical Marijuana Access Regulations or an exemption under section 56 of the *Controlled Drug and Substances Act.* With the exception of the cost of seeds purchased from Health Canada, expenses incurred by authorized users to grow their own marijuana will not be eligible.

(25) *Payments for moving expenses.* Such payments are made for reasonable moving expenses (up to a maximum of $2,000) of an individual who lacks normal physical development or has a severe and prolonged mobility impairment to move to a dwelling that is more accessible by the individual or in which the individual is more mobile or functional.

(26) *Payments for alteration to driveway.* Such payments represent the reasonable costs of alterations to the driveway of the principal place of residence of an individual who has a severe and prolonged mobility impairment to facilitate the individual's access to a bus.

(27) *Payments for a van.* Such payments are the lesser of $5,000 and 20% of the cost of a van that, at the time of acquisition or within six months thereafter, has been adapted for the transportation of the patient who requires the use of a wheelchair.



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(a) the gift is a "designated gift" from a registered charity;[85]

(b) the gift was not made out of the donor charity's income; or

(c) the gift is from a donor who is not a charity and the donor has not been allowed a deduction for the gift (in the case of a corporation) or a tax credit (in the case of an individual) or is not subject to tax under Part I in the year the gift is made.

Where a charitable foundation is a trust, income is not reduced by distributions to the beneficiaries as it is for other trusts.

## [¶11,624] Charitable Organizations — Related Business

A charitable organization is considered to be devoting its resources to its charitable activities to the extent that it carries on a related business. While the expression "related business" is not specifically defined, it includes a business that is unrelated to the objects of the organization if substantially all those employed in the business are volunteers.[86] A corporation established as a fundraising vehicle for various registered charities solicited goods that were sold by a separate company, the corporation receiving a minimum guaranteed amount; all monies were used for charitable purposes. The court held that the business aspect of the corporation's activities were merely incidental to its charitable objects.[87]

Charities Policy Statement CPS-019, "What is a Related Business?", sets out the CRA's policy for determining whether a charity is carrying on a related business or an unrelated business for purposes of acquiring or maintaining registered charity status. The Policy Statement describes two kinds of related businesses:

(1) businesses that are run substantially (i.e., 90%) by volunteers; and

(2) businesses that are linked to a charity's purpose and are subordinate to that purpose.

With respect to (2), a business will be considered linked to a charity's purpose if it fits within one of the following categories:

(a) *A usual and necessary concomitant of charitable programs.* Examples include: a hospital's parking lots, cafeterias, and gift shops for the use of patients, visitors, and staff; gift shops and food outlets in art galleries or museums for the use of visitors; and book stores, student residences, and dining halls at universities for the use of students and faculty.

(b) *An offshoot of a charitable program.* The charity carries out its charitable programs, not in order to create the asset, but to achieve its charitable purpose. The asset is simply a by-product of the charity's programs.

(c) *A use of excess capacity.* This type of business activity involves using a charity's assets and staff, which are currently needed to conduct a charitable program, to gain income during periods when they are not being used to their full capacity within the charitable program.

(d) *The sale of items that promote the charity or its objects.* Examples include pens, credit cards, and cookies clearly displaying the charity's name or logo, and T-shirts or posters depicting the work of the charity.

See page ii for explanation of footnotes.

[85] CCH ¶21,930; Sec. 149.1(1) "designated gift".

[86] CCH ¶21,921; Sec. 149.1(1) "charitable organization".

[87] Alberta Institute for Mental Retardation, 87 DTC 5306.





## [¶11,625] Charitable Organizations — Political Activities

A charitable organization may engage in non-partisan political activities as long as it devotes substantially all of its resources to charitable activities.[88] The CRA usually considers "substantially all" to mean 90% or more. Therefore, as a general rule, the CRA considers a charity that devotes no more than 10% of its total resources a year to political activities to be operating within the "substantially all" provision. However, in Policy Statement CPS-022, the CRA recognizes that this may have a negative impact on smaller charities. To alleviate this hardship, it will exercise its discretion and not revoke the registration of smaller charities for the excessive use of their resources on political activities as long as they meet the following administrative guidelines:

- Registered charities with less than $50,000 annual income in the previous year can devote up to 20% of their resources to political activities in the current year.
- Registered charities whose annual income in the previous year was between $50,000 and $100,000 can devote up to 15% of their resources to political activities in the current year.
- Registered charities whose annual income in the previous year was between $100,000 and $200,000 can devote up to 12% of their resources to political activities in the current year.

The political activities to which a registered charity devotes the maximum percentage of its resources must be ancillary and incidental to its charitable activities. A political activity is considered partisan if it involves direct or indirect support of, or opposition to, a political party or candidate for public office. When a political party or candidate for public office supports a policy that is also supported by a charity, the charity is not prevented from promoting this policy. However, a charity in this situation must not directly or indirectly support the political party or candidate for

See page ii for explanation of footnotes.

[88] CCH ¶21,931a, ¶21,936b; Sec. 149.1(1.1), 149.1(6.2).



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public office. This means that a charity may make the public aware of its position on an issue provided:

(a) it does not explicitly connect its views to any political party or candidate for public office;

(b) the issue is connected to its purposes;

(c) its views are based on a well-reasoned position;

(d) public awareness campaigns do not become the charity's primary activity.

A charity may provide information to its supporters or the public on how all the Members of Parliament or the legislature of a province, territory, or municipal council voted on an issue connected with the charity's purpose. However, a charity must not single out the voting pattern on an issue of any one elected representative or political party.

Effective January 1, 2013, a charitable organization that funds a qualified donee for the purpose of enabling it to pursue political activities will be required to count that donation against its own allowable limits for political activities. Failure to comply with this new requirement may trigger intermediate sanctions, such as monetary penalties or a one-year suspension of receipting privileges, as well as revocation of registration.[89] See ¶13,207.

## [¶11,627] Charitable Organizations — Disbursements to Other Charities and Accumulation of Property

A charitable organization is considered to be devoting its resources to its own charitable activities to the extent that, within limits, it disburses its income to other charities. The organization may disburse up to 50% of its income for a year to "qualified donees".[90] This expression, in general, refers to institutions which, upon receipt of a gift from a taxpayer, may issue a receipt which permits the taxpayer to deduct the amount given in computing taxable income. For more details, see ¶11,618. Thus, for example, if a charitable organization donates up to 50% of its income to other registered charities, the amount so donated will be considered to have been devoted by the donating charitable organization to its own charitable activities. It should be noted that the recipient charities will generally have to include the amount received in their incomes.

A charitable organization which disburses income to a registered charity associated with it will be considered to have devoted that income to its own charitable activities. A registered charity will be considered to be associated with a charitable organization if it is so designated.[91] Registered charities who want designation as associated charities must complete Form T3011. The CRA will approve a designation as associated charities if it

See page ii for explanation of footnotes.

[89] CCH ¶24,425; Sec. 188.1.
[90] CCH ¶21,936; Sec. 149.1(6).
[91] CCH ¶21,937; Sec. 149.1(7); Inf. Cir. 77-6.





is satisfied that the charitable aims or activities of each of the registered charities are substantially the same. If the charities' aims or activities are different, they can still become associated in order to undertake a joint project. In the latter case, they should explain on the application how the project will operate and what each of the registered charities will do to achieve the common goal. A charitable foundation that is granted associated status with another registered charity cannot be redesignated as a charitable organization solely on the basis of such associated status.

A charitable organization may pay amounts other than income to a qualified donee (see ¶11,618) and thereby be considered to have devoted resources to its own charitable activities.[92] For example, a charitable organization could donate part of the gifts received by it in the year or part of its own capital to a registered charity. Effective June 29, 2012, donations to support political activity do not fall under this rule and are not deemed to have been devoted to charitable activities.

A charitable organization may accumulate property for a particular purpose with the written consent of the Minister. Property so accumulated and any income thereon are deemed to have been expended on the organization's charitable activities in the taxation year in which they were so accumulated and not to have been expended in any other year.[93] With the repeal of the charitable expenditure (80%) rule in the 2010 Budget (see ¶11,628), this rule is amended for taxation years ending after March 3, 2010 in order to give the Minister the discretion to exclude property accumulated for a particular purpose from the capital accumulation (3.5%) disbursement quota calculation.

## [¶11,628] Charitable Organizations — Disbursement Requirements

Registered charities designated as charitable organizations are subject to certain rules that require them to spend each year a minimum amount on their own charitable activities or on gifts to qualified donees as defined in ¶11,618 (for example, other registered charities). These are called the disbursement quota rules, and they are discussed in more detail at ¶11,639. For charitable organizations, the disbursement quota rule can be summarized as follows:

- For taxation years ending after March 3, 2010, the disbursement quota rule only applies if the average value of a charitable organization's property not used directly in charitable activities or administration during the 24 months before the beginning of the fiscal period exceeds $100,000. If the $100,000 threshold is reached, the charity's disbursement quota is calculated as 3.5% of the average value of that property.

See page ii for explanation of footnotes.

[92] CCH ¶21,940; Sec. 149.1(10).
[93] CCH ¶21,938; Sec. 149.1(8).



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- For taxation years beginning after March 22, 2004 and ending before March 4, 2010, the rule was more complex to the extent that the charitable organization must make expenditures on charitable activities carried on by it in the year, or on gifts to qualified donees (see ¶11,618), equal to the aggregate of:

  (a) 80% of the previous year's tax-receipted donations plus other amounts relating to enduring property and transfers between charities (in other words, a "charitable expenditure rule"); and

  (b) 3.5% of all assets not currently used in charitable programs or administration, if these assets exceed $25,000 (in other words, a "capital accumulation rule"). Before 2009, this 3.5% disbursement quota rule only applied to those charities that were "foundations", but as of 2009, it applies to all charities, including all charitable organizations. The calculation of the 3.5% disbursement quota is based on the average value of property owned by the charity at any time in the 24 months before the beginning of the fiscal period, which was not used directly in charitable activities or administration. If the total of the charity's assets not used in charitable programs does not exceed $25,000, it will not have a 3.5% disbursement quota and it will not have to calculate the 3.5% disbursement quota.[94]

A charitable organization may receive other funds, such as business revenue, which are not subject to any distribution requirement.

### [¶11,630] Charitable Organizations — Revocation of Registration

The registration of a charitable organization may be revoked if it ceases to comply with the requirements for registration or breaches any of its obligations to report or maintain proper records.[95] In addition, registration may be revoked if:

(1) The organization carries on a business not related to its charitable activities (see ¶11,618, above).

(2) The organization fails to expend, in a particular taxation year, on charitable activities carried on by it and by way of gifts to qualified donees (see ¶11,618), amounts the total of which is at least equal to the organization's disbursement quota for that year. The disbursement quota requirement for charitable organizations is described at ¶11,628.

(3) Effective from June 2013, the organization makes a gift in a taxation year other than one made in the course of charitable activities carried on by it or to a qualified donee. This rule removes an argument previously available that once a charity had met its disbursement quota it was free to

See page ii for explanation of footnotes.

[94] CCH ¶21,924; Sec. 149.1(1) "disbursement quota".

[95] CCH ¶23,220; Sec. 168(1).





make distributions to foreign charities, which would not qualify as registered charities.

(4) The organization obtained its registration on the basis of false or deliberately misleading information. The Minister will also be able to assess the revocation tax at the same time as the proposed deregistration notice to avoid the dissipation of assets and, provided judicial authorization is obtained, to begin immediate collection of the revocation tax (see ¶11,613). This expedited revocation power applies to proposed deregistration notices issued after June 13, 2005.[96]

The Minister may also revoke the registration of:

(a) a registered charity if it makes a gift to another registered charity and it can reasonably be considered that one of the main purposes of making the gift was to unduly delay the expenditure of amounts on charitable activities;

(b) the recipient charity referred to in (a) if it can reasonably be considered that it acted in concert with the donor;

(c) any registered charity if a false statement was made in circumstances amounting to culpable conduct in the furnishing of information for the purpose of obtaining registration of that charity; and

(d) a registered charity, if, for taxation years ending after March 3, 2010:

  (i) it has in a taxation year received a gift of property (other than a "designated gift") from another registered charity with which it does not deal at arm's length; and

  (ii) it has expended before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of such property on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length.[97]

The rule in (d) essentially provides that when a registered charity receives a gift of property from a non-arm's length charity, it will need to spend an amount equal to the fair market value of the property on its own charitable activities or transfer the amount by way of gift to arm's length qualified donees within the current or subsequent taxation year or else its registration may be revoked. However, for taxation years ending after March 3, 2010, if the donor charity designates all or a portion of the gift of property in its information return for the year as a "designated gift", the designated portion will not be subject to the immediate disbursement requirement in the hands of the recipient charity.[98]

See page ii for explanation of footnotes.

[96] CCH ¶21,932; Sec. 149.1(2).

[97] CCH ¶21,934a; Sec. 149.1(4.1).

[98] CCH ¶21,923a; Sec. 149.1(1) "designated gift".



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With the heightened concern of terrorism, with respect to gifts accepted after February 10, 2014, the Minister's authority to revoke the registration of a charity is expanded if the charity accepts a gift from a foreign state listed in the *State Immunity Act*. The list in that Act identifies those governments where the Governor in Council is satisfied there are reasonable grounds to believe that the state supported or supports terrorism.

The CRA is now also allowed to refuse or revoke registration of a charitable organization or to suspend its ability to issue receipts, if a director, trustee, officer, or any individual who controls or manages the operation of the organization has been found guilty of a "relevant criminal offence" which has not been pardoned or a "relevant offence" in the last five years.[99] A "relevant criminal offence" is a criminal offence relating to financial dishonesty, including tax evasion, theft, and fraud, or any other offence pertaining to the operation of the charity.[100] A "relevant offence" is any other offence relating to financial dishonesty, including one under charitable fundraising legislation, consumer protection, or securities legislation.[101] However, in a Release dated June 7, 2011, the Charities Directorate of the CRA pointed out that, in more limited cases, the offence might not involve financial dishonesty, but is nonetheless relevant to the operation of the charity or association (e.g., an offence which if repeated by the individual could inflict harm on the organization or its beneficiaries).

A registered charity which expends a "disbursement excess" may apply such excess to satisfy its minimum disbursement requirements in the immediately preceding taxation year and five or fewer of its immediately subsequent taxation years.[102] Disbursement excess means the amount, if any, by which the aggregate of amounts expended in the year by the charity in charitable activities carried on by it or by way of gifts to qualified donees exceeds the minimum disbursement requirement.[103] For example, if a registered charity expended $100,000 in a year when its minimum disbursement requirement was $75,000, the registered charity may apply the $25,000 excess to its immediately preceding taxation year if it failed to meet its minimum disbursement requirement in order to eliminate such shortfall, or the excess may be carried forward and applied in any of the five subsequent taxation years as a credit which goes toward satisfying its minimum disbursement requirements in those years.

A charity that was registered to promote education and provide relief of poverty and sickness in a foreign country had its registration revoked when it did not comply with the Act.[104] The specific infractions included: a $20,000 grant to a museum that was reported as a scholarship; failure to issue a T4 slip for salary paid to an employee; donation receipts that could not be reconciled with the T3010 return and financial statements; and a

See page ii for explanation of footnotes.

[99] Sec. 149.1(1) "ineligible individual".

[100] Sec. 149.1(1) "relevant criminal offence".

[101] Sec. 149.1(1) "relevant offence".

[102] CCH ¶21,950; Sec. 149.1(20).

[103] CCH ¶21,951; Sec. 149.1(21).

[104] The Canadian Committee for the Tel Aviv Foundation, 2002 DTC 6843.





brochure produced by the agent that mentioned specific Canadian donors for projects claimed as the charity's projects. The latter practice suggested that the individual donor or the agent, and not the charity, was in control of where and how funds were disbursed and how contributions were recognized. The decision to revoke the charity's registration was upheld on the ground that a registered charity cannot act as a conduit for funds to be funnelled overseas and needs to show that it has direction and control over its activities, including the use of its funds by an agent.

## [¶11,631] Charitable Organizations — Revocation Tax

A charity whose registration is revoked loses its tax-exempt status and its ability to issue tax receipts. It must also transfer its assets within one year from its revocation to one or more registered charities. For notices of revocation issued after December 31, 2004, the ability of a revoked charity to divest assets within one year does not apply if the CRA obtains authorization from a judge to commence collection proceedings before that time. Any property remaining one year after revocation must be transferred to the Crown. This transfer of property is often referred to as the "revocation tax".

The 2004 Budget restricted the eligible transfers on revocation to "eligible donees". Eligible donees only include registered charities that are in compliance with the Act, are not the subject of a certificate under the *Charities Registration (Security Information) Act*, and more than 50% of the directors or trustees of which deal at arm's length with each director or trustee of the charity whose registration is revoked. Other qualified donees such as municipalities, foreign universities, and United Nations agencies are not eligible for transfers on revocation. The intent is to keep the money invested within the charitable sector in Canada and applied to charitable purposes that are analogous to those for which the funds were originally raised. This measure applies to notices of intended revocation issued after June 13, 2005.[105]

## [¶11,632] Charitable Organizations — Intermediate Sanctions

Before the 2004 Budget revisions to the regulatory regime for charities, the only sanction available to the CRA in response to non-compliant charities was the revocation of its status as a registered charity. Because of its harshness, revocation was seldom imposed for minor infractions and lesser forms of non-compliance could go unchecked. The revised regulatory regime implements more effective sanctions that are more appropriate than revocation for relatively minor forms of non-compliance. This sanction regime applies in respect of taxation years beginning after March 22, 2004.

For specific incidents of non-compliance, these sanctions include:

See page ii for explanation of footnotes.

[105] Sec. 188(1.1).



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