

Fewer Miles to Go

Government to reduce paper burden on car expenses

COURT REPORT

BY JAMIE GOLOMBEK



Just as tax season is about to come to an end, investment advisors should take note of a recent decision that may affect their own personal taxes as they finalize their 2008 tax returns.

The case (*Diaz v. The Queen*, 2009 TCC 114), heard late last

year, involved Aldo Diaz, a self-employed, investment salesman for Primerica, who, at the time, was paid commissions for selling insurance and investment products. According to court records, his business ceased operations at the end of 2004.

Diaz also had a "day job" working full-time for Statistics Canada since 1988, earning approximately \$90,000 annually for the tax years in question, 2003

and 2004. In those years, Diaz reported losses from his self-employment investment activity: \$28,988 in 2003 and \$16,628 in 2004.

In each of those years, Diaz was challenged by the Canada Revenue Agency as to the amount of automobile expenses he was permitted to deduct. He claimed 72% of his auto expenses, while the CRA was only prepared to allow about 24% of it.

During each year in question,

Diaz drove approximately 37,000 kilometers, which was not disputed. What was disputed was what proportion of those kilometers was "reasonable" to claim.

While there was some discussion in court about insurance policies, which car was actually driven (a summer Infiniti and a winter Nissan Maxima) and the number of drivers, these facts did not help the case.

The onerous days of keeping a detailed log book throughout the year may soon be coming to an end.

The CRA argued a portion of the car expenses "were personal expenses, and not incurred for the purpose of gaining or producing income from a business."

Unfortunately, Diaz was unable to produce any vehicle kilometer logs. He did, however, produce a detailed car log for the 1999 tax year, which he stated was indicative of his activities in 2003 and 2004.

Diaz claimed he often drove to visit clients within both the city of Ottawa and smaller communities "two or three evenings a week, and often on weekends." But the judge felt the income from Diaz's business did not seem to "reflect the need for the substantial automobile expenses claimed."

The judge dismissed Diaz' appeal and disallowed most of the automobile expenses claimed due to insufficient evidence.

The result is very similar to a 2005 case (*Watts v. The Queen*, 2005 TCC 651) in which Lawrence Watts was reassessed on the business use of his automobile, claiming he drove it 80% of the time for business use, but kept no log book to track his mileage, instead using "round figure estimates" for business kilometers driven in the year.

The judge denied him vehicle expenses, admonishing the taxpayer: "I do not think it's a particularly onerous task for a person claiming employment expenses to keep a record and separate receipts as well as a log book of automobile expenses."

The good news is the onerous days of keeping a detailed log book throughout the year may soon be coming to an end. In the 2008 federal budget, the Department of Finance announced, in conjunction with the Office of the Secretary of State (Small Business and Tourism) and the CRA, that it was reviewing "simplification options" for automobile expense tracking.

The proposal stated that maintaining a logbook during a "sample period of time, that is representative of how the motor vehicle is used, be sufficient to support motor vehicle expense and taxable benefit calculations."

The budget also stated the CRA would be undertaking consultations in 2008 with key stakeholders, including the Canadian Federation of Independent Business, and would be implementing a revised administrative policy in 2009. **AER**

Jamie Golombek, CA, CPA, CFP, CLU, TEP is the Managing Director, Tax & Estate Planning with CIBC Private Wealth Management in Toronto. Jamie.Golombek@cibc.com