
2007-8 Canadian Tax Foundation Regional Student-Paper Awards

Each year, the Canadian Tax Foundation awards up to four regional student-paper prizes. Depending on the merit of the papers received, one prize may be awarded for each of four regions of the country: Atlantic Canada (the Canadian Tax Foundation-McInnes Cooper Award), Quebec (the Canadian Tax Foundation-Jean Potvin Award), Ontario (the Canadian Tax Foundation-Fasken Martineau DuMoulin Award), and western Canada (the Canadian Tax Foundation-Bert Wolfe Nitikman Foundation Award). Papers must be written as a requirement of a tax-related course, including directed research courses, and can address any aspect of the Canadian tax system, including comparative analyses, tax policy, tax compliance, tax planning, and tax system design. Papers may be written in either English or French and must be recommended for award consideration by the professor or instructor of the course.

Papers will be reviewed by three independent reviewers, and abstracts (of 400 words or less) of the award-winning papers will be published in the *Canadian Tax Journal*. The authors of the winning papers will also receive a cash prize from the firms or institutions sponsoring the awards and a complimentary one-year membership in the Foundation, entitling them to receive complimentary copies of many of the currently issued Foundation publications, including the *Canadian Tax Journal*, *Canadian Tax Highlights*, *Tax for the Owner-Manager*, and the annual tax conference report, along with a complimentary copy of the current release of TaxFind, the Foundation's electronic research CD-ROM. As members of the Foundation, winners can also take advantage of generous discounts on other publications as well as discounted registration fees for Foundation conferences and courses.

Submissions to the student-paper competition may be addressed to the Canadian Tax Foundation, Student-Paper Competition, 595 Bay Street, Suite 1200, Toronto, ON M5G 2N5, or e-mailed to Leslie Barrett at lbarrett@ctf.ca. Entries must be accompanied by a letter of recommendation from the professor or instructor of the tax course for which the paper was written and must include the student's name, address, telephone number, and e-mail address. The submission deadline for the 2008-9 academic year is June 30, 2009.

THE CANADIAN TAX FOUNDATION-FASKEN MARTINEAU DUMOULIN AWARD FOR ONTARIO

Daniel Lyons

The Canadian Tax Foundation is pleased to announce that Daniel Lyons is the winner of the Canadian Tax Foundation-Fasken Martineau DuMoulin Award for the best Ontario student paper of 2007-8 dealing with an aspect of Canadian taxation.

Mr. Lyons's paper, "The Death of Income Trusts," was written as an LLM thesis in the intensive LLM program in tax at the University of Toronto. Mr. Lyons, who graduated from the Faculty of Law at Queen's University in 2005, received his LLM in 2007. Following is an abstract of Daniel Lyons's paper.

ABSTRACT

On October 31, 2006, the Department of Finance announced that income trusts and other flowthrough entities will be taxed as corporations. The author addresses the effect of this announcement on the future of the income trust as an alternative to the corporation. He looks at the structure of income trusts as a business organization and identifies the potential problems inherent in income trusts vis-à-vis the corporate structure.

The author argues that the decision to use income trusts as a business structure was primarily a tax-driven decision, since its flowthrough ability resulted in fewer taxes paid by the income trust. He concludes that the Department of Finance's decision to impose an entity-level tax on income trusts will lead to a decline in the use and the possible termination of the income trust as an alternative business organization, since it will no longer have a tax advantage over the corporate structure.

THE CANADIAN TAX FOUNDATION-MCINNES COOPER AWARD FOR THE ATLANTIC PROVINCES

Karen Stilwell

The Canadian Tax Foundation is pleased to announce that Karen Stilwell is the winner of the Canadian Tax Foundation-McInnes Cooper Award for the best Atlantic provinces student paper of 2007-8 dealing with an aspect of Canadian taxation. Ms. Stilwell's paper, "Taxation of Partnerships in Canada and the Aggregate-Entity Debate," was written for a Directed Research course of the LLB program at the University of New Brunswick. Ms. Stilwell holds an honours BA from the University of Toronto and an MA from Carleton University. She completed her LLB at the University of New Brunswick in 2008, and she is currently clerking with McInnes Cooper in Halifax. Following is an abstract of Ms. Stilwell's paper.

ABSTRACT

In recent years, the Uniform Law Conference of Canada (ULCC) has undertaken to determine whether partnership law in Canada is due for reform. In particular, the ULCC has questioned whether Canadian partnership law, currently reflective of the aggregate theory of the nature of partnerships, should be reformed to reflect the entity theory. In other words, should partnerships continue to be treated as aggregates of individual partners, or should they be treated as legal entities separate and distinct from the individual partners? The apparent conceptual simplicity of the question belies the reality that the landscape of Canadian partnership law is complex and does not adhere wholly to either model. In spite of its complexity, the law is relatively settled. As a result, a major concern of the ULCC is the potentially negative effect of stirring the pot by enacting a broad reform of partnership law to reflect the entity theory. The author focuses on the question of reform from the perspective of partnership taxation and on the issue of whether the reform would derogate from the ability of partnerships to flow untaxed

income and losses through to partners. She concludes that without substantive amendments to the Income Tax Act, most aspects of partnership taxation, including the ability of partnerships to flow untaxed income and losses through to partners, will be immune to such changes to general partnership law.

THE CANADIAN TAX FOUNDATION-JEAN POTVIN AWARD FOR QUEBEC

Mark R. Rintoul

The Canadian Tax Foundation is pleased to announce that Mark R. Rintoul is the winner of the Canadian Tax Foundation-Jean Potvin Award for the best Quebec student paper of 2007-8 dealing with an aspect of Canadian taxation. Mr. Rintoul's paper, "Spectrum of Sameness: The Tests of Loss-Streaming Rules," was submitted as his thesis for the Master of Laws (Taxation) program at HEC Montréal/University of Montréal. He also holds an MBA from HEC Montréal and a BA in economics from McGill University. He is a senior manager with Buchanan Barry LLP's Tax and Valuation Service in Calgary. Following is an abstract of Mr. Rintoul's paper.

ABSTRACT

Generally referred to as the "loss-streaming rules," subsection 111(5) of the Income Tax Act provides specific instances in which a corporation's non-capital losses incurred before an acquisition of corporate control may be deducted from the corporation's income generated after the acquisition of control (and vice versa). Because the provision was not conceived to allow the transfer of losses between parties, the carefully crafted and restrictive language of subsection 111(5) reflects Parliament's effort to limit loss trading. The narrowness of the subsection's relief is largely established by two conditions that permit the deduction of losses only where the losses' origin is ostensibly the same as the origin of the profit against which the losses are to be offset. These conditions have come to be known as the "same business" and "similar services or properties" tests.

Notwithstanding that subsection 111(5) was last substantially amended more than 25 years ago, its interpretation remains the subject of debate. The author examines the statutory and jurisprudential evolution of the tests and conditions of subsection 111(5) and its predecessors, revealing a half century of inconsistency in the case law as well as a general trend toward broadening the opening through which loss carryforwards and carrybacks can pass after an acquisition of control. The author first analyzes the provision as it currently reads and establishes the conditions that it imposes. In particular, he focuses on the two tests aimed at restricting loss streaming, which have received considerable attention in the courts. He then examines both the courts' and the Canada Revenue Agency's approaches to these tests by reviewing the case law, doctrine, and administrative policy pertaining to each test. He considers the differences between the "same business" test and the test applicable under regulation 1101(1), the purposes of both of which are ostensibly the same. He concludes with a summary that clarifies the loss-streaming rules and that will be of use in the structuring of control acquisitions without jeopardizing non-capital losses.