

Canada Revenue Agency Technical Interpretation number 9506405, *Union dues – weekly levy – funds for lawsuit*  
9506405 — Union dues — weekly levy — funds for lawsuit

Date: May 2, 1995

Reference: 8(1)(i)(iv), 8(5)(c)

Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the Department. Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle du ministère.

**PRINCIPAL ISSUES:** whether a \$5.00 per week levy on all union members is a deductible union due. Levy is the result of the high cost of a law suit against XXXXXXXXXXXX

**POSITION TAKEN:** Even if we accept that the due meets the definition of "annual" as determined in Lucas and that the levy has been presented to the membership as necessary to maintain membership, we believe that the provisions of 8(5)(c) will deny the deduction as the fund appears to be a special purpose fund (not an operating expense that could reasonably be considered an "ordinary operating expense").

**REASONS FOR POSITION TAKEN:** based on review of comments in IT-103R and 1993 Legal Opinion 950640

XXXXXXXXXX Sandra Short  
Attention: XXXXXXXXXXXX

May 2, 1995

Dear Sirs:

Re: **Union dues: \$5.00 per week levy to fund court action**

This is in reply to your letter of March 7, 1995 wherein you have asked whether a \$5.00 per week levy on all members may be deducted by the members as "union dues" under the Income Tax Act (the Act). As we understand it, your local union has commenced a law suit against XXXXXXXXXXXX Because the cost of this action will be very high, the union has passed a \$5.00 per week levy to generate funds for the court action. You have stated that this action is no different than arbitrations that you do on an ongoing basis.

XXXXXXXXXX

#### **Our Comments**

Subparagraph 8(1)(i)(iv) of the Act provides that in computing a taxpayer's income for a taxation year from an office or employment, there may be deducted amounts paid by the taxpayer in the year as "annual dues to maintain membership in a trade union". Subsection 8(5) of the Act, however, states that annual dues of a member of a trade union are not deductible, to the extent that they are, in effect, levied

- (a) for or under a superannuation fund or plan,
- (b) for or under a fund or plan for annuities, insurance or similar benefits, or

(c) for any other purpose not directly related to the ordinary operating expenses of the trade union to which they were paid.

Hence, in order for the membership dues to be deductible under subparagraph 8(1)(i)(iv) of the Act, the amounts paid must be, among other things, "annual" dues to "maintain membership" and not a special assessment made during a year. While the Department has accepted the Federal Court - Trial Division's conclusion in the case of *Lucas v. The Queen* [[1987] 2 C.T.C. 23] (87 DTC 5277) that amounts only need to be capable of recurring in order to be considered "annual" for purposes of subparagraph 8(1)(i)(iv) of the Act, we have not been advised that the \$5.00 per week levy is required to "maintain membership"; however, we have assumed this to be the case for the purpose of the remainder of our reply.

It is our opinion that the provisions of subsection 8(5) of the Act, specifically paragraph (c) therein, would serve to deny the deduction of the dues to the members. The \$5.00 per week levy is, in our view, for a special purpose fund and is "not directly related to the ordinary operating expenses of the trade union to which they were paid".

We believe that a union's "ordinary operating expense" can be defined as an expenditure which falls into place as part of the undistinguished common flow of the trade union's activity; that the expenditure forms part of the normal business as carried on, calling for no remarks and arising out of no special or particular situation. We understand your position to be that this action is no different than arbitrations that are done on an ongoing basis. It is our view that the suit against XXXXXXXXXX is an action which has arisen out of a special or particular situation and is itself a special situation. We believe that this situation goes beyond that which is ordinarily and frequently encountered in negotiations to promote working conditions and matters routinely settled through arbitration.

Based upon our review of the case, it is our view that the \$5.00 weekly levy is a payment into a special purpose fund and hence a non-deductible union due.

We trust our comments will be of assistance to you.

Yours truly,  
P.D. Fuoco for  
Director Business and General Division Income Tax Rulings and Interpretations  
Directorate Policy and Legislation Branch