

Brandt v The Queen, 2013 TCC 70

Deductibility of Employment Expenses by Sales Employee

Brandt v The Queen, [2013 TCC 70](#)

There were two issues:

1. is the appellant entitled to deduct motor vehicle expenses?
2. are the other expenses claimed disallowed deductible under paragraph 8(1)(f)?

FACTS

The appellant appealed the MNR's reassessment disallowing various employment expenses, including motor vehicle expenses, office supplies, meals, entertainment, parking, etc.

The Appellant was a full time employee of IBM Canada as a sale representative with one client only. He provided consulting services to two offices of the client in downtown Toronto. IBM reimbursed some expenses incurred by the appellant, and the appellant claimed expenses above this amount. The MNR assumed that the appellant was required to work away from the employer's offices and use a portion of his home for work, but denied that the home was his primary place of employment, stating that the clients' offices were the primary place of business.

The appellant was not provided designated office space at his employer's offices, but provide work stations where he could log in and access electronic files, and could book meeting space to meet with clients. The client claimed a number of deduction because he realized he had not submitted the receipts to his employer for reimbursement.

ANALYSIS

The TCC stated that each of paragraphs 8(1)(f), (h) and (h.1) disallow expense deductions where the employee receives an allowance that was not taxable because of one or more subparagraphs in paragraph 6(1)(b). Under 8(1)(h.1) expenses in excess of the allowance are deductible where the allowance is reasonable or where not all kilometers travelled in the course of employment are included in the allowance. Paragraph 8(1)(f) uses less restrictive wording than 8(1)(h) and (h.1) – “incurred for the purpose of earning income from employment” vs “expense incurred for travel in the course of employment” – and doesn't require any employment duty to be carried out in the course of the travel itself. Different words indicate different tests intended by Parliament. The Court stated:

[36] Paragraph 8(1)(f) allows the deduction of expenses incurred by a taxpayer for the purpose of earning income from employment where the taxpayer was engaged in sales or contract negotiation on behalf of the employer, where the taxpayer was ordinarily required to carry out the duties of his employment away from the employer's

place of business, and where the taxpayer was remunerated in whole or in part by commission. In order to deduct those expenses, the taxpayer must have been contractually required to incur the expenses personally, without reimbursement by the employer.

The TCC said that travel expenses are deductible pursuant to 8(1)(f) if:

- (a) The appellant was required to maintain a home office by the terms of his employment. Is it accepted in the case law that this may be implied by the circumstances of the employment.
- (b) The appellant's home office was his primary place of employment.
- (c) The travel expenses were incurred for travel between the appellant's primary place of employment and his customer's offices.
- (d) The allowance received by the appellant from IBM was insufficient to cover his actual eligible travel expenses.

On the facts the court concluded that the travel expenses are deductible.

However, the rest of the expenses were not deductible either because the appellant was not contractually required to incur them, or he could have claimed reimbursement from the employer (Employees are not contractually required to incur expense that they would have been able to claim reimbursement for from an employer).