



Blair P. Dwyer
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900-1175 Douglas Street
Victoria BC V8W 2E1

August 24, 2006

Dear Mr. Dwyer:

Re: Technical Interpretation of the status of the payment of the "Lost Opportunity Amount" from the BC Forestry Revitalization Trust (reference 2006-017235)

This is in response to your letter of June 30, 2006, wherein you indicated that in our technical interpretation 2006-017235 we misstated your view regarding the tax treatment of the "Lost Opportunity Amount". In our letter, we indicated that it was your opinion that the amount would be taxable as government assistance pursuant to subparagraph 12(1)(x) of the *Income Tax Act* (the "Act"). However, you request that we reconsider our opinion because it is your view that such amounts would not be taxable. Specifically, you indicate that paragraph 12(1)(x) of the Act does not apply because the payment is "not tied to any specific cost or any particular outlay or expense".

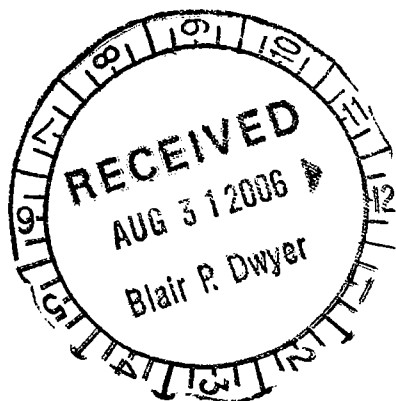
Our Comments:

We agree that subparagraph 12(1)(x)(iv) of the Act does not apply unless the amount paid as a "Lost Opportunity Amount" is in respect of the cost of property or an outlay or expense. However, we would note that subparagraph 12(1)(x)(iii) of the Act will apply if such payments are considered an inducement. Whether or not the payments are inducements is a question of fact and can be determined only after looking at all the relevant documents and surrounding circumstances. If the amount is not taxable under either subparagraphs 12(1)(x)(iii) or (iv), it is our view that the payment would generally be taxable as income from a business under subsection 9(1) of the Act. As a general rule where a payment is intended to compensate for lost income, the amount is taxable under subsection 9(1) of the Act as business income. In certain situations where the amount is intended to compensate for the destruction or material crippling of the whole structure of the profit making apparatus of a business, the amount will be considered a taxable capital receipt.

Yours truly,

Randy Hewlett
For Director
Business and Partnerships Division
Legislative Policy and Regulatory Affairs Branch

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Your file / Votre référence

Our file / Notre référence

2006-019405

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