

From: MinMail - CourrierMin [<mailto:MinMail.CourrierMin@cra-arc.gc.ca>]
Sent: Tuesday, March 15, 2011 1:02 PM
To: Williams, Joann
Subject: concerning payments to be made from the Nortel Health and Welfare Trust
Importance: High
Sensitivity: Private

Ms. Joann Williams, BSc., FSA, FCIA
jwilliams@wpi.ca

Dear Ms. Williams:

Thank you for your correspondence of February 2, 2011, concerning payments to be made from the Nortel Health and Welfare Trust. Thank you as well for taking the time to explain your concerns in person to Messrs. Ian West and Wayne Adams on February 16. The comments provided were extremely helpful in informing the discussion as well as the CRA's understanding of the situation. I also received a copy of your correspondence dated February 17, 2011, addressed to the Honourable James M. Flaherty, Minister of Finance, and several of his provincial counterparts.

The confidentiality provisions of the *Income Tax Act* do not allow me or officials of the Canada Revenue Agency (CRA) to comment on the tax issues of any taxpayer, including a trust, without that taxpayer's written authorization. However, I can offer you the following general information about the income tax aspects of your various concerns.

When discussing health and welfare benefits in the employment context, the CRA is typically referring to employer-sponsored arrangements that provide coverage for any combination of benefits such as medical and dental expenses, life insurance coverage, and benefits payable in the event of accident, illness, or maternity/paternity. It is the decision of the employer to offer all, some, or even no health and welfare benefits to its employees. It is also the employer's choice whether employees will be required to contribute to the cost of such benefits.

If an employer decides to offer a benefit program to its employees, the program can be structured in a variety of ways. The method chosen for the delivery of benefits is a business decision of the employer. For example, an employer may purchase contracts of insurance and pay premiums to an insurer for the coverage purchased. Alternatively, an employer might provide such benefits on a pay-as-you-go basis. In general terms, under a pay-as-you-go arrangement, an employer would simply pay the particular benefit out of general revenue when presented with an eligible claim by an employee under the benefit program. The concept of the health and welfare trust emerged several decades ago as an alternative means through which an employer could provide health and welfare benefits to employees.

The health and welfare trust developed as an industry response to situations in which employers did not want to purchase contracts of insurance, but employees (and/or their union representatives) wanted a somewhat higher degree of assurance than provided

under a pay-as-you-go arrangement. The concept of the health and welfare trust was proposed to ensure that interposing a trust did not create any unintended tax results in terms of preserving the non-taxable status of employment benefits and employer deductions for contributions to the trust.

As administrator of the Act, the CRA's role with respect to health and welfare trusts is limited to the taxation of benefit payments to employees, the deductibility of the employer's contributions to the trust, and the taxation of income earned within the trust. There are no provisions in the Act that give the CRA the authority to require an employer to offer benefits to its employees or to dictate to an employer which employees should receive a particular benefit. It is not the CRA's responsibility as tax administrator to require an employer to ensure any minimum level of funding. It is also not a function of the administration of the Act to ensure that benefits offered by an employer continue indefinitely.

In the course of winding up a health and welfare trust, its authorized representatives may decide to request an advance income tax ruling in order to confirm the tax consequences of distributions from the trust. However, it is not the role of the CRA to determine what amounts should be distributed or to whom on wind-up. It is also not within the CRA's authority to override the particular distributions directed by a court order, such as the one you refer to in your correspondence.

While I am sympathetic to the situation facing the individuals you represent, the Act does not give officials of the CRA the authority to intervene in the manner you have requested.

I trust that the information I have provided clarifies the CRA's position on this matter.

Yours sincerely,

Keith Ashfield
Minister of National Revenue