Docket: 2017-4706(IT)I

BETWEEN:

TYLER MACDONALD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 28, 2018, at Ottawa, Ontario

Before: The Honourable Justice B. Russell

Appearances:

Counsel for the Appellant:	Jean-Michel Cazabon Susan Tataryn
Counsel for the Respondent:	Montano Cabezas

JUDGMENT

The appeal of the reassessments raised April 1, 2016 under the federal *Income Tax Act* for the Appellant's 2012 and 2013 taxation years is allowed and the reassessments are referred back to the Minister for reconsideration and reassessment on the following bases:

a) the Appellant is allowed deductions of $320.68 for the 2012 taxation year and $2,109.42 for the 2013 taxation year in respect of cellular telephone expenses;

b) the Appellant is allowed deductions of $1,091.43 for the 2012 taxation year and $660.35 for the 2013 taxation year in respect of lodging expenses;

c) the Appellant is allowed deduction of $504 for the 2012 taxation year and $344 for the 2013 taxation year in respect of parking expenses;

d) the whole without costs due to the divided success of the parties.

Signed at Halifax, Nova Scotia, this 15th day of August 2019.

"B. Russell"

Russell J.

Citation: 2019TCC169
Date: 20190815
Docket: 2017-4706(IT)I

BETWEEN:

TYLER MACDONALD,

Appellant,

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REASONS FOR JUDGMENT

Russell J.

Introduction:

[1] The Appellant Tyler MacDonald has appealed, electing this Court's informal procedure, two reassessments raised April 1, 2016 by the Respondent's Minister of National Revenue (Minister) under the federal *Income Tax Act* (Act). The reassessments pertain to the Appellant's 2012 and 2013 taxation years respectively, disallowing claimed employment expenses of $37,979 (2012) and $61,888 (2013) - Reply, para. 9.

[2] The denied expenses include claims for motor vehicle expenses of $13,229 (2012) and $14,316 (2013), food and beverage/entertainment expenses of $3,500 (2012) and $4,145 (2013), lodging expenses of $9,800 (2012) and $20,450 (2013) and cell phone and airfare expenses of $11,450 (2012) and $18,175 (2013) - Reply, para. 7.

Background:

[3] At all material times the Appellant resided in Ottawa with his family including spouse and four adolescent/young adult children. On August 13, 2012 he commenced employment for employer ATI Telecom International (ATI) as "Executive Director, Fibre to Home Programs". He signed a short employment agreement dated July 31, 2012, co-signed by ATI's then president/COO. The

agreement provides that the Appellant's new employment position is, "based from our yet to be determined office in Ottawa, Ontario". In addition to brief provisions as to salary, potential bonus, vacation and benefits, the agreement states as follows for responsibility for travel expenses and finality of its terms (commencing with an awkwardly worded sentence):

> Business travel will be required as part of this role, and frequent travel to customer locations will be necessary to perform your duties specifically to Regina Saskatchewan [*sic*]. Due to a potential change in control of our business, and under your contract of employment, you will be required to pay for your own travel expenses, and you will not receive a non-taxable allowance for these travel expenses. You will however be compensated for travel to our head office in the Atlanta Georgia area, as well as some pre-approved customer meetings outside of our new Regina office location. This is the complete agreement regarding your employment status. It supersedes any other statements or representation, and it can only be changed in writing.

[4] The Appellant testified that this new ATI job entailed his heading of ATI's work with SaskTel, Saskatchewan's provider of residential telecommunications services, in "overbuilding" SaskTel telecommunications network(s) to provide "fibre in the home" new technology within that province. The Appellant testified that this job included also leadership by him in early stages of ATI seeking similar work in conjunction with large telecommunications companies such as Bell and Telus, operating particularly in Ontario and Quebec. However, the July 31, 2012 employment contract does not mention such work, but rather only Saskatchewan work. That contract provides that it, "is the complete agreement" and it, "supersedes any other statements or representation…"

[5] The Appellant remained employed by ATI, which had an anticipated change of ownership in November 2012, until he was dismissed from his position in September 2013. According to the Appellant his dismissal was due to ATI's new ownership intending to focus development of ATI's fibre in the home technology work in western Canada, rather than in eastern Canada as the Appellant said he had anticipated.

Section 8 re employment expenses:

[6] Section 8 of the Act speaks to deductibility of employment expenses. Subsection 8(2) provides that only to the extent permitted by section 8 can a deduction be claimed in computing employment income. Subsection 8(1) lists a number of claimable employment expenses. Claimable employment expenses are

restricted as compared to claimable business or property expenses per the more open-ended wording of paragraph 18(1)(a) of the Act.

[7] This appeal deals largely with two subsection 8(1) provisions – paragraphs 8(1)(h) which allows for non-motor vehicle "travel expense", and 8(1)(h.1) which allows for "motor vehicle travel expenses". They respectively provide:

> **Deductions allowed**
>
> 8 (1) In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:
>
> **Travel expenses**
>
> (h) 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), 6(1)(b)(vi) or 6(1)(b)(vii), not included in computing the taxpayer's income for the year, or
>
> (iv) claims a deduction for the year under paragraph 8(1)(e), 8(1)(f) or 8(1)(g);
>
> **Motor vehicle travel expenses**
>
> (h.1) 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 8(1)(f);
>
> (Underlining added)

Subsection 230 re records and books:

[8] Subsections 230(1) and (6) of the Act require that,

> (1) [e]very person...required...to pay taxes...shall keep records and books of account...in such form and containing such information as will enable the taxes payable under this Act...to be determined.
>
> (6) Where a person required by this section to keep records and books of account serves a notice of objection or where that person is a party to an appeal to the Tax Court of Canada under this Act, that person shall retain every record, book of account, account and voucher necessary for dealing with the objection or appeal until…in the case of an appeal…the appeal is disposed of and any further appeal in respect thereof is disposed of or the time for filing any such further appeal has expired.
>
> (Underlining added)

[9] The Appellant testified that in 2015 he had sent a bundle of receipts and other records to Canada Revenue Agency (CRA) auditor K. Nastos, supporting his claimed employment expenses. He said that only a small portion of that bundle was returned to him, enclosed with the auditor's March 21, 2016 letter, shortly prior to the Minister's raising of the two appealed April 1, 2016 reassessments. That CRA letter does not indicate it was returning to the Appellant anything less than all of the records the Appellant had sent to CRA.

[10] While the Appellant testified that some of these records were returned to him, he entered into evidence relatively few actual receipts.

[11] Nor did his counsel call as a witness any CRA officer (such as the auditor and/or the Appeals officer) to testify as to the Appellant's assertion that CRA had failed to return much of his bundle of records. Finally, the only letter to CRA entered by the Appellant in evidence and referring to alleged missing records is dated November 15, 2017 – more than a year and a half following CRA's March 21, 2016 letter. The Appellant did testify, without corroboration, that he had earlier followed up by telephone. There was no reference to this in his November 15, 2017 letter.

[12] The Appellant presented himself as an executive-level businessperson who dealt primarily with telecommunications company executives. Having in mind the duties statutorily fixed upon taxpayers to retain relevant records per subsections 260(1) and (6) of the Act, set out above, I must observe that the Appellant exhibited inadequate acumen and prudence in not retaining a copy of the expense records bundle that he sent to CRA.

The Appellant's Form T2200s:

[13] Subsection 8(10) provides that an amount otherwise deductible under any of certain subsection 8(1) provisions (including paragraphs 8(1)(h) and 8(1)(h.1) set out above) cannot be deducted unless the employee has filed a prescribed form (form T2200) signed by the employer. That form requires the employer's certification that the conditions of employment required by the relevant provision of subsection 8(1) - here, paragraphs 8(1)(h) and 8(1)(h.1) - were met in respect of that employee for the pertinent taxation year.

[14] The Appellant tendered in evidence two versions of form T2200 for each of the subject two years. The earlier of these two versions (Ex. A-1 (2012) & Ex. A-2 (2013) is dated "6/10/16" (June 10 or October 6, 2010), signed by an ATI "HR advisor", whose actual name cannot be made out. The later version, dated September 1, 2018 (Exs. A-3, A-4, A-5 and A-6) differs substantially from the 2016 version. Further, it came out in the Appellant's cross-examination that the Appellant himself had drafted the content of the 2018 version, rather than had any ATI employee or officer, including the HR advisor who had completed the 2016 version two years earlier.

[15] Also the same 2018 form T2200 was signed by two different ATI individuals. The individual signing one of these 2018 versions appears to have been "Gilles Langevin, ATI Program Director FTTH". The signing individual for the other 2018 form T2200s, also showing the date of September 1, 2018, but

according to the Appellant actually signed only a day or so prior to the late November 2018 hearing in this matter, was "Josh Sigmon, Director of Tax and Treasury" for ATI, based in the U.S.

[16] The Appellant did not call as witnesses any of the three different individuals who respectively signed these T2200s for ATI. They presumably could have testified as to what if any personal knowledge they had had respecting the Appellant's 2012 and 2013 employment terms.

[17] The 2016 form T2200 prepared and signed by an ATI HR advisor is in several respects significantly different from content of the 2018 form T2200s that the Appellant acknowledged in cross-examination he had prepared, and then had had signed by more senior ATI officials. The 2016 form T2200 provided that, (a) the Appellant's home address was Ontario, and that Saskatchewan was his specific area of travel for travel to locations that were not ATI's places of business or between different locations of ATI's places of business in performing employment duties; (b) that he had to be away for more than 12 hours at a time (in Saskatchewan) from where he normally reported for work; (c) that he had the use of a company vehicle without responsibility for any of its expenses; (d) that he had to pay his own travel cost to the ATI office [understood to be Regina]; (e) that he had to pay without reimbursement for his cell phone and Regina accommodation and food cost; and (f) also that his contract of employment did not require him to use a portion of his home for work.

[18] The subsequent 2018 T2200 version that the Appellant himself prepared, states that, (a) he had a much expanded area of travel than indicated in the ATI authored 2016 version - not just Saskatchewan but also Alberta, B.C., Ontario and "various U.S. states"; (b) he did not have the use of a company vehicle; (c) he was reimbursed for travel to Saskatoon and the Moose Jaw office (from his Regina office); (d) his contract of employment required him to use a portion of his home for work and 50% or greater of his employment duties were performed at his home office.

[19] These 2018 statements regarding home office and use of employer vehicle particularly are at direct variance with the 2016 T2200 version.

[20] I have decided that of these T2200 versions, the earliest version – being the version dated 10/6/16 - has the most credibility, and so it is the version I will accept. There are several reasons for this. First, this 2016 version was prepared by an ATI HR employee significantly closer in time (two years) to the 2012 and 2013

taxation years in issue. Memories do not improve with time. Further, the 2016 version more closely matches the provisions of the July 31, 2012 contract of employment, which makes no reference to work locations away from Ottawa other than Regina and outside ATI's new Regina office. The 2016 version says that the Appellant's area of travel was Saskatchewan.

[21] Also in the 2016 form T2200s there was no statement that the Appellant was to work from home. They do state he had the use of a company vehicle. And, regarding availability of a company vehicle, the Appellant in testimony concurred that he had the right to use a company vehicle. However, the 2018 version of the form T2200 drafted by the Appellant stated he did not have access to a company vehicle.

[22] Finally the evidence is that the Appellant had submitted the 2016 version form T2200s for 2012 and 2013 to CRA at the objection stage. He testified he had read them over before submitting them and knew they were wrong as to content, but that he did not say any such thing to CRA at the time. It was after this appeal was launched on November 27, 2017 that he himself prepared the 2018 version T2200s - with the content he drafted being in some respects substantially different than content of the 2016 version, as already noted. He sought senior officials of ATI to sign the 2018 versions. I question if either of these two officials signing in 2018 had the same degree of actual knowledge that ATI's HR advisor two years earlier presumably had, given the latter's specific HR responsibilities, when that HR person prepared and signed the 2016 version of the form T2200s. As stated none of the three ATI signatories were called as witnesses to speak to these discrepancies.

[23] Finally on this point, the Appellant in his testimony repeatedly criticized the 2016 form T2200s – on the basis that the pertinent taxation years on them had been reversed. That is, the 2012 form showed 2013 and *vice versa*. I see that as no more than a clerical error.

[24] I now turn to consideration of the various expense claims.

Airfare expenses:

[25] For claimed airline expenses, the Appellant relies upon paragraph 8(1)(h) of the Act. Thus he has to show, *inter alia*, that he was ordinarily required to carry on employment duties away from employer's place of business or in different places, plus that the contract of employment required him to pay the incurred travel

expenses in performance of employment duties, plus that the expenses were incurred in the performance of duties of the employment.

[26] The Appellant's documentary evidence as to airfare expenses included printed confirmation of three Air Canada "10 ticket flight packs" purchased August 2012, April 2013 and July 2013 (Ex. A-12). Each allowed 10 credits (one credit per flight direction) for travel between an Ontario location and a location in the "central region" which the Appellant testified consists of Saskatchewan and likely Manitoba.

[27] Also tendered in evidence were his American Express credit card monthly statements for the period June 18, 2012 to August 14, 2013 (Ex. A-11), showing airline flight purchases including routes, including these flight packs, using that credit card.

[28] Ex. A-10 consists of a two page table, prepared by the Appellant, based on his said AmEx credit card statements. The table shows flights purchased between June 18, 2012 and July 22, 2013. The table includes nine flights taken by his wife including a trip the couple took to Greece. The table includes a flight stated, obviously wrongly, as being from Winnipeg to Winnipeg on 27 February, 2013, costing $209. The document shows six flights from Ottawa to Regina but only one flight from Regina to Ottawa. The stated flights are presented as single direction not round trips. It shows purchase of the three ten ticket Air Canada flight packs noted above. It shows a few flights from Ottawa to Toronto, one from Toronto to Denver and two from Ottawa to Atlanta (one being for his wife), and one identified only as "Saskatoon (express air flight)" without identification of any destination or originating city.

[29] This Ex. A-10 table concludes by stating "Total Tickets Explicitly to Regina with Tyler as Passenger - $1,987.95" and "total Tickets Explicitly to Ontario with Tyler as Passenger - $2,231.06". I understand from the Appellant's testimony that at least most of those "to Ontario" flights are in fact flights back to Ottawa from Regina; and that at least most of the trips "to Regina" originated in Ottawa. I have noted the similarity in total costs of these flights "to Ontario" and these flights "to Regina", also suggestive that they tend to be single direction trips in opposite directions between the same cities - Ottawa and Regina.

[30] The document includes the statement, "Total Spent on 10 Ticket Flight Packs - $12,735.10". The Appellant testified that most at least of these flight passes were used for flights between Ottawa and Regina.

[31] The document is unclear as to what flights are being claimed. Certainly his and his wife's flights to Athens were personal, as was presumably his wife's flight July 9, 2013 with him from Ottawa to Regina. The fact that the document (Ex. A-10) does not delineate personal from purportedly employment flights renders this evidence of little use. There is no clear break-out as to what specific flights during the relevant 14 or 15 month period the Appellant is claiming as expenses. It is understood that he is claiming his commuting flights between Ottawa and Regina as deductible. What other flights he might be claiming I do not know.

[32] The Appellant's evidence was to the effect that he shuttled by air between Ottawa and Regina weekly, and he said sometimes twice a week. He acknowledged that his AmEx credit card was used both for business and personal expenses.

[33] As for the airfare expenses claimed as deductible that were airfare charges for the Ottawa/Regina commuting. I consider this travel to have been personal travel and not travel in the course of the Appellant's employment. It is well established law that generally expenses incurred in commuting between one's home to one's place of employment are personal expenses, and thus not deductible as employment expenses. See *Barry v. R*, 2014 FCA 280 at para. 15.

[34] Accordingly, the threshold question respecting application of paragraph 8(1)(h) is whether the Ottawa-Regina commute travel constitutes, "travelling in the course of the…employment" per that provision, or was simply personal travel and as such not travel in the course of employment.

[35] The Appellant argues that Ottawa was a place of employment for him, and so his travel between Ottawa and Regina was in the course of his employment and not simply personal travel. In this regard he relies upon having done some of his employment work within his Ottawa home, and asserts this made Ottawa a place of employment for him.

[36] The Appellant testified that he did ATI employment work from his Ottawa home on either Mondays or Fridays "a number of times" in 2012 and 2013, and "if [he] could squeeze in both [a Monday and Friday] [he] would". But there was no evidence that this intermittent work at home, consisting of, "conference calls, project meetings, reviews, skype meetings, administrative duties" was a condition of his ATI employment, as opposed to the Appellant simply choosing to arrange his schedule "a number of times" to spend a weekend-linked workday at home in Ottawa rather than in Saskatchewan. Plus there was scant evidence as to any actual

office in the home. There were no photographs of any such home office and no testimony describing it. Nor did the Appellant claim home office expenses.

[37] The fact that an employee might choose to "squeeze in" some of his or her employment work at his or her home (such as taking and making employment work calls from home, or drafting presentations at home), does not without more constitute the home as being an employment location. In *McCreath v. The Queen*, 2008 TCC 595 this Court per Campbell, J. found that an individual with an assigned office at his employer's work location 55 kilometres from his home who nevertheless chose to do most of his employment work from his home did not thereby establish his home as a location of employment so as to be able to justify non-reporting of a per kilometre allowance paid by the employer for the taxpayer's travel from his home to the employer's work location where the employee had an office; and as well for that taxpayer's travel from the home to other locations in the same geographic area for employment related work.

[38] The Court wrote at para. 12 in *McCreath* that certain judicial decisions that had found as an exception that a taxpayer's residence constituted a base of employment, cannot be extended to cases,

> ...where a taxpayer makes a personal decision to work from home when the employer has provided and maintains a regular office for his own use.

[and further]

> His [*i.e.* the employee's] home office cannot be considered an extension of the employer's office and therefore the travel expenses cannot be said to be incurred in traveling from one place of work to another. The Appellant's travel was from his home base, where he chose to conduct the majority of his duties as Chairman of NSLC, as a matter of convenience, to his place of work [55 kilometres distant] at NSLC headquarters.

[39] I consider that this is so in this appeal as well, without regard to distance between the employee's home and the employee's employer - assigned office. The two locations could be within the same regional municipality as in *McCreath*, or equally could be in different provinces well distant from each other.

[40] I do not consider that the specification in the July 31, 2012 employment contract that the Appellant's new position was "based from [ATI's] yet to be determined office in Ottawa, Ontario" alters the above conclusion. This is supported by the twin facts that there was no evidence that ATI made any effort to

found an ATI office in Ottawa during the relevant period, and also that there was no reference whatsoever in the employment contract or evidence generally as to any work pertinent to Ottawa, as opposed to pertinent to Regina and Saskatchewan, entailed by the new job.

[41] The airfare expenses incurred by the Appellant in his commuting between Ottawa and Regina are personal expenses, the same as would have been his motor vehicle expenses had he lived in suburban Regina and commuted daily by personal vehicle between that residence and his employer's downtown Regina workplace. Where a taxpayer lives is that taxpayer's personal decision, and the expenses of commuting from wherever he/she lives to his/her employer's place of business and return are personal and hence not deductible as expenses of employment.

[42] The evidence showed that the Appellant travelled basically weekly to Regina where was located his ATI provided office (he also had an ATI office in Moose Jaw). This is consistent with the July 31, 2012 employment agreement with specific reference to Regina for performance of his employment duties. As for air travel for employment purposes between Ottawa and other destinations, the Ex. A-10 table shows several flights between Ottawa and Toronto and one to Atlanta and one to Denver. I heard little testimony regarding these trips.

[43] Further, I note the statement in the July 31, 2012 employment agreement that, "[y]ou will however be compensated for travel to our head office in the Atlanta Georgia area, as well as some pre-approved customer meetings outside of our new Regina office location."

[44] However, the Appellant provided little if any evidence respecting for which trips he was compensated. Perhaps he was compensated for the Toronto trips, and maybe also the Denver trip. It appears from the employment agreement he would have been for the Atlanta trip. It would seem extreme for an employer to require an employee to personally pay for flights clearly undertaken for employment work purposes - all the more so when the cost of such flights is substantial, such as per Ex. A-10 an Ottawa - Toronto flight on March 7, 2013, said to have cost $1,318. I expect an employee would be most unlikely to pay this upgraded price for that routing if he or she knew it was coming out of his her own pocket, even if deductible, rather than the employer's pocket.

[45] Also, while I heard considerable testimony from the Appellant respecting travel to other parts of Canada and the U.S. and not just to and from Regina, yet his

Ex. A-10 table of flights that he himself prepared from his AmEx statements shows relatively few flights to and/or from destinations other than Regina.

[46] Further, I refer to the nature of the records tendered by the Appellant as evidence of these claimed air charges. I described this evidence above. Basically it was all his AmEx statements over much of the two years, which credit card he indicated was used both for business and pleasure. There was not organized documentation explaining as to which of these flights were being claimed for employment purposes, to where from where, and price, and why it had not been reimbursed by the employer who in the employment agreement had stated there would be compensation for certain pre-arranged travel other than to Regina. Thus I find that these records do not meet the requirement specified in subsection 230(1) of the Act, that such documentation be kept by the taxpayer,

> in such form and containing such information as will enable the taxes payable under this Act or the taxes or other amounts that should have been deducted, withheld or collected to be determined.

[47] Finally with respect to air expenses, can it be said that paragraph 8(1)(h) allows the Appellant's unreimbursed Ottawa - Regina - Ottawa travel expenses to be deducted on the basis that, per subparagraph 8(1)(h)(i), the Appellant was ordinarily required to carry on his employment duties "away from the employer's place of business or in different places"?

[48] See *Royer v. Canada*, 99 DTC 683 (TCC) at para. 17, wherein this Court determined that this language means that where a worker must work at the employer's discretion at several different places including the employee's ordinary work location (here, Regina), then the employee's expenses for travel between that ordinary work location and home would remain personal and hence non-deductible. The evidence was that travel to locales in Saskatchewan was via Regina where ATI and the Appellant had offices; not *via* Ottawa.

[49] In summary, I find the major portion of the Appellant's claimed airfare to have been for personal air travel in commuting between Ottawa and Regina and therefore not deductible as employment expenses. With regard to the remainder of claimed airfare as deductible employment expenses pursuant to subparagraph 8(1)(h) of the Act, I find the evidence insufficient as to the specific identity of such flights (as distinguished from personal flights, there being no such breakout in Ex. A-10), and as to the specific employment purpose of each of such flights, and as to why the employer ATI presumably did not recompense the Appellant the cost of

such flights as the July 31, 2012 employment agreement indicated would occur for "some pre-approved customers meetings outside…our new Regina location".

[50] Evidence from a knowledgeable ATI representative could have assisted with this. The Appellant's assertion that he was not on good terms with ATI, with his current employer being a competitor of ATI, is no reason to have not served one or more ATI staff with a subpoena *duces tecum*. I have no reason to expect that any such person(s) would not have truthfully testified under oath or affirmation as to content of relevant ATI records.

Regina accommodation and meal expenses:

[51] It follows that expenses paid for Regina accommodation - whether hotels or a rented apartment - are not deductible as travel expenses. Regina is where the Appellant's principal office was for his employment, as determined above. The fact that he did not reside sufficiently proximate so as to be able to lodge at his own home each night after a working day in his Regina office is an aspect of the Appellant's personal choice in maintaining his residence in distant Ottawa rather than having moved to Regina. Thus I do not accept as being non-personal and accordingly deductible the claims for Regina hotel accommodation, apartment rent and related utility bills.

[52] The same would apply to personal meals taken in Regina - that is, meals in Regina other than for employment-related purposes such as for taking a potential ATI customer out for a meal or entertainment, or on occasion taking ATI staff out for a meal or entertainment. Personal meals would be at personal expense, and thus non-deductible. The Appellant said he was only claiming for "personal" meals, by which term I accept he meant meals he himself ate and not in a client entertainment or other employment specific context.

[53] The evidence was not at all detailed or specific as to meals claimed. Further, the Appellant's testimony - that he was far from home and had to eat, he had not brought a sandwich with him - does not advance his cause. He was far away from home through his own choice of maintaining his home in distant Ottawa. And that is fine, in and of itself. But this decision that he took, in accepting employment based in Regina - far distant from his actual home - does not at all entitle him to have the meals that he consumed in Regina, being his employment base, subsidized under the Act as a deductible expense.

Motor vehicle expenses:

[54] The claimed motor vehicle expenses relate, I gather, to the Appellant's use of his own vehicle in and about Saskatchewan. The 2016 T2200 provides that the Appellant had the use of a company vehicle and that expenses related to its operation by the Appellant would be paid by the employer, ATI. The Appellant acknowledged that he had access to various vehicles of ATI in Saskatchewan. However, he said he did not like any of these vehicles that would be available to him. He said that they were for "construction", indicating they thus were inappropriate for his travel in and about Saskatchewan to meet with executive-level persons.

[55] Whether this means the employer anticipated the Appellant would drive, for example, a pick-up truck is unknown from the evidence. In the 2018 version of the T2200 that the Appellant himself composed, he indicated that a company vehicle was not made available to him. Yet the 2016 version prepared by the HR advisor that the Appellant sent along to CRA stated that he did have access to a company vehicle with the company to pay the expenses thereof. Presumably if this were not true the Appellant would have said something to CRA about that, yet he testified he did not identify to CRA any content of the 2016 version T2200s as being erroneous. That only came later, in 2018 after the Appellant had retained counsel and the herein appeal had been commenced.

[56] This claim would be pursuant to paragraph 8(1)(h.1), dealing with employee motor vehicle travel expenses, and as set out above. Also as noted above subsection 8(10) requires that for a claim under this paragraph there must be a supporting statements in the applicable form T2200. Here, in the applicable form T2200, being the 2016 version, there is no statement that the Appellant was required to use his own vehicle. The relevant statement instead is that ATI as employer would provide a vehicle for the Appellant's use, at ATI's complete expense. It was the choice of the Appellant to use his own vehicle.

[57] Thus I would disallow this claim.

[58] However, I will continue. The Appellant testifies that he kept a log of his employment-related motor vehicle travel with his own motor vehicle, but that CRA lost it. Again, the Appellant wrongly did not guard against such an eventuality by retaining a copy of this record. And no CRA official was called by the Appellant to provide corroborative testimony that they had seen the motor vehicle log that the Appellant says he sent to CRA and purportedly had then been lost.

[59] In the absence of this log, the Appellant presented documentary evidence that were estimates of average length of daily driving around Saskatchewan. Again no personal diary (in the absence of a log) was entered into evidence that could have shown his actual motor vehicle trips, basically within Saskatchewan. See for example, Ex. A-24 which consists of two typed statements of the Appellant, only the first statement dealing with motor vehicle expenses, reading, "Assuming 2 trips to Saskatoon @ 500 kilometres for each round-trip once a week @ 4 we [sic] 52,000km @ $0.455/km = $23,600". So clearly, this was an estimate.

[60] Further, it is unclear if the claim includes expenses for driving the vehicle between Ottawa and Regina. The evidence is that he drove his personal vehicle from Ottawa out to Saskatchewan and back twice - when he began and ceased using the vehicle for ATI employment work and also at the December holiday season in 2012 when he drove it from Saskatchewan to Ottawa and then back out to Saskatchewan. For me that is personal travel just as were the flights back and forth between Ottawa and Regina personal travel. I do not know whether the Appellant has included expenses for that travel in his claim. I anticipate that he has, as that would be consistent with the logic of his claim for the expense of his flights between Ottawa and Regina. Assuming these kilometres for this one way distance (in excess of 2,500 kilometres) four times are included, the total of kilometres claimed would be significantly affected.

[61] So, for the reason also of inadequate records, contrary to subsections 230(1) and (6) of the Act, I am unable to allow the Appellant the claimed deduction for motor vehicle travel expenses for either of the 2012 and 2013 taxation years. As part of this the July 31, 2012 employment agreement indicated that at least some of such travel would be underwritten by ATI. I have no information as to what extent that occurred, and if and to the extent it did not, then why not?

Food, beverage/entertainment expenses:

[62] The evidence as to the claim for food, beverages and entertainment was also inadequate. Referring again to Ex. A-24, the Appellant's second typed statement is, "Assuming 10 meals a week @ 4 weeks per month over 13 months 520 meals @ $15.15/meal = $7,878". That $7,878 amount is close to the $7,645 total of the two claimed amounts noted in paragraph 2 above (*i.e.*, the notably round figure of $3,500 (2012) and $4,145 (2013)). Again here the claim is based on assumptions rather than upon proven specific amounts and diarized trips. That does not meet the requirements of subsections 230(1) and (6) noted above. It may be that if properly documented some or many of the meals consumed on the road in Saskatchewan

outside Regina would be claimable. However, without proof in the form of specific records, as specified by the Act, a deduction cannot be permitted. I have addressed above the claim that records were sent to CRA and not returned.

Cellular telephone:

[63] The Appellant claimed Fido cellular telephone charges of $400.85 for the 2012 taxation year and $2,636.77 for the 2013 taxation year, totalling $3,036.77. His overall total charges for Fido for this period were slightly greater in amount - $3,257.42. He also had an Ottawa home cellular phone account with Rogers. His evidence was that the Fido phone was used for work and prices were high back in these years, including for data charges. There was no evidence as to what extent or whether the Fido phone was used for personal, not work calls. He has claimed slightly more than 93% of total Fido charges. The charges are set out in Ex. A-27 and documented in the Ex. A-11 AmEx statements.

[64] I will allow 80% of the claimed charges, *i.e.* $320.68 for the 2012 taxation year and $2,109.42 for the 2013 taxation year. The Appellant's testimony did not at all make clear that these were all work charges and that he did not use the Fido phone for any personal calls - although neither did Respondent's counsel in cross-examination pursue this usual point. Also I have reservations about the startlingly large and round figure of $700 shown on Ex. A-27 as having been charged by Fido on the transaction date of January 21, 2013. No explanation for this was provided. I note there was no December 2012 monthly charge but even at that the $700 seems excessive, arbitrary and without explanation. This is part of the rationale for my reduction of the overall claim (including that $700 charge) to 80%.

[65] The 2016 T2200s both (for 2012 and 2013) provide that the Appellant as a condition of employment had to, "pay for the use of a cell phone".

Lodging (Saskatoon, Whitby, Toronto):

[66] The Appellant's Ex. A-13 provides a breakdown of charges for "Lodging", taken from the Appellant's AmEx statements. It shows one claim for a Regina stay, 15 Saskatoon hotel stays, one Whitby hotel stay and one Toronto hotel stay - all for single nights with exception of one two-night Saskatoon stay. Also, the breakdown shows that two of the Saskatoon stays are both for "24-Sep-12" to "25-Sep-12", at the same hotel and with near identical respective charges of "$234.5" and "254.5".

[67] I have in mind the statement in the July 31, 2012 employment agreement that the Appellant, "will be compensated for travel [for] some pre-approved customer meetings outside our new Regina office location". Evidence is wholly inadequate as to which trips to Saskatoon, whether all or some or none, were "compensated" by the employer. Rather than wholly deny the claim (noting that here the relevant amounts are specified and have not simply been estimated) I will, taking all the evidence into account and the demeanour of the Appellant and giving the Appellant the benefit of the doubt, allow one half of all the Saskatoon charges (less each of three charges for a second room for the same night - $235.4 (24-25 Sept. 2012); $178.40 (4-5 Nov. 2012) and $189.62 (19-20 Nov. 2012)) totalling $3,005.48/2 = $1,502.74. Plus I will allow one-half of the one Whitby charge of $189.83, *i.e*. $94.92; plus one-half of the one Toronto charge of $308.23, *i.e.* $154.12. For reasons noted above regarding Regina accommodation claims I will not allow any of the "17-Aug-12" Regina charge of $651.41 shown on the exhibit nor any of the three Regina apartment charges shown at the bottom of the exhibit being $976.64, $16,200 and $4,940. Thus the total amount allowed under this heading is $1,502.74 + $94.92 + $154.12 = $1,751.78. Of this total amount, $1,091.43 and $660.35 are attributable to the 2012 and 2013 taxation years respectively.

Parking:

[68] Parking was not pleaded as an expense to be deducted but there was no specific objection from the Respondent at the hearing to a claim for parking expenses being included. Ex. A-21 is the Appellant's listing of parking charges from his AmEx statements although without convenient referencing to where the parking related. Having reviewed the Ex. A-11 AmEx statements I am prepared to allow all parking claims per paragraph 8(1)(h.1) of the Act which I understand relates to parking a vehicle close to his employer-assigned downtown Regina office. However, I do not include the several Regina airport parking charges which from review of Ex. A-11 I see have also been included. I believe that would have been part of his personal travel between Regina and Ottawa as discussed above.

[69] Thus, of the total parking charges of $719.50 as shown on Ex. A-21 for 2012, I disallow the RAA (Regina Airport Authority) parking charges of $44, $41, $44, $53.50 and $33, leaving as deductible $504. Similarly for the 2013 taxation year $460.50 was claimed. I will disallow RAA parking charges of $61.50 and $55, leaving as deductible $344.

Conclusion:

[70] In conclusion this appeal will be allowed, to the extent of allowing the amounts referenced above in paragraphs 65, 68 and 70. The appealed reassessments are referred back to the Minister for reconsideration and reassessment accordingly. Results having been divided in this informal procedure matter there will be no order as to costs.

Signed at Halifax, Nova Scotia, this 15th day of August 2019.

"B. Russell"

Russell J.

CITATION:	2019TCC169
COURT FILE NO.:	2017-4706(IT)I
STYLE OF CAUSE:	TYLER MACDONALD AND HER MAJESTY THE QUEEN
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REASONS FOR JUDGMENT BY:	The Honourable Justice B. Russell
DATE OF JUDGMENT:	August 15, 2019

APPEARANCES:

Counsel for the Appellant:	Jean-Michel Cazabon Susan Tataryn
Counsel for the Respondent:	Montano Cabezas

COUNSEL OF RECORD:

For the Appellant:

Name:	Jean-Michel Cazabon Susan Tataryn
Firm:	Tataryn Law

For the Respondent:	Nathalie G. Drouin Deputy Attorney General of Canada Ottawa, Canada