

# Winners & Losers: Deductibility of Travel Expenses to/from Work



An employee's costs in traveling from home to the workplace are normally non-deductible. Exception: Travel expenses are deductible when employees are required to incur them to carry out their work duties. The mere fact that employees can't do their jobs from home isn't enough. One example of what *is* enough: When the employee's home is an extension of the workplace such that traveling back and forth between what are essentially the two places of work is integral to the employee's job. Here are 2 cases illustrating how courts determine whether such conditions exist.

## **TRAVEL EXPENSES ARE DEDUCTIBLE**

### **FACTS**

A software company based in Ottawa hires a programmer and lets him work out of his home in Kingston, ON. He keeps all of his equipment, including six computers, in his home office; by contrast, he doesn't even have his own office in the Ottawa building. But the programmer does have to travel to the Ottawa office at least once a week at his own expense to meet clients of the company. The programmer deducts his expenses in travelling back and forth between Kingston and Ottawa from his taxable income. CRA disallows the deduction. The programmer appeals.

### **DECISION**

The Tax Court of Canada rules that the programmer's travel expenses are deductible.

### **EXPLANATION**

The programmer's real base of operations was his home in Kingston. The Kingston home office was an extension of the software company's place of business and the programmer's principal place of employment, the court explained. The programmer thus had to do his job in two workplaces: Kingston and Ottawa. And if a job has to be carried out in two workplaces, the costs of travelling back and forth between them are deductible even if one of those work places also happens to be the taxpayer's home, the court concluded.

[*Toutov v. The Queen*, 2006 DTC 2928]

## **TRAVEL EXPENSES ARE NOT DEDUCTIBLE**

## FACTS

The director of the Nova Scotia Liquor Corporation (NSLC) spends 70% of his time working from his home in Hubbards and divides the balance of his time between the NSLC's Halifax office, where he has his own office, and offsite events. The director also uses his Hubbards home office to run another company, PMC Communications. Operating PMC is his main business and principal source of income. The home office is equipped by PMC. CRA says that the director can't deduct the costs of travelling between the home office and the NSLC Halifax office 55 kms. away. The director appeals.

## DECISION

The Tax Court of Canada rules that the director's travel expenses are not deductible.

## EXPLANATION

The court pointed to three major differences between the director's situation and that of the programmer in the *Toutov* case above:

- The director spent most of his time in the home office working for another company, PMC;
- PMC equipped the home office; and
- "[M]ost importantly," NSLC maintained an office for the director's use in Halifax.

Thus, unlike the programmer in *Toutov*, the director could have done his job at a single location, i.e., the company office in Halifax. Travelling between Halifax and the home office was his "personal decision" and dictated by his own convenience.

*[McCreath v. Canada, [2008] T.C.J. No. 454]*