

Dear Members of the House of Commons Standing Committee on Finance,

We appreciate the opportunity to make a submission to your committee as you consider your recommendations for the 2017 Federal Budget. MNP is the fifth largest national accounting, tax and business consulting firm in Canada. We proudly serve and respond to the needs of our clients in the public, private and not-for-profit sectors, and are an active partner in building Canada's economy and its communities. Our submission relates to your request for recommended federal measures that could assist Canadians living in rural and remote communities throughout Canada. In particular, we propose that your committee take this opportunity to address an inequitable situation regarding the taxation of Hutterite Colonies in Canada.

MNP has been representing Hutterite Colonies for almost 60 years, and to date, we have approximately 350 Hutterite Colonies as clients. This represents well over 90% of all Hutterite Colonies in Canada and their 40,000 members. Our Hutterite specialists have hundreds of years of combined experience in Hutterite matters, and we consider ourselves the subject matter experts.

The stated intent of the current legislation related to the taxation of Hutterites is clear: Hutterite Colonies should be "taxed in the same manner as their non-Hutterian neighbors", that is "be treated favourably, but not more favourably than other taxpayers". These quotes are taken from the Third Session of the Thirtieth Parliament of the Senate of Canada, on Wednesday November 30, 1977.

As well, the 1977 Notice of Ways and Means Motion ("NWMM") enacting the legislation of s.143 stated the following:

"be required to pay taxes as though the organization were an inter vivos trust, but be given an option to calculate its tax payable **as the aggregate of the taxes that would have been payable by the families in the organization had its income been apportioned and taxed in their hands**".

Over the last forty years, as the Income Tax Act ("ITA") has evolved, s.143 of the ITA, dealing with Hutterite Colonies, has remained largely unchanged. The result is that the stated intentions of s.143 are no longer achieved. This is evidently an unintended consequence of Parliament. MNP would like to work with Parliamentarians and the government to find solutions that meet the stated intentions of the legislation and to provide equality for Hutterites.

History of the Taxation of Hutterite Colonies in Canada and Section 143 of the Income Tax Act

By way of background, prior to 1961, Hutterite Colonies were treated as a Church and paid no income tax. However, over time it was determined that while Hutterite Colonies were a Church, they were also engaged in commercial enterprises. It is the Hutterite Colonies' commercial enterprises, their business endeavors, which enable them to support, maintain, instruct and educate all of its Members.

In an attempt to respect the Hutterites' religious beliefs and to ensure fair and equitable tax treatment, the Minister of National Revenue and the Hutterites reached a Memorandum of Understanding ("MOU") which was signed in 1968. The MOU was "the consensus or understanding respecting the application of the ITA to Hutterite Colonies and the Members thereof for the taxation years 1961 to 1967 inclusive" (page 7 of the MOU). Essentially, the MOU allowed the income of the Colony and income of any of its Members to be notionally divided by the number of Members who were 19 years of age or older and not a spinster. Additionally, any income of a married female was deemed to be that of her spouse.

The basic rules of the MOU were brought into the ITA and became s.143 in 1977. Although there were some differences that would have been insignificant at the time, they now have become major challenges.

The Senate's comments, the MOU and the NWMM provides us with clarity as to what Parliament's intentions had been for the legislation of s.143. It is clear that all parties were intending to develop a taxation regime that would result in Hutterites being taxed in the same manner as their non-Hutterian neighbors, yet still respecting the Hutterites unique religious beliefs. It is a great example of collaboration between the Government and the Hutterite community.

Unintended Consequences to be addressed and Recommended Solutions

Over time s.143 of the ITA has not been updated to reflect other changes made to the ITA. This has resulted in Hutterites being treated differently than non-Hutterites. The following are some critical issues that have arisen through the evolution of tax policy. With each issue we are providing our recommended solutions.

1. Source or Character of the Income – The urgency for this issue is because the Canada Revenue Agency ("CRA") is interpreting the legislation to deny members of Hutterite Colonies their claims for the Working Income Tax Benefit ("WITB"). Hutterites have been claiming the WITB since its introduction in 2007, and the CRA had been assessing the returns as filed until recently.

The CRA has provided guidance on how both **trust returns** and **personal tax returns** subject to s.143 should be filed, originally in Information Circular 78-5, now in version IC78-5R3 ("IC") Communal Organizations, as well as their T3 Trust Guide and their General Income Tax and Benefit Guide.

The original IC No. 78-5, from April 24, 1978, is very clear at paragraphs 13 – 20, that the net income from business, farming etc. is to be entered on to the Trust Return and financial statements attached. Other sources of income from interest, dividends and capital gains are to be broken down and reported separately. In preparing the T3 Supplementaries, Net Farming Income is to be broken out and reported separately and the other sources of income are to continue to be broken out and reported separately. It clarifies that this separation of different sources of income is to continue on the Personal T1s as well, to ensure that various benefits, such as the “Averaging for Farmers and Fishermen” can be taken.

The current version of the IC states the following:

- 19. When completing the **T3 return**, follow the instructions in the T3 guide, and make sure that you:
 - (f). if the trust is allocating business, farming, or fishing income, enter on Schedule 9, in the area called "self-employment earnings," the total amount of business, farming, and fishing income allocated
- 22. **The trust** has to complete a T3 slip, Statement of Trust Income Allocations and Designations, for each beneficiary (specified adult). When preparing the T3 slip, follow the instructions in the T3 guide, and make sure that you:
 - (d) follow the instructions for "Box 26," if some of the income in box 26 is from farming, fishing, or business activities; (Specifically, the T3 Trust Guide states that where a communal organization has business, farming or fishing income it needs to be marked with an asterisk, and state that it is self-employment earnings)
- 24. When completing the **individual return**, follow the instructions in the General Income Tax and Benefit Guide, and make sure that you:
 - (f) report farming or fishing income on the applicable lines. The income reported by the trust as a footnote on the T3 slip is to be entered at both the gross and net income lines (for example for farming, gross income is line 168 and net income is line 141)

It is clear from the wording of the 1977 NWMM, the MOU, the opening words to s.143 (which subsection only applies if a congregation carries on a business), a number of court cases, the Constitution of the Hutterian Brethren Church (“Constitution”), ICs, other legislation, agricultural programs and the Colony Articles of Incorporation, that the income from a Hutterite Colony is considered farming and/or business income. The CRA has always required that income from a s.143 deemed trust be reported as income from farming, fishing or a business. MNP has followed these rules of reporting for over 55 years and the CRA has assessed them accordingly. However, the CRA’s current position with the WITB contradicts this.

In fact, on January 15, 2015, the CRA changed the form for the WITB. Specifically, the T1 - 2014 Schedule 6 - Working Income Tax Benefit Form at line 5 added "(excluding losses and income from a communal organization)". Please note that “communal organization” is not defined in the ITA, nor is it defined in the Constitution.

The CRA's position on the WITB being unavailable to Hutterites appears to show a complete disregard to the fact that the income for Hutterites is business income. Every other Canadian that farms or has a business is eligible for the WITB (as long as they meet all the other criteria). The MOU, the NWMM, court cases and s.143 would have always intended for Hutterites to have this refundable tax benefit available to them. The only reason for having s.143 is because Hutterites have business income. The goal, from the history of the taxation of Hutterites in Canada, has always been for Hutterites to be treated in the same manner as every other Canadian. Consequently, how can we then possibly justify denying a benefit that is available to all other taxpayers.

There are other situations where the CRA treats income from a deemed s.143 trust as business or farming income, for example for income tax installment purposes, for CPP purposes, for the five-year block averaging that was available to farmers and fishermen, for NISA purposes, for other agriculture programs of the government, and so on.

As well, one can simply look at the facts, Hutterites are farmers and business people. They devote their entire lives to farming and invest millions of dollars into their businesses.

We recommend inserting wording in s.143 that the income, deemed payable for the year to a particular participating member of the congregation, retains its source as farming or business income, interest, capital gains, dividends, etc., and that this be for purposes of the ITA. This would allow eligible Hutterites to collect the WITB.

2. Treatment of individuals under 18 years of age – Hutterites entire lives are spent working within the Colony businesses, as well as on the Colony. Hutterite youth become actively engaged from a young age. In addition, Hutterites traditionally leave public school at the age of 15 to become full-time participants in the business operations. The Provinces have an agreement with Hutterites to allow for this. The inability of Hutterites to recognize the contributions of youth and to allocate some share of income to them creates a significant inequity with their non-Hutterite neighbours. Non-Hutterites can pay their children an amount that is reasonable in the circumstances based upon knowledge and expertise of the child, skills of the child, hours worked, work completed, what would be paid to an arm's length person. The non-Hutterite business owner would then be entitled to a deduction for this amount.

We recommend that Hutterite Congregation be given the option of deducting amounts deemed payable to their children. This would provide them with similar tax treatment as non-Hutterite farmers. These deductions would be taken prior to the application of the formula found in s.143(2)

3. Definition of congregation pursuant to subsection 143(4) – The definition of congregation in s.143(4)(c) states that it “does not permit any of its members to own any property in their own right”. This statement is inaccurate. Neither the Constitution nor the MOU use this terminology. The Constitution states at paragraph 1., the Definitions:

“Colony” means and includes a community, association, congregation or colony, incorporated or unincorporated, comprised of persons who have joined together to have, hold, use, possess and enjoy all things in common, being all of one mind, heart and soul, according to the ways of those whom men call Hutterians...”

It is clear that these important Church documents recognize that Colony members may own property. In order to more accurately reflect the beliefs of the Hutterian Brethren Church, **we recommend that the wording in (c) be exchanged for “the members of which have joined together to have, hold, use, possess and enjoy all things in common”.**