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Why boutique tax credits may be more trouble than they're worth

By Jamie Golombek

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If you were involved in the preparation of your 2015 tax return, you will no doubt be intimately familiar with the plethora of so-called "boutique" tax credits that fill up an entire page of the return. There are credits for volunteer firefighters, search and rescue volunteers as well as first-time home buyers.

While the most recent federal budget announced the elimination of four of the credits come 2017 - namely the children's fitness and arts credits as well as the education and textbook credits for students - the Liberals introduced another, new boutique credit for teachers' classroom supplies.

A week after the budget, Finance Minister Bill Morneau told The Canadian Press in a roundtable interview that he was "going to embark on looking at the tax expenditures in the code and making sure they are all consistent with our approach to tax fairness."

"Tax expenditures" is a term favoured by tax policy junkies to describe government spending to promote certain programs - such as the arts, physical fitness or post-secondary education - or that target certain segments of the population, such as parents, seniors or pensioners. These expenditures are administered through the tax system and are often delivered in the form of tax credits.

In a paper published earlier this year by law professor Neil Brooks of York University titled "The Case Against Boutique Tax Credits and Similar Tax Expenditures," Brooks comes down heavily against the use of such credits. He believes boutique tax credits, along with almost all other tax expenditures, "impair the legitimacy of the tax system and hobble it in the pursuit of its primary functions - raising revenue and redistributing income." He further argues that boutique tax credits "violate almost every criterion of a well-designed spending program."

Often, the rules surrounding the eligibility, administration and enforcement of some of the credits are mind-bogglingly complex to decipher, and in some cases, the effort needed by taxpayers for a successful claim can outweigh the value of the tax credit being sought.

Take, for example, a case decided last month in Tax Court regarding an Oakville, Ont., man's eligibility for the public transit tax credit. Under the Income Tax Act, you can claim the cost of monthly or annual public transit passes that permit unlimited travel on either local buses, streetcars, subways, commuter trains, buses or ferries.

In some cases, electronic payment cards can also qualify, if the card is used to make at least 32 one-way trips during an uninterrupted period no longer than 31 days, provided you can get a receipt that proves both the cost and usage of the card.

In the tax case, the Canada Revenue Agency denied the taxpayer's transit credit for the use of his PRESTO card to pay for transit services to commute to and from work in downtown Toronto. The reason for the denial was that the taxpayer, by the time he was reassessed by the CRA in 2015, was no longer able to obtain records from the transit authority relating to his 2013 PRESTO purchases.

The judge estimated that the taxpayer took more than 400 one-way trips in 2013 and, although he was able to produce credit card transaction history for all his PRESTO purchases, this wasn't good enough for the CRA, as it specifically required proof of usage.

Luckily, the judge was sympathetic to the taxpayer's plight and, despite lacking the appropriate proof of usage, allowed the credit, saying that "there has to be some guideline by the CRA on an administrative basis that allows for substantial compliance using other evidentiary means where that (transit) organization fails to issue the required documentation."

This case serves an example of both the trouble and cost associated with administering and enforcing a boutique tax credit.

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References

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