

Family

Accounting, legal fees related to support payments may be tax deductible

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(July 7, 2023, 11:25 AM EDT) -- If a client retained a lawyer and/or an accountant in the past year to establish, apply for, vary, or collect late child or spousal support payments, they may be entitled to claim a tax deduction with respect to the legal and/or accounting fees that were paid.

Given the complexity of tax laws, we found it useful to provide an overview of the provincial and federal rules relating to the deductibility of legal and/or accounting costs related to support payments.

Quebec

At the provincial level, s. 336.0.5 of the *Taxation Act* provides that a taxpayer (either the recipient [referred to as the "creditor of support"] or the payer [referred to as the "debtor of support"]) may deduct, in computing his or her income for a taxation year, judicial (e.g., stamps to institute proceedings, bailiffs fees, and stenographers fees) and extrajudicial (i.e., counsel fees) expenses incurred in the determination or review or collection of a support amount under a court order.

For Quebec tax purposes, the term "support amount" means an amount payable as an allowance on a periodic basis for the maintenance of a recipient who is the spouse or former spouse, father, or mother of a child of the payer, a child of the recipient or both of them. As a result, the deduction is allowed for legal fees with respect to either spousal or child support, even though child supports are non-taxable for the recipient and non-deductible for the payer.

Federal

At the federal level, there is no specific legal provision allowing for the deduction of legal and accounting fees with respect to support payments.

We must therefore turn to the general tax rules, which are summarized by the Canada Revenue Agency in its Income Tax Folio S1-F3-C3.

Under the general rules, and in accordance with paragraph 18(1)(a) of the *Income Tax Act*, no deduction can be made unless the expenses are incurred for the purpose of gaining or producing income from a business or property. Thus, only the recipient may deduct in computing his or her income such fees to the extent that they were incurred in determining the amount of support owed to him or her by his or her spouse or former spouse, or in determining, reviewing, disputing or recovering the amount of support owed by his or her spouse, a former spouse, or the parent of his or her child (if the entitlement to support has already been established by a court order).

Further, we note that child support payments do not constitute "exempt income" as that term is defined in the *Income Tax Act*, even if those payments are non-taxable. As such, the rule at paragraph 18(1)(c) of the *Income Tax Act* restricting the deductibility of expenses relating to exempt

income is not applicable to legal fees incurred in connection with child support payments.

Finally, it should be noted that among the criteria that must be met in order for the deduction to be eligible at both the federal and provincial levels, the legal and/or accounting fees must not have been deducted in a previous year, must not have been reimbursed and the taxpayer must not be entitled to their reimbursement.

In this context, it is important to keep invoices and receipts for any legal and accounting fees paid. In addition, in order to help clients minimize their taxes, it is common practice to prepare a letter outlining the total legal fees paid during the year with an estimate of the legal fees relating to support issues.

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