



CESTNICK

TAX MATTERS

Working from home could mean deductible vehicle expenses

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I had a friend who was a Lada car salesman back in the early 1990s. My neighbour, Jack, bought a car from him and, amazingly, Jack still owns it. It barely runs. He heard I was heading to Canadian Tire, so he said “Tim, I’d like an air freshener for my Lada.” I looked at him and said “Jack, that sounds like a fair trade.”

But regardless of how badly your car runs, if you use it for work, you may be able to claim a deduction for expenses related to the vehicle. I used to tell clients to use the oldest car they own for work because the repair costs – which could be pretty high – would be partly deductible. So, Jack drives his Lada for work all the time.

Now, it’s been the long-standing position of the [Canada Revenue Agency](#) (CRA) that travelling between your home and a regular place of employment is generally considered to be personal travel, so that you can’t claim vehicle costs related to your drive to work.

But now that work arrangements for many folks changed when the [pandemic](#) arrived – some working

from home full-time or part-time – there’s a growing number of employees who believe they should be entitled to a deduction for their vehicle costs when they drive to their employer’s office or workplace. A recent court case may be helpful in understanding how the courts looks at this issue. Let me explain.

The Case

This story comes from the case *Gardner v The Queen* (2020 TCC 108). In 2015, a Jodi Gardner was a sales representative who worked for a cosmetics company based in Oakville, Ont. She lived in Pickering and worked primarily from home. In fact, her employer required her to work from home 90 per cent of the time. She made the 72-kilometre trek from home to her employer’s office in Oakville once or twice each week to meet with her supervisor and co-workers for one to two hours each time and used her own vehicle for the drive.

When Ms. Gardner filed her 2015 tax return, she claimed vehicle expenses amounting to \$12,868. Her employer supported her claim by completing Form 2200, Declaration of Conditions of

Employment, which is required under tax law to make a claim. The form simply confirmed that she worked from home 90 per cent of the time (as an aside, more than 50 per cent is generally required to make a claim), and that she did not have access to a company vehicle.

Another important fact was that Ms. Gardner did not have her own office or workstation at her employer's place of business. Rather, she was able to use the boardroom, her supervisor's office or temporary workstations, if available, if she needed a place to work.

In Ms. Gardner's case, the CRA simply applied their usual policy of denying motor vehicle deductions when an employee travels from home to a regular place of employment and reassessed her. Ms. Gardner then appealed the reassessment to the Tax Court of Canada (TCC).

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The Decision

The key issue here was whether the travel between Ms. Gardner's home and her employer's office counted as personal travel, or employment travel. Under paragraph 8(1)(h.1) of our tax law, motor vehicle expenses can only be claimed when incurred for travelling in the course of employment.

To be clear, if an employee travels between two places of employment (from an employer's office to another office of the employer, for example), this will count as travelling in the course of employment. It wouldn't be personal travel.

The TCC held that Ms. Gardner was really travelling between two employment-related locations – not simply travelling from her personal residence to a regular place of work – and so the court allowed her deductions. Chock one up for the taxpayer.

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The Nuances

This court decision was tried under what is called the Informal Procedure at the TCC. This means that the decision in this case is not to be treated as a precedent for any other cases. Nevertheless, the court in this case did consider a previous informal decision from the case Campbell et al. v R. (2003 TCC 160). In the Campbell case, the taxpayers were employed by a school board and primarily worked from home but visited the school board's main office – where they didn't have assigned offices or workspaces – for regular meetings, and Form T2200 was signed for them. The employees' travel was considered to be for work purposes.

It's important to note that, in another case, McCreath v Her Majesty (2008 TCC 595), the taxpayer was denied vehicle deductions because he had an office available to him at his employer's workplace and simply chose to work from home.

CRA has said recently, that where an employee's circumstances are factually similar to Ms. Gardner's, the deductions will generally be allowed.

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