Docket: 2019-948(IT)I

BETWEEN:

VOLODYMYR BYKOV,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on common evidence with the appeals of
Volodymyr Bykov (2019-1278(IT)I), Volodymyr Bykov (2020-416(IT)I)
and Volodymyr Bykov (2022-1467(IT)I) on
January 10, 2024, at Toronto, Ontario

Before: The Honourable Justice John R. Owen

Appearances:

Counsel for the Appellant:	Oleksiy Bykov
Counsel for the Respondent:	Samantha Jennings

JUDGMENT

UPON hearing the evidence and submissions of counsel for the Appellant and counsel for the Respondent;

IN ACCORDANCE with the attached Reasons for Judgment, the appeal from the reassessment made under the *Income Tax Act* for the 2015 taxation year, by notice dated December 20, 2018 is dismissed without costs.

Signed at Ottawa, Canada, this 14th day of March 2024.

"J.R. Owen"

Owen J.

Docket: 2019-1278(IT)I

BETWEEN:

VOLODYMYR BYKOV,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on common evidence with the appeals of
Volodymyr Bykov (2019-948(IT)I), Volodymyr Bykov (2020-416(IT)I)
and Volodymyr Bykov (2022-1467(IT)I) on
January 10, 2024, at Toronto, Ontario

Before: The Honourable Justice John R. Owen

Appearances:

Counsel for the Appellant:	Oleksiy Bykov
Counsel for the Respondent:	Samantha Jennings

JUDGMENT

UPON hearing the evidence and submissions of counsel for the Appellant and counsel for the Respondent;

IN ACCORDANCE with the attached Reasons for Judgment, the appeal from the reassessment made under the *Income Tax Act* for the 2016 taxation year, by notice dated January 17, 2019 is dismissed without costs.

Signed at Ottawa, Canada, this 14th day of March 2024.

"J.R. Owen"

Owen J.

Docket: 2020-416(IT)I

BETWEEN:

VOLODYMYR BYKOV,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on common evidence with the appeals of
Volodymyr Bykov (2019-948(IT)I), Volodymyr Bykov (2019-1278(IT)I)
and Volodymyr Bykov (2022-1467(IT)I) on
January 10, 2024, at Toronto, Ontario

Before: The Honourable Justice John R. Owen

Appearances:

Counsel for the Appellant:	Oleksiy Bykov
Counsel for the Respondent:	Samantha Jennings

JUDGMENT

UPON hearing the evidence and submissions of counsel for the Appellant and counsel for the Respondent;

IN ACCORDANCE with the attached Reasons for Judgment, the appeal from the reassessment made under the *Income Tax Act* for the 2017 taxation year, by notice dated November 12, 2019 is dismissed without costs.

Signed at Ottawa, Canada, this 14th day of March 2024.

"J.R. Owen"

Owen J.

Docket: 2022-1467(IT)I

BETWEEN:

VOLODYMYR BYKOV,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on common evidence with the appeals of
Volodymyr Bykov (2019-948(IT)I), Volodymyr Bykov (2019-1278(IT)I)
and Volodymyr Bykov (2020-416(IT)I) on
January 10, 2024, at Toronto, Ontario

Before: The Honourable Justice John R. Owen

Appearances:

Counsel for the Appellant:	Oleksiy Bykov
Counsel for the Respondent:	Samantha Jennings

JUDGMENT

UPON hearing the evidence and submissions of counsel for the Appellant and counsel for the Respondent;

IN ACCORDANCE with the attached Reasons for Judgment, the appeal from the reassessment made under the *Income Tax Act* for the 2018 taxation year, by notice dated March 31, 2022 is dismissed without costs.

Signed at Ottawa, Canada, this 14th day of March 2024.

"J.R. Owen"

Owen J.

Citation: 2024 TCC 36
Date: 20240314
Dockets: 2019-948(IT)I
2019-1278(IT)I
2020-416(IT)I
2022-1467(IT)I

BETWEEN:

VOLODYMYR BYKOV,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Owen J.

I. Introduction

[1] Mr. Volodymyr Bykov (the "Appellant") appeals reassessments of his 2015, 2016, 2017 and 2018 taxation years (collectively, the "Reassessments"). The Reassessments reduced or denied certain expenses that the Appellant claimed in respect of his employment during his 2015, 2016, 2017 and 2018 taxation years (collectively, the "Taxation Years").

[2] The Appellant filed a separate notice of appeal for each of the four Taxation Years. With the consent of the parties, the four appeals were heard together on common evidence.

[3] The legal issues raised by these appeals result from the distinctions in the *Income Tax Act* (Canada)[1] (the "ITA") between income from a source that is an office or employment and income from a source that is a business. Subsection 8(2)

[1] R.S.C. 1985, c.1 (5th Supp.). Unless otherwise noted, all statutory references are to the ITA.

expressly limits the amounts that may be deducted by a taxpayer in respect of an office or employment to the amounts that are permitted by section 8.

[4] The parties agreed that the Appellant was employed by four separate employers in 2015 and three separate employers in 2016, 2017 and 2018 (individually, an "Employer" and, collectively, the "Employers").[2] I confirmed with counsel for the Appellant that the Appellant was not taking the position that during the Taxation Years the Appellant was an independent contractor rather than an employee.

II. The Facts

[5] The Appellant testified on his own behalf. I found the Appellant to be a credible witness.

[6] The Respondent did not call any witnesses.

[7] The Respondent set out in the four Replies to the four Notices of Appeal filed by the Appellant the assumptions of fact made by the Minister of National Revenue (the "Minister") when reassessing each of the Taxation Years. Rather than repeating all of the assumptions of fact here, I have reproduced them in Appendices A to D of these reasons for judgment.

[8] I must accept the Minister's assumptions of fact as true unless the Appellant meets his evidentiary burden to demolish the Minister's assumptions.[3]

[9] The Appellant testified that he is a visiting registered nurse who provides nursing services to individuals in their own home, or in a retirement or nursing home. The majority of the Appellant's patients are in palliative care.

[10] During the Taxation Years, the Appellant provided nursing services six days one week and four days the next week on a rotating basis. Each week included two or three seven-hour night shifts during which the Appellant was on standby for patients that required urgent care during the night.

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[2] There were four employers in 2015 because on April 30, 2015, Revera Home Health Services Inc. ("Revera") was acquired by ParaMed Home Health Care, a division of Extendicare (Canada) Inc. ("ParaMed") (Exhibit A-1). After this acquisition, there were three concurrent employers of the Appellant: ParaMed, Spectrum Health Care LP ("Spectrum") and K. & S. Temporary Medical Services Inc., which carried on business under the name S.R.T. Med-Staff ("S.R.T. Med-Staff").

[3] *Dirani v. R.*, 2023 FCA 13 ("*Dirani*"), at paragraphs 6 and 12.

[11] Each evening prior to a workday, the Employers would provide the Appellant with a schedule of the individuals that he was to visit the following day (I will refer to these individuals as "patients"). The Appellant estimated that he visited between 10 and 30 patients during a day shift and that he worked on average of 40 to 45 hours per week plus the two to three seven-hour night shifts.

[12] A visit to a patient could involve any of a number of nursing services provided by the Appellant depending on the needs of the patient. A visit could also involve consultation with one or more members of the patient's family.

[13] The Employers paid the Appellant a fixed amount for each patient visit regardless of the nursing services provided by the Appellant. For example, the terms of employment with S.R.T. Med-Staff in Exhibit A-4 state under the heading "Wages, Benefits and Vacation":

> As a nurse working in the community you are paid by the client visit at a rate of $36.00 per visit, less any applicable statutory and other deductions.

[14] The Appellant lived in Bradford, Ontario and travelled from there to visit the patients. The Employers did not provide the Appellant with a place to work and required the Appellant to have a car, a cell phone and a home office with a fax machine and office supplies.

[15] The Appellant testified that he maintained an office in his home that occupied most of the basement (the "home office"). The Appellant used the home office to hold telephone consultations with other medical professionals (e.g., doctors) regarding patients, to store medical supplies provided by the Employers, and to store the medical records of patients under the Appellant's care.

[16] The Appellant stated that the patients' medical records were confidential and that he was required to store the records securely in an area of his home office with restricted access.

[17] The Appellant submitted copies of the T2200 forms issued by the Employers for each of the Taxation Years (collectively, the "T2200s").[4] The T2200 forms issued by Spectrum show home office use of 15 percent for all of the Taxation Years and the T2200 forms issued by S.R.T. Med-Staff show home office use of 30 percent for all of the Taxation Years. The T2200 forms issued by ParaMed show home office

[4] Exhibits A-19 to A-30. Each of these exhibits also includes a T4 issued to the Appellant by the particular Employer for the year. There is no T2200 for Revera for 2015 presumably because that Employer was acquired by ParaMed on April 30, 2015.

use of “50%” for 2015, “<40%” for 2016, “40%” for 2017 and “less than 50%” for 2018.

[18] Section 5 of the T2200s indicate that ParaMed and Spectrum gave the Appellant a motor vehicle allowance, which the Appellant testified was less than the per kilometer amount accepted by the Canada Revenue Agency (the “CRA”) as a reasonable automobile allowance. The Appellant stated that he deducted the difference as an employment expense.

[19] Section 5 of the T2200 forms issued to the Appellant by Spectrum for the Taxation Years states that the Appellant’s motor vehicle allowance was calculated on a per visit basis rather than a per kilometer basis. The allowances for 2015, 2016, 2017 and 2018 were $8,008.80, $7715.35, $7,501 and $5,995.95, respectively. The T2200 forms indicate that these amounts were not included on the Appellant’s T4s for the Taxation Years.

[20] Section 5 of the T2200 forms issued by ParaMed for the Taxation Years states that the motor vehicle allowance was 0.38 cents per kilometer. The allowances for 2015, 2016, 2017 and 2018 were $502.51, $1,097.22, $651.01, and $369.67, respectively. Section 5 of the T2200 form for 2018 also identifies $5.30 as a fixed motor vehicle allowance that was included on the Appellant’s T4 for that year.

[21] On the T2200s, each Employer answered “no” to the question “Did you require this employee to be away for at least 12 consecutive hours from the municipality and metropolitan area (if there is one) of your business where the employee normally reported to work?”[5] and “yes” to the question “Did you normally require this employee to travel to locations that were not your place of business or between different locations of your places of business, during the course of performing his or her employment duties?”.[6]

[22] The Appellant testified that because his wife’s name was on the insurance policy the CRA allowed only one-half of the cost of his motor vehicle insurance even though his wife did not have a driver’s licence. The Appellant did not submit evidence in support of the quantum of the motor vehicle insurance premium.

[23] The Appellant testified that he maintained records of his employment activities and expenses including a time log showing the time spent performing his employment duties and a mileage log showing his motor vehicle use for

[5] Section 3 of the T2200s.
[6] Section 2 of the T2200s.

employment. The Appellant testified that he provided the records to the CRA by registered mail.[7]

[24] The Appellant did not provide the Court with a copy of any records or logs, and also did not provide the Court with documentary evidence regarding the sending of records to the CRA by registered mail. The Appellant testified that he received letters from the CRA stating that the CRA did not receive the records.[8]

[25] The Appellant provided the Court with a copy of a T777 Comparative Summary of Employment Expenses that covered the Taxation Years.[9] The T777 form, in conjunction with the Appellant's testimony regarding the form,[10] is evidence of the employment related expenses claimed by the Appellant for the Taxation Years, but it is not evidence in support of the quantum of those expenses.

[26] In cross-examination, the Appellant agreed with counsel for the Respondent that his employment by the Employers did not require or involve the selling of property or the negotiating of contracts for the Employers.

A. Position of the Parties

(1) The Appellant

[27] The Appellant submits that he was a commissioned employee because he was paid on a per patient visit basis and that he is entitled to deduct the expenses that he claimed for the Taxation Years.

[28] With respect to the use of the home office, the percentages on the T2200s issued by the Employers add up to more than 50 percent and therefore the condition in paragraph 8(13)(a) is satisfied.

[7] Transcript of the proceedings held in Toronto on the 10th day of January, 2024 (the "Transcript") at lines 3 to 18 of page 51, lines 5 to 28 of page 63 and page 64.
[8] Lines 13 to 17 of the page 63 of the Transcript.
[9] Exhibit A-17. Exhibit A-17 also includes the employment expenses claimed by the Appellant for his 2019 taxation year, which is not under appeal.
[10] The Appellant's testimony regarding Exhibit A-17 is found at lines 21 to 28 of page 45 and lines 1 to 19 of page 46 of the Transcript.

(2) The Respondent

[29] The Respondent submits that the Appellant was a salaried employee and denies the Appellant's entitlement to a deduction of expenses greater than the expenses allowed by the Reassessments.

[30] The Appellant was not employed in connection with the selling of property or the negotiation of contracts and therefore the deductions permitted by paragraph 8(1)(f) do not apply to the Appellant.

[31] Contrary to the position of the Appellant, the use of a home office must be determined for each office or employment and the percentage of use for each of the three separate employments in issue in these appeals cannot be aggregated.

[32] All but one of the T2200s indicates home office use by the Appellant of less than 50 percent and the remaining form indicates home office use of exactly 50 percent in 2015. This use does not satisfy the condition in subparagraph 8(13)(a)(i).

[33] The Appellant received a non-taxable automobile allowance from ParaMed and Spectrum and the additional motor vehicle related amounts claimed by the Appellant were not deductible under section 8.

III. Analysis

[34] Generally speaking, an individual that carries on a business is entitled to deduct any reasonable expense that is not on account of capital and that is incurred for the purpose of gaining or producing income from the business. In contrast, under subsection 8(2), an employee may deduct only those expenses that are permitted by section 8.

[35] The provisions of the ITA that are relevant to these appeals are paragraphs 6(1)(b), 8(1)(f), (i), (h), (h.1) and (j) and subsections 8(2) and (13). I have reproduced these provisions in Appendix E to these reasons for judgment and will refer to them as required for clarity.

[36] The Appellant submits that paragraph 8(1)(f) applies to the expenses he incurred in respect of his employment by the Employers. The introductory words of paragraph 8(1)(f) state the following condition that must be met for the paragraph to apply to the Appellant:

> where the taxpayer was employed in the year in connection with the selling of property or negotiating of contracts for the taxpayer's employer, and …

[37] The Appellant is a registered nurse who provides nursing services to patients and who is compensated for those services on a per patient visit basis. The Appellant acknowledged that he did not sell property or negotiate contracts for the Employers.

[38] Based on the opening words of subparagraph 8(1)(f) read in their entire context and in their grammatical and ordinary sense,[11] the Appellant does not qualify for the deductions permitted by that paragraph because during the Taxation Years the Appellant did not sell property or negotiate contracts for the Employers.

[39] The technical notes issued in May 1991 that accompanied a proposed amendment of paragraph 8(1)(f)[12] state, in part:

> Paragraph 8(1)(f) permits a commissioned **salesperson** to deduct amounts expended for the purpose of earning income from employment, where the **salesperson** was not in receipt of a non-taxable travel allowance and was required by the contract of employment to pay his or her expenses and carry on the duties of employment away from the employer's place of business.
>
> [Emphasis added.]

[40] The purpose of paragraph 8(1)(f) is to allow a salesperson to deduct expenses related to the activities of selling and negotiating contracts provided certain additional conditions are satisfied such as payment by commission. The fact that the Appellant was paid by the Employers on a per visit basis does not bring the Appellant within the scope of paragraph 8(1)(f). The Appellant's nursing duties are simply not the kind of employment duties contemplated by paragraph 8(1)(f).

[41] Subparagraphs 8(1)(i)(ii) and (iii) allow a deduction for office rent and supplies consumed in the performance of an employment, respectively. The Appellant did not suggest that he paid office rent, and the supplies consumed by the Appellant in the performance of his nursing duties were provided by the Employers. Therefore, the only supplies that would fall under subparagraph 8(1)(i)(iii) are miscellaneous office supplies. The Appellant did not provide evidence of the quantum of expenditures on miscellaneous office supplies.

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[11] A purposive reading of paragraph 8(1)(f) does not alter the requirement that the Appellant sell property or negotiate contracts for the Employers.

[12] The amendment, which added subparagraph 8(1)(f)(vii), was enacted by 1994, c. 7, Sch. II (1991, c. 49), subsection 5(1), applicable to 1990 and subsequent years.

[42] Even if an expenditure was proven and satisfied the requirements of paragraph 8(1)(f) or (i), the amount may not be deductible because of subsection 8(13). This is because subsection 8(13) provides that no amount is deductible under paragraph 8(1)(f) or (i) unless specified conditions are met. Paragraph 8(13)(a) states:

> **Notwithstanding paragraphs (1)(f) and (i)**,
>
> (a) no amount is deductible in computing an individual's income for a taxation year from an office or employment in respect of any part (in this subsection referred to as the "work space") of a self-contained domestic establishment in which the individual resides, except to the extent that the work space is either
>
> (i) the place where the individual **principally performs** the duties of the office or employment, or
>
> (ii) **used exclusively** during the period in respect of which the amount relates for the purpose of earning income from the office or employment and **used on a regular and continuous basis for meeting customers or other persons** in the ordinary course of performing the duties of the office or employment;
>
> [Emphasis added.]

[43] With respect to the Appellant's employment by each of the Employers, the condition in subparagraph 8(13)(a)(i) requires that he principally perform the duties of his employment at his home office.

[44] The word "principally" is an adverb that is defined in the *Oxford English Dictionary* (online) to mean "For the most or greater part; in most cases; in the main; mostly." The word connotes an action that is greater than 50 percent of all relevant actions. This is the meaning adopted in the tax case law.[13]

[45] The nature of the Appellant's employment activities—caring for patients in their home, or in a nursing or retirement home—strongly suggests that the greater part of the Appellant's employment activities do not take place at his home office. Rather, the Appellant's use of his home office is ancillary to and in support of the performance of his nursing duties at other locations.

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[13] See, for example, *Will-Kare Paving & Contracting Ltd. v. R.*, [1996] 2 C.T.C. 2426, at 2434, affirmed 2000 SCC 36, *Estate of Elisa Aquilini v. R.*, 2019 TCC 132, at paragraphs 135 and 136, and *0742443 B.C. Ltd. v. R.*, 2014 TCC 301, at paragraphs 22 to 26.

[46] This general observation is confirmed by the T2200s, which indicate home office use in respect of employment by Spectrum of 15 percent for all of the Taxation Years, home office use in respect of employment by S.R.T. Med-Staff of 30 percent for all of the Taxation Years, and home office use in respect of employment by ParaMed of "50%" for 2015, "<40%" for 2016, "40%" for 2017 and "less than 50%" for 2018.

[47] Contrary to the position asserted by the Appellant, the "principally" requirement in subparagraph 8(13)(a)(i) applies separately to each employment[14] and, therefore, the percentages shown on the T2200s cannot simply be added together. I note that even if the employments were addressed on an aggregate basis, based on the T2200s the total home office activity would always be 50 percent or less of all relevant activity because at no time does the percentage of home office activity for an Employer exceed 50 percent of total activity.

[48] Subparagraph 8(13)(a)(ii) has two conditions. First, the home office must be used by the Appellant exclusively for the purpose of earning income from employment. Secondly, the home office must be used by the Appellant on a regular and continuous basis for meeting customers or other persons in the ordinary course of performing the Appellant's employment duties. The Appellant did not suggest that he satisfied the second condition and there is no evidence to indicate that the second condition was satisfied. Telephone conferences participated in by the Appellant from the home office do not qualify as using the home office to meet customers or other persons.

[49] Based on the foregoing, even if the Appellant was entitled to a deduction for home office expenses under paragraph 8(1)(f) or (i), the deduction would be denied because the Appellant does not satisfy the requirements of either subparagraph 8(13)(a)(i) or 8(13)(a)(ii).

[50] The remaining provisions in issue are paragraphs 8(1)(h), (h.1) and (j). Paragraph 8(1)(h) addresses travel expenses other than motor vehicle expenses, paragraph 8(1)(h.1) addresses motor vehicle expenses, and paragraph 8(1)(j) addresses the cost of acquiring a motor vehicle (i.e., interest and capital cost allowance).

[51] Subparagraphs 8(1)(h)(i) and (ii) and subparagraphs 8(1)(h.1)(i) and (ii) state the following requirements for paragraphs 8(1)(h) and (h.1), respectively, to apply:

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[14] See paragraph 4(1)(a).

where the taxpayer, in the year,

> (i) was ordinarily required to carry on the duties of the office or employment away from the employer's place of business or in different places, and
>
> (ii) was required under the contract of employment to pay the [8(1)(h): travel expenses] [8(1)(h.1): motor vehicle expenses] incurred by the taxpayer in the performance of the duties of the office or employment, …

[52] The Appellant clearly met these conditions. Under the terms of his employment by each of the Employers the Appellant was ordinarily required to travel throughout the GTA to see patients, to have a motor vehicle and to incur travel and motor vehicle expenses. While it is possible that the Appellant occasionally met patients at an Employer's place of business (e.g., a retirement home or nursing home operated by the Employer),[15] the Appellant was also required to meet patients in their homes in the ordinary course of his employment duties.

[53] Under subparagraph 8(1)(h)(iii), paragraph 8(1)(h) does not apply to travel expenses if the Appellant received an allowance for the travel expenses that was not included in his income because of subparagraph 6(1)(b)(v), (vi) or (vii). The evidence indicates that the Appellant did not receive an allowance for travel expenses from any of the Employers. Consequently, the Appellant's reasonable travel expenses incurred by him in the performance of the duties of his employment by each of the Employers were deductible. I will address the quantum of such expenses at the conclusion of these reasons for judgment.

[54] Under subparagraph 8(1)(h.1)(iii), paragraph 8(1)(h.1) does not apply to motor vehicle expenses incurred by the Appellant if the Appellant received an allowance for the motor vehicle expenses that was not included in income because of paragraph 6(1)(b).

[55] Subject to a parenthetical exception that does not apply to the Appellant, subparagraph 6(1)(b)(vii.1) excludes from the income of an employee "reasonable" allowances received by an employee from the employer for travelling in the performance of the duties of the employment.

[15] This possibility goes to the quantum of expenses eligible for deduction.

[56] In *Nicoll v. R.*, 2023 TCC 116, the Tax Court judge reproduced subparagraphs 6(1)(b)(vii) and (vii.1) and then observed:

> 11 The above wording has been in effect since 1994 and applies to the 1990 taxation year and later. The retroactive amendment in 1994 specifically deleted the previous wording of "allowances (not in excess of reasonable amounts)" from both subparagraphs 6(1)(b)(vii) and (vii.1) and replaced it with "reasonable allowances".
>
> 12 In explanation of the amendment, the May 30, 1991 Department of Finance Technical Notes say:
>
> > These paragraphs are amended, applicable to the 1990 and subsequent taxation years, to provide that reasonable allowances in respect of travelling expenses and motor vehicle expenses will be excluded in computing the income of an individual from an office or employment. Thus allowances that are not reasonable, rather than only those in excess of a reasonable allowance, may be included in income. In these circumstances, the taxpayer may be entitled to a deduction with respect to travelling expenses under paragraph 8(1)(f) or (h).
>
> [Footnotes omitted.]

[57] The question of whether an allowance is reasonable or is not reasonable is a question of fact.[16] The word "reasonable" in the sense employed in subparagraph 6(1)(b)(vii.1) connotes that an amount must be within limits of what it would be rationale or sensible to expect in the circumstances.

[58] In *Mohammad v. Canada*, [1998] 1 F.C. 165 (FC-AD), the Court observed:

> [28] When evaluating the reasonableness of an expense, one is measuring its reasonableness in terms of its magnitude or quantum. Although such a determination may involve an element of subjective appreciation on the part of the trier of fact, there should always be a search for an objective component. …

[59] Neither the Respondent nor the Appellant argued that the motor vehicle allowances provided to the Appellant by ParaMed and Spectrum were not reasonable and in the absence of evidence demonstrating manifest unreasonableness I see no reason to address that question of fact.

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[16] *Petro-Canada v. R.*, 2004 FCA 158 at paragraph 64.

[60] In addition to the factual question of reasonableness, subparagraph 6(1)(b)(x) deems an allowance not to be reasonable where the measurement of the use of the motor vehicle used to calculate the allowance is not based solely on the number of kilometers driven for the relevant employment, and subparagraph 6(1)(b)(xi) deems an allowance not to be reasonable where the taxpayer receives both an allowance in respect of the use of a motor vehicle and is reimbursed in whole or in part for expenses in respect of that use.

[61] With the exception of the fixed allowance of $5.30 in 2018, the motor vehicle allowance provided by ParaMed for each of the Taxation Years was not included in the Appellant's income because of subparagraph 6(1)(b)(vii.1). Accordingly, the Appellant was not entitled to a deduction of motor vehicle expenses incurred in respect of his employment by ParaMed for any of the Taxation Years.

[62] The fact that the CRA may have considered a greater per kilometer allowance than that provided by ParaMed reasonable does not entitle the Appellant to deduct the difference under paragraph 8(1)(h.1) when the allowance was not included in income because of subparagraph 6(1)(b)(vii.1) and there is no evidence that the allowance was not reasonable.[17]

[63] According to the T2200 forms issued to the Appellant by Spectrum, the motor vehicle allowance provided to the Appellant by Spectrum was not based solely on the number of kilometers driven by the Appellant in connection with his employment by Spectrum. Consequently, the motor vehicle allowance was not excluded from the Appellant's income by subparagraph 6(1)(b)(vii.1) because it was deemed not to be reasonable by subparagraph 6(1)(b)(x).

[64] However, section 5 of the T2200 forms issued by Spectrum to the Appellant for the Taxation Years indicates that Spectrum did not include the motor vehicle allowance on the T4s it issued to the Appellant for the Taxation Years. Also, the Appellant did not report this allowance as income, the CRA did not challenge the Appellant's filing position and based on the Respondent's submissions, the Respondent appears to have assumed that the allowance was not taxable.

[65] Paragraph 8(1)(h.1) states that a taxpayer that meets the conditions recited in subparagraphs 8(1)(h.1)(i) and (ii) is entitled to deduct motor vehicle expenses incurred for travelling in the course of employment:

[17] As previously stated, neither party argued that the allowance from ParaMed was not reasonable.

> … **except where** the taxpayer
>
> (iii) received an allowance for motor vehicle expenses that was, **because of paragraph 6(1)(b)**, not included in computing the taxpayer's income for the year …
>
> [Emphasis added.]

[66] In this case, the motor vehicle allowance provided by Spectrum to the Appellant for each of the Taxation Years was not included in computing his income because Spectrum failed to include the allowance on the T4s issued to the Appellant for the Taxation Years and the Appellant did not otherwise report the amount as income.

[67] Because based on the evidence[18] subparagraph 6(1)(x) clearly did apply to the allowance provided by Spectrum, paragraph 6(1)(b) did not apply to exclude the allowance from the Appellant's income. Consequently, the limitation in subparagraph 8(1)(h.1)(iii) did not apply to the motor vehicle expenses incurred by the Appellant in respect of his employment by Spectrum.

[68] Although this is a peculiar result, it is nevertheless clearly the result mandated by the words of subparagraph 8(1)(h.1)(iii) when read in their entire context and in their grammatical and ordinary sense.

[69] The result is not inconsistent with the purpose of the exclusion in subparagraph 8(1)(h.1)(iii), which is to disallow a deduction for a motor vehicle expense if the taxpayer has received an allowance that is not included in the income of the taxpayer because of paragraph 6(1)(b). This purpose is not thwarted if the allowance is not included in income for some other reason.

[70] In order to be entitled to a deduction under paragraph 8(1)(j), the Appellant must be entitled to a deduction under paragraph 8(1)(f), (h) or (h.1). I have found that the Appellant was entitled to deduct the travel expenses that he incurred in respect of his employment by each of the Employers. I have also found that the Appellant was entitled to deduct the motor vehicle expenses that he incurred in respect of his employment by S.R.T. Med-Staff and Spectrum. Consequently, the Appellant is entitled to deduct the amounts identified in paragraph 8(1)(j) for the motor vehicle used by the Appellant in the performance of his employment duties for the Employers.

---

[18] In particular, the T2200s and T4s issued to the Appellant by Spectrum.

[71] The foregoing analysis of the law does not address the quantum of the expenses allowed to the Appellant under paragraphs 8(1)(h), (h.1) or (j). The quantum of the expenses that may be deducted by the Appellant is impacted not only by the actual amount of the expenses incurred by the Appellant but also by issues such as whether any of the Appellant's travel was between his home and a place of work.[19] Evidence such as receipts, travel logs and motor vehicle logs would allow the Court to address such issues.

[72] Unfortunately, apart from the Appellant's testimony that he maintained records and logs that he provided to the CRA, and that he incurred the expenses indicated on the T777 comparative summary entered as Exhibit A-17, the Appellant provided no evidence supporting the quantum of the expenses incurred by him that qualify for deduction under paragraph 8(1)(h), (h.1) or (j). I raised this issue with counsel for the Appellant during argument and counsel conceded that there was no evidence on the record regarding the quantum of the expenditures incurred by the Appellant.[20]

[73] The Appellant's evidence regarding the type of records he maintained and the quantum of expenses that he claimed is not the sort of evidence that challenges the Minister's assumptions of fact regarding the quantum of the employment expenses he incurred during each of the Taxation Years. Consequently, I have no choice but to accept the Minister's assumptions as to the quantum of those expenses. As recently stated by the Federal Court of Appeal in *Dirani*:

> [5] In denying the appellant's claims, the Minister relied on the following assumptions: the company's assets exceeded its liabilities upon its dissolution, the appellant did not make an investment in the company, and the company did not owe any uncollectible debt to the appellant.
>
> [6] The Tax Court determined that the appellant had failed to demolish these assumptions. The Tax Court judge carefully reviewed the evidence before it (Oral Reasons at pages 3-5), and found that the appellant had not submitted any evidence upon which it could conclude that he had either advanced money to the company or incurred any bad debt (Oral Reasons at pages 10-11).
>
> …
>
> [12] The expiry of the time periods prescribed in subsection 230(4) of the Act and section 5800 of the Regulations do not shield or immunize taxpayers from the evidentiary burdens they face in Tax Court proceedings. To hold otherwise would

[19] See, for example, *Daniels v. R.*, 2004 FCA 125 at paragraph 7 and *Mason v. R.*, 2022 TCC 65 at paragraphs 7 to 12.
[20] Lines 19 to 28 of page 108, pages 109 and 110 and lines 1 to 5 of page 111 of the Transcript.

> undermine the integrity of our self-assessing tax system. Maintaining books and records is an ongoing obligation in a self-assessing system and the appellant's failure to do so also made it impossible for him to meet the evidentiary burden on him to demolish the Minister's assumptions.

[74] The failure of the Appellant to present evidence challenging the assumptions of fact made by the Minister regarding the quantum of the Appellant's travel and motor vehicle expenses leads inexorably to the conclusion that the Appellant has failed to satisfy the burden of proof placed on the Appellant to establish to a balance of probabilities the facts that show the Reassessments to be wrong.

[75] For the foregoing reasons, the appeals by the Appellant of the Reassessments are dismissed without costs.

Signed at Ottawa, Canada, this 14th day of March 2024.

"J.R. Owen"

Owen J.

APPENDIX A

Minister's Assumptions of Fact from Docket 2019-948(IT)I

Assumptions

10. In determining the Appellant's tax liability for the 2015 taxation year, the Minister made the following assumptions of fact:

a) the facts stated above;

b) the Appellant was employed with K.&S. Temporary Medical Services Inc ("K&S"), Spectrum Health Care LP ("Spectrum"), Revera Health Services Inc ("Revera"), and Extendicare (Canada) Inc ("Extendicare"), for the 2015 taxation year;

c) the Appellant was in receipt of salary, wages, or other remuneration of $110,783, $73,682, $13,591 and $13,252 from K&S, Spectrum, Revera, and Extendicare, respectively, for the 2015 taxation year;

d) the Appellant did not receive commissions or other similar amounts related to volume of sales made or contracts negotiated with K&S, Spectrum, Revera, and Extendicare for the 2015 taxation year;

e) the Appellant claimed employment expenses of $39,025 for the 2015 taxation years, as set out in **Schedule "A"** under *Second Amounts Submitted*;

f) the Appellant received a non-taxable motor vehicle allowance of $502 from Paramed (also known as Revera);

g) the Appellant provided a signed T2200 in respect of employment expenses from S.R.T Med-Staff (also known as K&S), and from Spectrum stating:

i. the Appellant was required to travel within the Greater Toronto Area;

ii. the Appellant was not required to be away from the municipality and metropolitan area for more then 12 hours;

iii. the Appellant received a non-taxable motor vehicle allowance of $8,008 from Spectrum;

iv. the Appellant is required to pay for supplies used in the performance of his work;

v. the Appellant is required to pay for the use of a cellphone; and

vi. the Appellant is required to use a portion of his personal residence for work 30% of the time for SRT, and 15% of the time for Spectrum;

h) the Appellant did not maintain proper books and records of sufficient nature to allow the Minister to determine the employment expenses with K&S and Spectrum for the 2015 taxation year;

i) the Appellant claimed food expenses of $537 for the 2015 taxation year;

j) the Appellant was not required to be away for his municipality or metropolitan area for the 2015 taxation year;

k) the Appellant did not incurred food expenses for the purpose of earning employment income for the 2015 taxation year;

l) if incurred, the disallowed food expenses of $537 were the personal expenses of the Appellant;

m) the Appellant claimed accounting expenses of $400 for the 2015 taxation year;

n) the Appellant is not paid wholly of partly by commission according to the volume of sale or contract negotiated;

o) the Appellant did not incurred accounting expenses of $400 for the purpose of earning employment income for the 2015 taxation year;

p) if incurred, the disallowed accounting expenses were the personal expenses of the Appellant;

q) the Appellant claimed internet expenses of $432 for the 2015 taxation year;

r) the Appellant did not incur internet expenses for the purpose of earning employment income;

s) if incurred, the disallowed internet expenses were the personal expenses of the Appellant;

t) the Appellant claimed cellphone expenses of $2,598 for the 2015 taxation year;

u) the Appellant incurred cellphone expenses of $800 for the purpose of earning employment income;

v) if incurred, the disallowed cellphone expenses of $1,798 were the personal expenses of the Appellant;

w) the Appellant claimed parking expenses of $530 for the 2015 taxation year;

x) the Appellant incurred parking expenses of $473 for the purpose of earning employment income;

y) if incurred, the disallowed parking expenses of $57 were the personal expenses of the Appellant;

z) the Appellant claimed and incurred supplies expenses of $331 for the purpose of earning employment income for the 2015 taxation year;

aa) the Appellant claimed uniform expenses of $1,221 for the 2015 taxation year;

bb) the Appellant did not incur uniform expenses of $1,221 for the purpose of earning employment expenses;

cc) if incurred, the disallowed uniform expenses of $1,221 were the personal expenses of the Appellant;

dd) the Appellant claimed work-space-in-home expenses of $5,220 and home office expenses of $9,590 for the 2015 taxation year;

ee) the Appellant did not principally perform his duties of office or employment at home;

ff) the Appellant did not use on a regular and continuous bases his home for meeting customers or other persons in a ordinary course of performing the duties of office or employment;

gg) the Appellant did not incur work-space-in-home expenses of $5,220 and home office expenses of $9,590 for the 2015 taxation year;

hh) if incurred, the disallowed work-space-in-home expenses of $5,220 and home office expenses of $9,590 for the 2015 taxation year, were the personal and living expenses of the Appellant;

ii) the Appellant claimed motor vehicle expenses of $18,166 for the 2015 taxation year;

jj) the Appellant received for the 2015 taxation year a non-taxable allowance for motor vehicle expenses incurred for earning employment income of $8,511;

kk) the Appellant received a reasonable allowance for motor vehicle expenses for the 2015 taxation year;

ll) the total motor vehicle kilometers ("km") for employment is 64.5% (27,730 km ÷ 42,993) for the 2015 taxation year;

mm) the total motor vehicle expenses for the 2015 taxation year is $12,797;

nn) the total motor vehicle expenses for employment for the 2015 taxation year is $8,254;

oo) the motor vehicle allowance received by the Appellant for the 2015 taxation year is greater then the total motor vehicle expenses for employment; and

pp) if the Appellant incurred the disallowed motor vehicle expenses of $18,166 for the 2015 taxation year, they were not incurred for the purpose of earning employment income and were the personal and living expenses of the Appellant.

APPENDIX B

Minister's Assumptions of Fact from Docket 2019-1278(IT)I

Assumptions

9. In determining the Appellant's tax liability for the 2016 taxation year, the Minister made the following assumptions of fact:

a) the facts stated above;

b) the Appellant was employed with K.&S. Temporary Medical Services Inc ("K&S"), Spectrum Health Care LP ("Spectrum"), and Extendicare (Canada) Inc ("Extendicare"), for the 2016 taxation year;

c) the Appellant was in receipt of salary, wages, or other remuneration of $97,368, $71,664, and $28,534 from K&S, Spectrum, and Extendicare, respectively, for the 2016 taxation year;

d) the Appellant did not receive commissions or other similar amounts related to volume of sales made or contracts negotiated with K&S, Spectrum, and Extendicare for the 2016 taxation year;

e) the Appellant claimed employment expenses of $39,175 for the 2016 taxation years, as set out in **Schedule "A"** under *Second Amounts Submitted*;

f) the Appellant provided for the 2016 taxation year, a signed T2200 in respect of employment expenses from S.R.T Med-Staff (also known as K&S), from Spectrum, and from Extendicare stating:

   i. the Appellant was required to travel within the Greater Toronto Area;

   ii. the Appellant was not required to be away from the municipality and metropolitan area for more then 12 hours;

   iii. the Appellant received a non-taxable motor vehicle allowance of $7,715 from Spectrum, and $1,097 from Extendicare;

   iv. the Appellant is required to pay for supplies used in the performance of his work;

   v. the Appellant is required to pay for the use of a cellphone; and

   vi. the Appellant is required to use a portion of his personal residence for work 30% of the time for SRT, 15% of the time for Spectrum, and less then 40% of the time for Extendicare;

g) the Appellant did not maintain proper books and records of sufficient nature to allow the Minister to determine the employment expenses with K&S, Spectrum, and Extendicare for the 2016 taxation year;

h) the Appellant claimed food expenses of $839 for the 2016 taxation year;

i) the Appellant was not required to be away for his municipality or metropolitan area for the 2016 taxation year;

j) the Appellant did not incur food expenses for the purpose of earning employment income for the 2016 taxation year;

k) if incurred, the disallowed food expenses of $839 were the personal expenses of the Appellant;

l) the Appellant claimed accounting expenses of $400 for the 2016 taxation year;

m) the Appellant is not paid wholly of partly by commission according to the volume of sale or contract negotiated;

n) the Appellant did not incur accounting expenses of $400 for the purpose of earning employment income for the 2016 taxation year;

o) if incurred, the disallowed accounting expenses were the personal expenses of the Appellant;

p) the Appellant claimed internet expenses of $2,160 for the 2016 taxation year;

q) the Appellant did not incur internet expenses for the purpose of earning employment income;

r) if incurred, the disallowed internet expenses of $2,160 were the personal expenses of the Appellant;

s) the Appellant claimed cellphone expenses of $3,407 for the 2016 taxation year;

t) the Appellant incurred cellphone expenses of $800 for the purpose of earning employment income;

u) if incurred, the disallowed cellphone expenses of $2,607 were the personal expenses of the Appellant;

v) the Appellant incurred parking expenses of $463 for the 2016 taxation year;

w) the Appellant claimed and incurred supplies expenses of $1,217 for the purpose of earning employment income for the 2016 taxation year;

x) the Appellant claimed uniform expenses of $3,332 for the 2016 taxation year;

y) the Appellant did not incur uniform expenses of $3,332 for the purpose of earning employment expenses;

z) if incurred, the disallowed uniform expenses of $3,332 were the personal expenses of the Appellant;

aa) the Appellant claimed work-space-in-home expenses of $5,220 and home office expenses of $8,265 for the 2016 taxation year;

bb) the Appellant did not principally perform his duties of office or employment at home;

cc) the Appellant did not use on a regular and continuous bases his home for meeting customers or other persons in a ordinary course of performing the duties of office or employment;

dd) the Appellant did not incur work-space-in-home expenses of $5,220 and home office expenses of $8,265 for the 2016 taxation year;

ee) if incurred, the disallowed work-space-in-home expenses of $5,220 and home office expenses of $8,265 for the 2016 taxation year, were the personal and living expenses of the Appellant;

ff) the Appellant claimed motor vehicle expenses of $14,334 for the 2016 taxation year;

gg) the Appellant received for the 2016 taxation year a non-taxable allowance for motor vehicle expenses incurred for earning employment income of $8,813;

hh) the Appellant received a reasonable allowance for motor vehicle expenses for the 2016 taxation year;

ii) the total motor vehicle kilometers ("km") for employment was 62.8% (23,560 km ÷ 37,514) for the 2016 taxation year;

jj) the total motor vehicle expenses for the 2016 taxation year was $11,322;

kk) the total motor vehicle expenses for employment for the 2016 taxation year was $7,111;

ll) the motor vehicle allowance received by the Appellant for the 2016 taxation year was greater then the total motor vehicle expenses for employment; and

mm) if the Appellant incurred the disallowed motor vehicle expenses of $14,334 for the 2016 taxation year, they were not incurred for the purpose of earning employment income and were the personal and living expenses of the Appellant.

APPENDIX C

Minister's Assumptions of Fact from Docket 2020-416(IT)I

Assumptions

10. In determining the Appellant's tax liability for the 2017 taxation year, the Minister assumed the following facts:

    a. the facts stated and admitted above;

b. the Appellant was employed with K. & S. Temporary Medical Services Inc. ("K&S"), Paramed Inc. ("Paramed"), and Spectrum Health Care LP ("Spectrum) in the 2017 taxation year;

c. the Appellant was in receipt of salary, wages, or other remuneration of $125,848, 21,382, and 70,051, from K&S, Paramed, and Spectrum, respectively, in the 2017 taxation year;

d. the Appellant did not receive commissions or other similar amounts related to the volume of sales made or contracts negotiated with K&S, Paramed, and Spectrum in the 2017 taxation year;

e. the Appellant claimed employment expenses of $29,938 as set out in the chart below:

Employment Expenses 2017	Claimed in filing T1 Return	Assessed	Amount Claimed in Objection	Amount Assessed after Objection	Difference
Automobile expenses	$ 11,373	$ 8,746	$ 8,413	$ 8,746	$ 333
Automobile expenses (CCA)	$ 4,590	$ 2,170	$ 6,162	$ 2,170	-$ 3,992
Accounting and legal fees	$ 400	$ -	$ 400	$ -	-$ 400
Supplies	$ 272	$ 272	$ 695	$ 272	-$ 423
Parking	$ -	$ -	$ 94	$ -	-$ 94
Cell Phone	$ 2,430	$ -	$ 2,430	$ 420	-$ 2,010
Home Office	$ 3,741	$ -	$ 5,637	$ -	-$ 5,637
Uniform	$ 792	$ -	$ 791	$ -	-$ 791
Internet	$ 1,764	$ -	$ 5,316	$ -	-$ 5,316
Total Employment Expenses	$ 25,363	$ 11,188	$ 29,938	$ 11,608	-$ 18,330

f. the Appellant claimed motor vehicle expenses of $8,413 in the 2017 taxation year;

g. the Appellant received a reasonable motor vehicle allowances for motor vehicle expenses in the 2017 taxation year;

h. the Appellant received a non-taxable motor vehicle allowance of $7,501 from Spectrum in the 2017 taxation year;

i. the Appellant received a non-taxable motor vehicle allowance of $651 from Paramed in the 2017 taxation year;

j. the motor vehicle allowances received by the Appellant were less than the total motor vehicle expenses incurred for employment purposes in the 2017 taxation year;

k. the Appellant did not include the motor vehicle allowances received from Spectrum and Paramed in reporting his income or claiming his motor vehicle expenses in the 2017 taxation year;

l. the Appellant claimed Capital Cost Allowance ("CCA") for 3 vehicles used for employment purposes in the 2017 taxation year which consisted of $3,979 for a class 10.1 vehicle, $233 for a class 10.1 vehicle, and $1,950 for a class 10 vehicle;

m. the Appellant claimed supplies expenses of $695 for the purposes of earning employment income in the 2017 taxation year;

n. the Appellant incurred expenses for supplies, motor vehicle expenses and CCA in the amount of $11,118 in the 2017 taxation year;

o. if incurred, any disallowed amounts for supplies, motor vehicle expenses and CCA were the personal expenses of the Appellant;

p. the Appellant claimed parking expenses of $94 in the 2017 taxation year;

q. the Appellant did not incur parking expenses of $94 in the 2017 taxation year;

r. if incurred, the disallowed parking expenses were the personal expenses of the Appellant;

s. the Appellant claimed accounting and legal fees of $400 in the 2017 taxation year;

t. the Appellant was not paid wholly or partly by commission according to volume of sale or contracts negotiated;

u. the Appellant did not incur accounting and legal fees of $400 for the purpose of earning employment income in the 2017 taxation year;

v. if incurred, the disallowed accounting and legal fees were the personal expenses of the Appellant;

w. the Appellant claimed cellphone expenses of $2,430 for the 2017 taxation year;

x. the Appellant incurred cell phone expenses of $420 for the purposes of earning employment income in the 2017 taxation year;

y. if incurred, the disallowed cell phone expenses of $2,010 were the personal expenses of the Appellant;

z. the Appellant claimed uniform expenses of $791 in the 2017 taxation year;

aa. the Appellant did not incur uniform expenses for the purposes of earning employment income in the 2017 taxation year;

bb. if incurred, the disallowed uniform expenses were the personal expenses of the Appellant;

cc. the Appellant claimed home office expenses of $5,637 and internet expenses of $5,316 in the 2017 taxation year;

dd. the Appellant did not principally perform his duties of office or employment at home;

ee. the Appellant did not use his home on a regular or continuous basis to meet with customers or clients in the course of performing his duties of office or employment;

ff. the Appellant did not incur home office expenses of $5,637 and internet expenses of $5,316 in the 2017 taxation year;

gg. if incurred, the disallowed home office expenses and internet expenses were the personal and living expenses of the Appellant;

hh. the Appellant claimed a tuition credit of $1,592 relating to a tuition credit transfer from his son in the 2017 taxation year;

ii. the Appellant's son earned total income of $23,293 in the 2017 taxation year;

jj. the Appellant's son did not have an unused tuition carryforward amount available for use in the 2017 taxation year;

kk. the Appellant's sons' tax payable in the 2017 taxation year exceeded the tuition credit available to be claimed by the Appellant's son in the 2017 taxation year;

ll. the Appellant's son did not have any remaining tuition tax credit available to be transferred to the Appellant after claiming a tuition credit of $1,592 in his 2017 taxation year; and

mm. the Appellant was not entitled to claim the disallowed tuition tax credit transfer from his son in the 2017 taxation year.

11. The Minister relies on the following additional facts:

a. the Appellant incurred supplies expenses of $272 for the purposes of earning employment income in the 2017 taxation year;

b. the total motor vehicle kilometers for employment was no greater than 58% in the 2017 taxation year;

c. the Appellant drove two passenger vehicles for employment purposes in the 2017 taxation year: a 2010 Hyundai Santa Fe and a 2012 Volkswagen Passat;

d. the Appellant did not use a class 10 vehicle for employment purposes in the 2017 taxation year;

e. the Appellant incurred total motor vehicle expenses of $8,746 in the 2017 taxation year; and

f. the Appellant was entitled to claim CCA of $2,170 in respect of his class 10.1 passenger vehicles used for employment purposes in the 2017 taxation year.

APPENDIX D

Minister's Assumptions of Fact from Docket 2022-1467(IT)I

Assumptions

12. In determining the Appellant's tax liability for the 2018 taxation year, the Minister made the following assumptions of fact:

a) the facts stated above;

b) the Appellant was employed with K.&S. Temporary Medical Services Inc ("K&S"), Spectrum Health Care LP ("Spectrum"), and ParaMed Inc (also known as Extendicare) ("ParaMed"), for the 2018 taxation year;

c) the Appellant was in receipt of salary, wages, or other remuneration of $124,338, $56,701, and $13,293 from K&S, Spectrum, and ParaMed, respectively, for the 2018 taxation year;

d) the Appellant did not receive commissions or other similar amounts related to volume of sales made or contracts negotiated with K&S, Spectrum, and ParaMed for the 2018 taxation year;

e) the Appellant claimed employment expenses of $24,946 for the 2018 taxation years, as set out in **Schedule "A"** under *Amounts Submitted*;

f) the Appellant provided several T2200's in respect of employment expenses from S.R.T Med-Staff (also known as K&S), from Spectrum, and from Extendicare (also known as ParaMed) stating:

   i. the Appellant was required to travel within the Greater Toronto Area for K&S, Spectrum, and ParaMed;

   ii. the Appellant was not required to be away from the municipality and metropolitan area for more then 12 hours;

   iii. the Appellant received a non-taxable motor vehicle allowance of $5,996 from Spectrum, and $370 from ParaMed;

   iv. the Appellant was required to pay for supplies used in the performance of his work;

   v. the Appellant was required to pay for the use of a cellphone; and

   vi. the Appellant was required to use a portion of his personal residence for work 30% of the time for SRT, 15% of the time for Spectrum, and less then 50% of the time for ParaMed;

g) the Appellant did not maintain proper books and records of sufficient nature to allow the Minister to determine the employment expenses with K&S, Spectrum, and ParaMed for the 2018 taxation year;

h) the Appellant claimed accounting expenses of $400 for the 2018 taxation year;

i) the Appellant was allowed accounting expenses of $452 for the purpose of earning employment income for the 2018 taxation year;

j) the Appellant originally claimed cellphone expenses of $2,293 for the 2018 taxation year;

k) the Appellant submitted a revised claim for cellphone expenses of $7,649 for the 2018 taxation year;

l) the Appellant provided invoices totaling $3, 319 of cell phone usage;

m) the Appellant did not provide a breakdown of cell phone amounts incurred for the purposes of earning income from employment;

n) the Appellant incurred a reasonable amount of cellphone expenses of 50% of total cellphone expenses claimed of $3,319 to earn income from employment;

o) if incurred, the disallowed 50% of cellphone expenses of $1,659, were the personal expenses of the Appellant or were not reasonable in the circumstances;

p) the Appellant claimed supplies expenses of $230 for the 2018 taxation year;

q) the Appellant incurred and was allowed supplies expenses of $305 for the purpose of earning employment income for the 2018 taxation year;

r) the Appellant claimed home office expenses of $5,356 for the 2018 taxation year;

s) the Appellant did not principally perform his duties of office or employment at home;

t) the Appellant did not use on a regular and continuous bases his home for meeting customers or other persons in a ordinary course of performing the duties of office or employment for the 2018 taxation year;

u) the Appellant did not incur home office expenses of $5,356 for the 2018 taxation year;

v) if incurred, the disallowed home office expenses of $5,356 for the 2018 taxation year, were the personal and living expenses of the Appellant;

w) the Appellant claimed motor vehicle expenses of $16,667 for the 2018 taxation year, consisting of 85.7% of total motor vehicle expenses of $19,445;

x) the Appellant incurred total motor vehicle expenses of $8,426 for the 2018 taxation year, consisting of 100% of total motor vehicle expenses for employment usage of $14,792 less non-taxable allowance received of $6,366; and

y) if incurred, the disallowed motor vehicle expenses of $8,241 (amount claimed less amount allowed) for the 2018 taxation year were not incurred for the purpose of earning employment income as they were reimbursed by his employers and were the personal and living expenses of the Appellant.

APPENDIX E
Statutory Provisions

6(1)(b) **personal or living expenses [allowances]** — all amounts received by the taxpayer in the year as an allowance for personal or living expenses or as an allowance for any other purpose, except

(i) travel, personal or living expense allowances

(A) expressly fixed in an Act of Parliament, or

(B) paid under the authority of the Treasury Board to a person who was appointed or whose services were engaged pursuant to the Inquiries Act, in respect of the discharge of the person's duties relating to the appointment or engagement,

(ii) travel and separation allowances received under service regulations as a member of the Canadian Forces,

(iii) representation or other special allowances received in respect of a period of absence from Canada as a person described in paragraph 250(1)(b), (c), (d) or (d.1),

(iv) representation or other special allowances received by a person who is an agent-general of a province in respect of a period while the person was in Ottawa as the agent-general of the province,

(v) reasonable allowances for travel expenses received by an employee from the employee's employer in respect of a period when the employee was employed in connection with the selling of property or negotiating of contracts for the employee's employer,

(v.1) allowances for board and lodging of the taxpayer, to a maximum total of $300* for each month of the year, if

(A) the taxpayer is, in that month, a registered participant with, or member of, a sports team or recreation program of the employer in respect of which membership or participation is restricted to persons under 21 years of age,

(B) the allowance is in respect of the taxpayer's participation or membership and is not attributable to services of the taxpayer as a coach, instructor trainer, referee, administrator or other similar occupation,

(C) the employer is a registered charity or a non-profit organization described in paragraph 149(1)(l), and

(D) the allowance is reasonably attributable to the cost to the taxpayer of living away from the place where the employee would, but for the employment, ordinarily reside,

(vi) reasonable allowances received by a minister or clergyman in charge of or ministering to a diocese, parish or congregation for expenses for transportation incident to the discharge of the duties of that office or employment,

(vii) reasonable allowances for travel expenses (other than allowances for the use of a motor vehicle) received by an employee (other than an employee employed in connection with the selling of property or the negotiating of contracts for the employer) from the employer for travelling away from

(A) the municipality where the employer's establishment at which the employee ordinarily worked or to which the employee ordinarily reported was located, and

(B) the metropolitan area, if there is one, where that establishment was located,

in the performance of the duties of the employee's office or employment,

(vii.1) reasonable allowances for the use of a motor vehicle received by an employee (other than an employee employed in connection with the selling of property or the negotiating of contracts for the employer) from the employer for travelling in the performance of the duties of the office or employment,

(viii) [Repealed]

(ix) allowances (not in excess of reasonable amounts) received by an employee from the employee's employer in respect of any child of the employee living away from the employee's domestic establishment in the

place where the employee is required by reason of the employee's employment to live and in full-time attendance at a school in which the language primarily used for instruction is the official language of Canada primarily used by the employee if

(A) a school suitable for that child primarily using that language of instruction is not available in the place where the employee is so required to live, and

(B) the school the child attends primarily uses that language for instruction and is not farther from that place than the community nearest to that place in which there is such a school having suitable boarding facilities;

and, for the purposes of subparagraphs (v), (vi) and (vii.1), an allowance received in a taxation year by a taxpayer for the use of a motor vehicle in connection with or in the course of the taxpayer's office or employment shall be deemed not to be a reasonable allowance

(x) where the measurement of the use of the vehicle for the purpose of the allowance is not based solely on the number of kilometres for which the vehicle is used in connection with or in the course of the office or employment, or

(xi) where the taxpayer both receives an allowance in respect of that use and is reimbursed in whole or in part for expenses in respect of that use (except where the reimbursement is in respect of supplementary business insurance or toll or ferry charges and the amount of the allowance was determined without reference to those reimbursed expenses);

...

8(1)(f) **sales expenses [of commission employee]** — where the taxpayer was employed in the year in connection with the selling of property or negotiating of contracts for the taxpayer's employer, and

(i) under the contract of employment was required to pay the taxpayer's own expenses,

(ii) was ordinarily required to carry on the duties of the employment away from the employer's place of business,

(iii) was remunerated in whole or part by commissions or other similar amounts fixed by reference to the volume of the sales made or the contracts negotiated, and

(iv) was not in receipt of an allowance for travel expenses in respect of the taxation year that was, by virtue of subparagraph 6(1)(b)(v), not included in computing the taxpayer's income,

amounts expended by the taxpayer in the year for the purpose of earning the income from the employment (not exceeding the commissions or other similar amounts referred to in subparagraph (iii) and received by the taxpayer in the year) to the extent that such amounts were not

(v) outlays, losses or replacements of capital or payments on account of capital, except as described in paragraph (j),

(vi) outlays or expenses that would, by virtue of paragraph 18(1)(l), not be deductible in computing the taxpayer's income for the year if the employment were a business carried on by the taxpayer, or

(vii) amounts the payment of which reduced the amount that would otherwise be included in computing the taxpayer's income for the year because of paragraph 6(1)(e);

...

8(1)(h) **travel expenses** — where the taxpayer, in the year,

(i) was ordinarily required to carry on the duties of the office or employment away from the employer's place of business or in different places, and

(ii) was required under the contract of employment to pay the travel expenses incurred by the taxpayer in the performance of the duties of the office or employment,

amounts expended by the taxpayer in the year (other than motor vehicle expenses) for travelling in the course of the office or employment, except where the taxpayer

(iii) received an allowance for travel expenses that was, because of subparagraph 6(1)(b)(v), (vi) or (vii), not included in computing the taxpayer's income for the year, or

(iv) claims a deduction for the year under paragraph (e), (f) or (g);

8(1)(h.1) **motor vehicle travel expenses** — where the taxpayer, in the year,

(i) was ordinarily required to carry on the duties of the office or employment away from the employer's place of business or in different places, and

(ii) was required under the contract of employment to pay motor vehicle expenses incurred in the performance of the duties of the office or employment,

amounts expended by the taxpayer in the year in respect of motor vehicle expenses incurred for travelling in the course of the office or employment, except where the taxpayer

(iii) received an allowance for motor vehicle expenses that was, because of paragraph 6(1)(b), not included in computing the taxpayer's income for the year, or

(iv) claims a deduction for the year under paragraph (f);

8(1)(i) **dues and other expenses of performing duties** — an amount paid by the taxpayer in the year, or on behalf of the taxpayer in the year if the amount paid on behalf of the taxpayer is required to be included in the taxpayer's income for the year, as

(i) annual professional membership dues the payment of which was necessary to maintain a professional status recognized by statute,

(ii) office rent, or salary to an assistant or substitute, the payment of which by the officer or employee was required by the contract of employment,

(iii) the cost of supplies that were consumed directly in the performance of the duties of the office or employment and that the officer or employee was required by the contract of employment to supply and pay for,

(iv) annual dues to maintain membership in a trade union as defined

(A) by section 3 of the Canada Labour Code, or

(B) in any provincial statute providing for the investigation, conciliation or settlement of industrial disputes,

or to maintain membership in an association of public servants the primary object of which is to promote the improvement of the members' conditions of employment or work,

(v) annual dues that were, pursuant to the provisions of a collective agreement, retained by the taxpayer's employer from the taxpayer's remuneration and paid to a trade union or association designated in subparagraph (iv) of which the taxpayer was not a member,

(vi) dues to a parity or advisory committee or similar body, the payment of which was required under the laws of a province in respect of the employment for the year, and

(vii) dues to a professions board, the payment of which was required under the laws of a province,

to the extent that the taxpayer has not been reimbursed, and is not entitled to be reimbursed in respect thereof;

8(1)(j) **motor vehicle and aircraft costs** — where a deduction may be made under paragraph (f), (h) or (h.1) in computing the taxpayer's income from an office or employment for a taxation year,

(i) any interest paid by the taxpayer in the year on borrowed money used for the purpose of acquiring, or on an amount payable for the acquisition of, property that is

(A) a motor vehicle that is used, or

(B) an aircraft that is required for use

in the performance of the duties of the taxpayer's office or employment, and

(ii) such part, if any, of the capital cost to the taxpayer of

(A) a motor vehicle that is used, or

(B) an aircraft that is required for use

in the performance of the duties of the office or employment as is allowed by regulation;

...

8(2) **General limitation** — Except as permitted by this section, no deductions shall be made in computing a taxpayer's income for a taxation year from an office or employment.

...

8(13) **Work space in home** — Notwithstanding paragraphs (1)(f) and (i),

(a) no amount is deductible in computing an individual's income for a taxation year from an office or employment in respect of any part (in this subsection referred to as the "work space") of a self-contained domestic establishment in which the individual resides, except to the extent that the work space is either

(i) the place where the individual principally performs the duties of the office or employment, or

(ii) used exclusively during the period in respect of which the amount relates for the purpose of earning income from the office or employment and used on a regular and continuous basis for meeting customers or other persons in the ordinary course of performing the duties of the office or employment;

(b) where the conditions set out in subparagraph (a)(i) or (ii) are met, the amount in respect of the work space that is deductible in computing the individual's income for the year from the office or employment shall not exceed the individual's income for the year from the office or employment, computed without reference to any deduction in respect of the work space; and

(c) any amount in respect of a work space that was, solely because of paragraph (b), not deductible in computing the individual's income for the immediately preceding taxation year from the office or employment shall be deemed to be an amount in respect of a work space that is otherwise deductible in computing the individual's income for the year from that office or employment and that, subject to paragraph (b), may be deducted in computing the individual's income for the year from the office or employment.

CITATION:	2024 TCC 36
COURT FILE NOs.:	2019-948(IT)I 2019-1278(IT)I 2020-416(IT)I 2022-1467(IT)I
STYLE OF CAUSE:	VOLODYMYR BYKOV AND HIS MAJESTY THE KING
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	January 10, 2024
REASONS FOR JUDGMENT BY:	The Honourable Justice John R. Owen
DATE OF JUDGMENT:	March 14, 2024

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