A Guide To Deducting Home Office Expenses As An Employee



The Canadian *Income Tax Act* (the "*Tax Act*") requires employees to meet stringent eligibility criteria before claiming home office expenses, such as using the workspace primarily for the purpose of earning employment income and being required by their employment contract to incur those costs. Eligible taxpayers may deduct a portion of utilities, rent or condominium fees, and a few other minor expenses, such as renewable supplies, from their employment income, under subparagraphs 8(1)(*i*)(i) and (ii) of the *Tax Act*.

This article will provide an overview of the *Tax Act*'s requirements for deducting home office expenses from employment income.

What does the *Tax Act* say about an employee's home office expenses'

Generally, under subsection 8(2) of the *Tax Act*, individuals are not permitted to make any deductions in computing their income from employment for a taxation year, subject to specific exceptions. Accordingly, the *Tax Act* prescribes very specific criteria for employees to be eligible to deduct home office expenses from their employment income. Where an employee intends to claim home office expenses, subsection

8(13) of the *Tax Act* first requires that the home office be either a place where the individual principally performs their employment duties, or a place used exclusively to earn employment income and used on a continuous basis for meetings with customers or other persons in the ordinary course of performing employment duties. If the workspace meets either requirement under subsection 8(13), the *Tax Act* allows home office deductions for office rent, and the cost of supplies consumed directly in the performance of employment duties under subparagraphs 8(1)(*i*)(ii) and (iii). The home office expenses must have been incurred as a requirement of the employment contract, and the taxpayer must not have received, or have been eligible for, reimbursement from their employer.

What kind of workspace qualifies as a home office'

The workspace at home must either be the place where the individual principally performs their employment duties or must be used exclusively to earn employment income and used on a regular and continuous basis for meeting customers or other persons in the ordinary course of performing employment duties. The question of what constitutes "principally performing" one's employment duties at home was considered in *McCann v The Queen*, 2002 CanLII 952 (TCC) ("*McCann*"). In *McCann,* the taxpayer estimated that approximately 60% of her employment duties were performed at her home office, whereas the Canada Revenue Agency (the "CRA") argued that she did not principally perform the duties of her employment from her home office. The Tax Court in *McCann* applied a common-sense interpretation to the statute, finding that the home office was used exclusively for an important aspect of the taxpayer's work, and therefore, "in ordinary parlance this is where she principally does her work."

Taxpayers looking to claim home office expenses should take

steps to partition an area of the home as much as possible for use as a workspace and use that workspace primarily in the performance of their employment duties. They or their employer should consult with an experienced Canadian tax lawyer to ensure that the expenses will be deductible.

Who can deduct home office expenses'

If an individual's workspace at home qualifies as a home office for the purposes of the *Tax Act*, taxpayers must meet additional requirements to deduct home office expenses. These requirements are summarized in the CRA's Interpretation Bulletin, IT352R2, *"Employee's Expenses, Including Work Space in Home Expenses*." An employee claiming home office expenses must obtain an employer certification, Form T2200, "*Declaration of Conditions of Employment*," in which their employer certifies that the employee meets the conditions therein. Specifically, the employer must certify that the employee is required by the employment contract to pay for home office expenses, and that the employee has not been reimbursed and is not entitled to reimbursement for incurring those expenses. The Tax Court in *McCann* stated that the employment contract may either explicitly or implicitly require the employee to incur home office expenses, but the taxpayer must establish that the expenses were essential for the duties of employment to be carried out.

In *Emery v the Queen*, 2003 TCC 568 (CanLII) ("*Emery*"), the taxpayer's employer allowed him to maintain an office at home because it was closer to potential clients than his employer's place of business. The question in *Emery* was whether the taxpayer was "required" by his employment contract to maintain a home office and incur home office expenses. The Tax Court held that a completed Form T2200 itself was not sufficient to establish that he was required to incur home office expenses to carry out the duties of his employment. Instead, the evidence showed that he was merely permitted by his employer

to do so. Absent CRA clarification, the case law suggests that employees who choose to work from home during the pandemic, although not required by their employer to do so, may not be eligible to deduct home office expenses. However, if an employer closes the business premises or restricts the number of employees working there to establish social isolation, then the requirement to work from home has been met.

What types of expenses can be deducted as home office expenses'

The *Tax Act* permits employees to claim home office deductions for office rent, and supplies consumed directly in the performance of employment duties. The CRA's guide, "*T4044 Employment Expenses 2019*" indicates that salaried employees can deduct supplies such as electricity, heating, and maintenance costs. Employees earning commission income can deduct the same supplies, and in addition, property taxes and home insurance. Notably, employees who own the home in which they work cannot deduct mortgage interest or capital cost allowance in respect of the home.

In contrast, employees who rent the home or apartment in which they work can deduct part of the rent from their employment income. Rent and supplies must be deducted reasonably, as a proportion of the home office to the entire home. This generally means that taxpayers should calculate the area of the home office and divide it by the overall finished area of the home and apply this percentage to each claimed home office expense. An exception to this general rule is maintenance because maintenance costs should only be deducted to the extent that they were incurred directly in maintaining the home office.

Pro Tax Tips – Employer reimbursement of

home office expenses

If you are an employee who primarily works from home, it is generally advantageous to be reimbursed by your employer for home office expenses, rather than deducting them on your income tax return. Before claiming home office expenses on your return, be sure to check with your employer to determine if they are willing to reimburse you for your home office expenses. For tax planning related to home offices, or if you have been reassessed by the CRA and were disallowed home office expenses, please contact our experienced Toronto tax lawyers for a consultation.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

by David Rotfleisch
Rotfleisch & Samulovitch P.C.