

Caught by the Calendar

Potential homeowners need to watch dates with RRSP withdrawals under the Home Buyers' Plan

COURT REPORT

BY JAMIE GOLOMBEK



The federal Home Buyers' Plan (HBP) allows a first-time home buyer, along with

his or her spouse or common-law partner, to withdraw up to \$20,000 each from a Registered Retirement Savings Plan to purchase a first home.

Under the plan, the RRSP must be repaid over a 15-year period, beginning with the second calendar year after the year of withdrawal. Interest is not charged on the RRSP withdrawal nor will it be taxed, provided the minimum payments are repaid to the RRSP over the 15-year period.

A tax case released last month (*Loh v The Queen, 2007 ICC 740*) focuses on a little-known quirk in the tax rules, which could have had unintended consequences for the taxpayer involved.

On October 20, 2003, Joseph Loh and his wife signed an offer on a house and on that day, withdrew \$13,837 from his RRSP under the HBP to finance the deposit on the home. Sadly, the deal fell through.

That being said, under the HBP rules, you don't actually have to purchase a qualifying home until October 1st of the following year in order to have your withdrawal still count as an HBP withdrawal and thus be excluded from your income.

The Lohs found another home in April 2004 and at that time, Loh withdrew approximately \$6,300 from his RRSP such that the total withdrawal was about \$20,000.

The problem was that this second withdrawal occurred in a subsequent calendar year. Under the technical rules, since Loh had an HBP balance owing of \$13,837 at the end of 2003, he was not permitted to participate in the HBP program again until this balance was repaid.

The Canada Revenue Agency therefore reassessed Loh for 2004, including the \$6,300 withdrawn that year in his income and finding that it was not a qualifying HBP withdrawal.

While the HBP rules certainly contemplate multiple withdrawals from an RRSP to purchase a home, the rules assume those multiple withdrawals occur within the

same calendar year.

As the judge explained, though, the *Income Tax Act* "recognizes the realities of buying and financing homes by allowing for such things as a first purchase falling through, closing in the next year and the like."

Accordingly, a special deeming rule in the Act states that any withdrawals under the HBP made in January of a particular year ("or at such later time as is acceptable to

the Minister") are deemed to have been an eligible HBP withdrawal of the prior year.

The question before the court therefore boiled down to whether Loh's 2004 withdrawal, which was

The problem was that this second withdrawal occurred in a subsequent calendar year.

made in early April 2004, and not in January 2004, "is or is not such a later time as was acceptable to the Minister."

Based on the evidence, the judge was unable to determine whether or not the Minister (i.e., the CRA) ever considered whether April 12, 2004 was an "acceptable" time "consistent with the Minister not having turned her mind to this special rule nor having decided, as she is clearly required to do, whether or not April 12, 2004 was or was not an acceptable later time in the particular taxpayer's circumstances."

As a result, the judge ruled in favour of the taxpayer, finding that

since the CRA did not opine as to whether April 12 was an acceptable date, it would be inappropriate to conclude that the CRA found the date unacceptable and thus the \$6,300 can properly be excluded from Loh's 2004 income since it can be deemed to be part of the 2003 qualifying HBP withdrawal. The Judge noted that the CRA has until July 21, 2008 to again reassess Loh for the 2004 withdrawal. **AER**

Jamie.Golombek@aimtrimark.com
Jamie Golombek, CA, CPA, CFP,
CLU, TEP is the vice-president,
Taxation & Estate Planning, at AIM
Trimark Investments in Toronto.