THE TAXMAN HAS NO PLACE IN THE BEDROOMS OF THE NATION, UNLESS YOU CLAIM IT AS A HOME OFFICE

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"There is no place for the state in the bedrooms of the nation," quipped the elder Trudeau back in 1967, when, as justice minister, he announced reforms to the Criminal Code that, among other measures, would decriminalize homosexuality.

But that famous statement doesn't necessarily hold true when it comes to the taxman, who may indeed have a keen interest in what goes on in your bedroom, especially if you try to write it off as a home office.

Take the recent case, decided earlier this month, involving employment expenses. The taxpayer, a former Toronto-based marketing and communications consultant who now lives in Boston, was employed by a private company of which she was the sole director. Her job was to procure clients for the company's advertising business.

In 2016, she claimed home office expenses of $6,207 and motor vehicle expenses of $5,427. The Canada Revenue Agency reassessed her, disallowing about half of these expenses. She appealed to the Tax Court of Canada.

The law

Under the *Income Tax Act*, an employee who pays for various work-related expenses for which they are not reimbursed by their employer may be able to get some tax relief come tax time by claiming a deduction for valid employment expenses.

Typical, deductible employment expenses can include: accounting, legal, advertising and promotion fees, allowable motor vehicle expenses, certain food, beverage, and entertainment expenses, out-of-town lodging expenses, parking, postage, stationery and other office supplies and even work space in your home. For a valid claim, the employee must obtain a properly completed and signed Form T2200, "Declaration of Conditions of Employment."

In the recent case, while the taxpayer had no executed employment agreement, there was a completed Form T2200, which indicated that a home office and a motor vehicle were necessary requirements of her employment.

The CRA agreed, from the outset, that the taxpayer was entitled to deduct employment expenses. A dispute arose, however, as to the quantum of the expenses and what the correct allocation percentage was to be used to divide the expenses between personal and employment purposes.

Home office expenses

To be entitled to deduct home office expenses, an employee must be "required by the contract of

employment" to maintain such an office, as certified by the employer on the T2200. It must also be either where she "principally" (more than 50 per cent of the time) performs her duties of employment or the space must be used exclusively to meet customers on a regular and continuous basis in the course of employment. This requirement must be certified by the employer on the T2200.

As evidence of her deductible home office expenses, the taxpayer submitted a landlord's annual rent statement, a home office floor plan delineating the office vs. personal use, as well as hydro-electric utility statements and evidence of her property insurance cost.

The CRA took issue with the percentage of her home she claimed as tax deductible. In court, the accountant who had prepared her 2016 tax return and who represented the taxpayer, testified that "it was primarily the bedroom that was utilized as a home office." The accountant stated he had claimed 25 per cent of her property expenses as workspace in the home-employment expenses "based on his usual rule of thumb."

The floor plan dimensions submitted to the court, however, indicated that the taxpayer's apartment was 1,475 square feet and her bedroom measured 140 square feet. This would mean that the taxpayer's employment use space was in fact only 10 per cent of the premises. In denying the excess expense, the judge observed: "Since there was only one bedroom in the unit, the room was also used a goodly portion of the time for personal use."

Motor Vehicle Expenses

The second disputed amount related to motor vehicle expenses the taxpayer claimed. She submitted a variety of records to the court to substantiate her auto expenses, which included: a handwritten vehicle log, car insurance invoice, credit card statements showing evidence of fuel purchases, car washes, repairs and maintenance.

While the CRA had no concerns about the legitimacy of the expenses claimed (other than an insurance expense which had been overstated by $450), the issue before the court was the total mileage driven during the year and the amount allocable to personal vs. employment expenses.

To arrive at an appropriate allocation of expenses based on kilometres driven for personal vs. employment use, the court turned to "objective third party evidence," namely the record of the mileage of her BMW when undergoing service. There were six invoices recording various repairs and maintenance throughout 2016 and each invoice consistently logged the mileage of the car. The records measured, incrementally, an increase in mileage from 64,141 km to 74,452 km.

As the judge wrote, "Ten thousand kilometres a year is hardly extraordinary. However, this total was neither the mileage (the taxpayer) asserted she drove the car nor what her driving log recorded she drove." As it turns out, the taxpayer's 2016 tax return showed "a stark contrast to the mileage logged by her garage."

On her return, the taxpayer claimed to have driven only 1,353 kilometres in total, 1,015 of which was recorded "for employment purposes." In other words, her own log disclosed only 10 per cent of the total mileage recorded by the third-party repair shops reflected in the taxpayer's own receipts. Ninety per cent of the total mileage "was missing from all her calculations," observed the judge.

The accountant attempted to explain this discrepancy "as an error by the garage given his experience as an accountant for other clients." But the judge wasn't buying that.

The judge allowed 10 per cent of her motor vehicle expenses to be deductible as employment expense, concluding: “The fact remains that the garage odometer readings were consistent, graduated and normalized throughout the year. It is (the accountant’s) assertion and claim that is the outlier.”