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CANADA REVENUE AGENCY: ABANDONING AN UNTENABLE POSITION

by **Donald H. Layh, Q.C.**

Your Credit Union is undoubtedly familiar with Requirements to Pay issued by Canada Revenue Agency (CRA). A Requirement to Pay can visit legal difficulty upon a Credit Union if handled incorrectly. Credit Unions must not only be aware of the legitimate obligations that a Requirement places upon Credit Unions, but must also be aware of the false interpretation that the Winnipeg office of CRA has recently advanced to certain Credit Unions.

Several officers of CRA from the Winnipeg office have suggested that a Requirement to Pay not only obligates a Credit Union to provide to CRA funds held on deposit to the credit of the taxpayer, but also obligates a Credit Union to forward to CRA any funds the Credit Union may have received from the taxpayer toward payment of the taxpayer's loans at the Credit Union, if the Credit Union has received such payments after receipt of the Requirement to Pay. In at least one instance, CRA requested the Credit Union to disgorge mortgage payments that it received after receipt of the Requirement to Pay. Faced with CRA's insistent demands based on an alleged statutory right to intercept the payment, the Credit Union provided the mortgage payments to the Agency.

CRA's position was based on an erroneous interpretation of section 224 of the *Income Tax Act*. Layh & Associates called upon CRA, over several months of correspondence and unanswered telephone inquiries, to justify its untenable interpretation of the Act. When no answer was forthcoming, we lodged our concerns with the Minister of National Revenue, The Honourable Gordon O'Connor.

The Minister, in correspondence of April 3, 2008, offered the following helpful comments which completely reversed the untenable position that the Winnipeg office had previously tenaciously exerted. He wrote:

It is not the intention of the CRA to use requirements to pay in the example that you have outlined; namely, in circumstances where a member of a credit union provides funds to a teller to pay a utility bill or make a loan payment. The requirements to pay do not apply since the credit union is not liable to make a payment to the tax debtor, and, therefore, a debtor-creditor relationship does not exist. However, should the tax debtor deposit funds to an account, then a debtor-creditor relationship exists. In such a situation, the Requirement to Pay would apply and serve to attach the amount on deposit as well as amounts that may be deposited in the future, within the one-year period.

Not only did the Minister reverse the insupportable position previously held by the Winnipeg office, he offered his regrets about the manner in which the Winnipeg office had ignored our office's repeated inquiries, stating:

I also regret that your previous correspondence was not replied to in a timely manner. The CRA recognizes that the highest level of public confidence must be maintained if tax related legislation is to be administered efficiently. Standards are set to ensure that CRA employees conduct themselves professionally and provide individuals with quality service. In this regard, I have forwarded a copy of your correspondence to Mr. Douglas E. McLean, Director of the Winnipeg Tax Services Office, so that he may be made aware of the situation.

The Honourable Minister must be commended for his intervention. Credit Unions now must account for funds on deposit, but nothing in a Requirement to Pay disallows a Credit Union from receiving continued payments of outstanding loans owed by the taxpayer to the Credit Union.

If your Credit Union has acceded to the demands of CRA and paid to the Agency funds received from a taxpayer toward a loan obligation, you should seek return of the money paid under CRA's erroneous request.

For more information on CRA and Requirements to Pay, please contact Layh & Associates at (306)743-5520 or email info@layhlaw.com. Layh & Associates offers national services in areas of debtor creditor, bankruptcy and insolvency, and personal property security law. In January 2009, Layh & Associates will open a Manitoba office in Russell. Visit our website at www.layhlaw.com.