

TAXADVISOR

Expenses for Advice

COURT REPORT

BY JAMIE GOLOBBEK



A recent tax case (*Emmons v. The Queen*, 2006 TCC 269) decided last month will be of

particular interest to advisors as it deals with a broker's ability – and inability – to deduct various work-related expenses from their employment income.

Ronald Emmons is a financial advisor with BMO Nesbitt Burns in Saskatoon. In 2002 and 2003 he deducted approximately \$10,000 and \$13,500, respectively, of employment expenses against his commission income. The Canada Revenue Agency reviewed his expenses and objected to two in particular: annual parking costs of \$1,605 and his purchase of computer equipment for just over \$3,000.

PARKING

The CRA argued that Emmons' parking costs should not be tax-deductible since the cost of parking at an employer's premises is considered personal expense.

But Emmons maintained that he uses his car daily to go from his employer's office in Saskatoon to visit clients as well as to travel to his satellite business office about 150 kilometres away in Prince Albert, Sask. Since these meetings are not always scheduled and occur "when necessary or when clients request them," he had to have his car available to him during the day to facilitate his traveling to visit clients.

The judge accepted this explanation and ruled that since his "parking fees are required as a necessary part of his duties to earn his employment income, [t]hey are deductible."

COMPUTER COSTS

The cost of the computer equipment, however, was disallowed by the CRA on the basis that it was a "capital expenditure." Under the *Income Tax Act*, an employee who earns commission income can deduct certain expenses, but specifically cannot deduct outlays, losses or replacements of capital or payments on account of capital, except capital cost allowance on automobiles and airplanes.

Emmons argued that the cost of computer equipment should be deductible as a current expense and not be considered a capital expenditure since "their useful life

is about three years."

The judge reviewed the Tax Act's capital cost allowance rules for computers. As of the 2004 federal budget, computer equipment is included in Class 45 with a maximum 45% annual deduction for capital cost, implying an amortization period of 2.2 years.

The judge observed that "Parliament's capital cost treatment of computer equipment is suggestive of the short product life-cycle mentioned [by Emmons]...

It is clear that Parliament intended that computers shall be viewed as capital in nature and has allowed businesses [but not employees] to make a reasonable deduction for capital cost." As a result, the judge denied Emmons' computer costs.

Readers will recall that this issue came to the forefront in the 2004 Supreme Court of Canada ruling against Thomas Gifford, a case that also involved a broker who was unable to deduct the cost of buying another broker's client list. Gifford

was denied any deduction for the \$100,000 he paid to purchase the client list. The Supreme Court publicly highlighted this unfairness, saying that, "employees are treated differently than taxpayers earning income from business... This seemingly inequitable result for [Gifford] is the result of the structure of the [*Income Tax Act*]."

NEW RELIEF

Perhaps in partial response to this problem, the recent federal budget announced that beginning next month, there will be a new tax credit available exclusively to employees called the "Canada Employment Credit."

The good news is that no receipts are required to justify any actual employment-related expenditures. In fact, no expenditures need actually be made at all. Instead, for 2006, the new credit will provide tax relief on the lesser of \$250 and an individual's employment income for the year. For the 2007 and subsequent taxation years, however, the maximum amount on which the credit is calculated will be increased to \$1,000.

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