

# Commissioned Sales Employee Deductible Expenses

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*Perera v The Queen*, [2014 TCC 280](#)

The court had to determine whether expenses claimed by the taxpayer were deductible as employment expenses, and allowed some of the expenses.

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### FACTS

The Taxpayer was employed as a commissioned insurance sales representative. Though he had an office at the employers place of business, this was only to bring in clients. He was expected to work away from the office - either from home or his car - and his [T2200 \(Declaration of Conditions of Employment Form\)](#) stated that he was required to pay his own expenses, work away from the employer's place of business, pay for a cellphone, and pay other expenses for which he did not receive reimbursement or an allowance.

The taxpayer claimed expenses for: Motor vehicle; Meals, beverages, and entertainment; advertising and promotion; parking costs; supplies; phone, car rental; and travel (on the 407).

### ANALYSIS

[Justice Lyons](#) reviewed the applicable law. A commissioned sales employee, where required by the employer under a contract of employment to pay for the expenses incurred in the year in the course of employment, may deduct these expenses only to the extent allowed under Section 8 of the *Income Tax Act*.

Paragraph 8(1)(f) limits the deductions to the commission income earned - meaning that a loss cannot be created. Other conditions include:

- The amounts must be expended by the employee in the year and for the purpose of earning income from employment;
- the employee must be employed in the year in connection with the selling of property or negotiating contracts for the employer
- the employee must ordinarily be required to carry on the duties of employment away from the employer's place of business;
- the remuneration must be wholly or partially through commission; and

- the employee must not receive a non-taxable travel allowance.

Additional general limitations apply, including that the expense is deductible only if it was:

- not an outlay, loss or replacement of capital or payment on account of capital;
- not an outlay or expense that is not deductible pursuant to 18(1)(l) - maintenance of a yacht, camp, lodge, or golf course facility, or recreational, dining, or sporting membership fees or dues;
- not an amount described in subparagraph 8(1)(f)(vii) in connection with standby charges for a vehicle; and
- reasonable in the circumstances.

In looking for the purpose of an expense, the court has to look at the objective manifestations of purpose: *Symes v Canada*, [\[1993\] 4 SCR 695](#); see also *Arthurs v Canada*, [2003 TCC 636](#).

Particularly, in differentiating personal from business purpose, the SCC referred to the comments of professor Brooks:

If a person would have incurred a particular expense even if he or she had not been working, there is a strong inference that the expense has a personal purpose. For example, it is necessary in order to earn income from a business that a business person be fed, clothed and sheltered. However, since these are expenses that a person would incur even if not working, it can be assumed they are incurred for a personal purpose – to stay alive, covered, and out of the rain.

Motor vehicle expenses are permitted by paragraph 8(1)(h.1) where the employee is required to carry on employment duties away from the employer's place of business, and required to in fact pay for those expenses incurred while traveling for employment purposes.

Supplies expenses are permitted by paragraph 8(1)(i)(iii) when the supplies were consumed directly in the performance of the employment duties and the employee was required to pay for the supplies.

Meals, beverage, and entertainment expenses are affected by paragraphs 8(4), 67.1(1) and (2), and section 67 - The meal must be consumed during a period where the employee was required to be away, for no less than 12 hours, from the municipality where the employer's establishment to which the employee normally reports to is located; the amount must be reasonable in the circumstances; and the amount allowed is 50% of the lesser of the amount expended or a reasonable amount.

The court also noted that claims for large amounts of personal expenses can cast doubt on the claims for expenses by a taxpayer: *Chrabalowski v Canada*, [2004 TCC 644](#). The court

concluded:

- The cost for clothing and dry-cleaning, though necessary for the taxpayer to be well-groomed, is a personal-appearance expense related to personal choices in preparation for work - therefore non-deductible personal expenses;
- expenses for vitamins, gym memberships, and spa treatments were admitted to be personal expenses, as were expenses for a vacuum cleaner, magic bullet, driveway sealing, his wife's clothing, and the full amount of cable, home phone, and internet;
- Expenses for a printer and laptop are non-deductible capital expenses;
- claims for motor vehicle expenses are hard to claim without a vehicle log: *Glawdecki v Canada*, [2010 TCC 650](#);
- single meals are personal expenses, and also [the T2200](#) form indicated that the taxpayer was not required to be away from the municipality for more than 12 hours, therefore not deductible pursuant to subsection 8(4);
- group meals and gift tickets to third parties were conceded to be 50% deductible;
- Telemarketing expenses paid to a third party and proved by receipt were deductible;
- All other expenses were not deductible.

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