

International Brotherhood of

BOILERMAKERS • IRON SHIP BUILDERS

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MARTIN D. NICHOLSON
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LODGE 359

BLACKSMITHS • FORGERS & HELPERS

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March 16, 2018

Notice to all Lodge 359 Members

Re: CRA Assessments for 2014-2016 (Travel and Meal Allowance issues)

As most of you are now aware another one of our employers recently underwent an audit from the CRA, which in turn has created a myriad of tax complications which has resulted in tax assessments being issued for the years 2014-2016. There has been a number of discussions over what can be done and what sort of approach would be the best in this extremely unfortunate circumstance. On March 14th, 2018 the Union met with Lewis and Company, which is a tax specialist who specializes in these types of matters. Enclosed you will find a document that has been provided by Lewis and Company which may assist in providing information for path forward. Lodge 359 is working as diligently as possible to try and get information to its members and we are committed to doing everything we can, however Lodge 359's ability to help individual taxpayers is limited due to the Canadian Tax Laws. Please be aware that we are not the only trade involved, and we are in discussions with the other affected trades about a combined path forward.

As more information becomes available we remain committed to ensuring that all members are informed as promptly as possible. Lodge 359 makes no representation or warranties of any kind whether express or implied as to the content of the document provided by Lewis and Company dated March 14th, 2018. We strongly encourage each individual to also seek their own tax advice.

Fraternally,


Jordan Streng
Business Representative

MEMORANDUM

TO: Mr. Ken Noga & Mr. Jordan Streng, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers Boilermakers Lodge 359

FROM: Hugh Woolley

DATE: March 14, 2018

SUBJECT: Canada Revenue Agency Audit

This morning we met at my office to discuss the actions that the Canada Revenue Agency ("CRA") has taken involving various members of your union.

I understand that the CRA has conducted payroll audits of various employer companies and determined that travel allowances and overtime meal allowances are taxable benefits to your members. Further, I understand that the CRA has issued Notices of Reassessment in respect of prior years' tax returns of many union members. Although none of the employees have been issued amended T4 slips, it appears that these reassessments pertain to these meal and travel allowances.

Very generally, the basis of the CRA's reassessments can be summarized as follows:

Overtime Meals

Subsection 6(1) of the Income Tax Act requires that an employee include in their income the value of all benefits received by virtue of their employment. Generally, this includes the cost of free meals or a meal allowance.

It is generally agreed that an employee benefit does not arise when the benefit primarily accrues to the employer not the employee. A simple example of this would be workplace training. Even though the employees may benefit from the work-related training, the training is primarily for the benefit of the employer not the employee.

The CRA is willing to accept that an "overtime meal" (or an allowance in respect of an overtime meal) does not result in an employee benefit (presumably on the basis that the primarily beneficiary of the employee working overtime is the employer) if various conditions are met. These conditions are arbitrary imposed by the CRA and are not set out in the Income Tax Act. These conditions include that the cost of the meal (or allowance) doesn't exceed \$17 unless the particular work location justifies a higher rate based on relative cost of food in that locale or there are "other significant extenuating circumstances".

This \$17 is a threshold not an exemption. That means any meal (or allowance) over \$17 is fully taxable rather than just the portion that exceeds \$17. Put another way, an employee in a 40% marginal tax bracket receiving a \$25 allowance will retain only 60% of the \$25 (or \$15) which is less than they would retain if they received a \$17 non-taxable allowance.

I understand that the CRA included the value of all overtime meal allowances received as taxable employment income on the basis that the employees received an overtime meal allowance which exceeded the CRA's arbitrary \$17 threshold.

Travel Allowance

I understand that travel costs are only reimbursed for out of town work.

Subsection 6(6) of the Income Tax Act (the "Act") excludes from an employee's income an allowance for travel between the employee's principal place of residence and a special work site (being a location at which the employee worked on a temporary basis and the employee could not reasonably be expected to return to their principal place of residence) PROVIDED that such allowance is "reasonable".

The Act does not define what is a reasonable allowance. Although paragraph 18(1)(r) of the Act states that the employer may not claim a tax deduction for amounts paid to employees that exceeds prescribed millage rates (54 cents per km in 2016), these limits do not dictate what an employee may receive as a non-taxable allowance.

In a private letter technical interpretation dated December 30, 2013 the CRA's head office stated that for the purposes of subsection 6(6) of the Act that is a "question of fact" what is a reasonable allowance and that any "allowance that approximates the transportation expenses to be incurred by the employee would generally be considered reasonable".

I understand that employees are paid a per kilometre allowance for out of town travel based on the distance between Burnaby City Hall and the special work site regardless of the particular employee's actual travel distance.

I understand that in some instances the actual distance travelled exceeds the distance from Burnaby City Hall to the special work site and in some instances the actual distance travelled is less.

I understand that the language in the contracts basing the allowance on the distance from Burnaby City Hall was an administrative convenience intended to simplify the record keeping of the various employers so that they did not have to track the distance from the home of each employee (when there were often hundreds of employees working on a particular job site and frequently the particular employees hired changed from job site to job site).

I understand that the CRA included the value of all travel allowances received as taxable employment income on the basis that the allowance was based on the distance from Burnaby City Hall and not the employees residence.

Although subsection 6(6) of the Act refers to the transportation between the employee's principal place of residence and the special work site, it does not require that the reimbursement be based on that particular distance but only requires that the allowance be "reasonable".

Plan of Action

Based on what has transpired, I would recommend the following course of action.

1. All employees must be aware that in order to protect their legal right to appeal the increased tax set out in the recently received Notice of Reassessment, that they must file with the CRA a Notice of Objection on Form T400 within 90 days of the date set out in their particular Notice of Reassessment. Appendix A to this memo sets out some issues that the employees may wish to consider but it is imperative that each employee seek independent tax advice from their accountant or lawyer because the union is not in a position to provide this tax advice and because each member's situation is unique.
2. Besides filing a Notice of Objection, employees may wish to consider whether they should amend their income tax returns to claim their actual automobile costs as an employment expense.

Employees who are in receipt of a non-taxable allowance are not permitted to claim their actual employment related travel expenses. However, if the CRA believes that the amounts that the employees received are, in fact, a taxable allowance, then it may be possible for the employee to claim various car expenses provided that a number of conditions are met, including:

- A. Their employer signs CRA Form T2200 "Declaration of Conditions of Employment" stating that it was a condition of employment that the employee have a motor vehicle for work purposes. If the employer is unable to attest to this fact then this option may not be possible. This may be an issue if the union contract does not contain such a requirement.
- B. The employee kept track of their actual car expenses including lease payments or capital cost of purchasing the car (including interest on any car loan), insurance premiums, repairs and maintenance costs and fuel costs.
- C. The employee kept track of their milage they drove the vehicle to work sites compared to the total millage driven during the year.

Appendix B to this memo sets out the required information.

Generally, the CRA will permit an individual to amend their tax returns for up to 10 years to claim deductions that they have previously failed to claim. This 10 year window exists to claim deductions even though the CRA is not legally permitted to reassess taxpayers to increase their tax payable more than 3 years after they originally assessed the individual's tax return (except in limited circumstances such as fraud).

Even if employees wish to file a Notice of Objection, they may wish to pursue this matter on both fronts by also amending their tax returns in the event that their Notices of Objection are not successful.

Also, if an employee would simply prefer to amend their tax returns to claim their actual car expenses, they may still wish to file a Notice of Objection to prevent the CRA's collections department from taking collection action while they are waiting for the CRA to process their adjustment. Generally, the CRA is not permitted to take collection action while a Notice of Objection is in effect.

3. Even if the CRA's position is upheld and the tax is ultimately owing by the employee (or if, for any reason, the employee has no interest in disputing the reassessment) it may be possible for the employees to request that the CRA waive any associated interest or penalty charges on the basis that the additional tax resulted from an incorrect T4 slip prepared by their employer and not from any action on their part. Appendix C is the form required to be filed in this regard. Generally, the CRA will not consider a waiver request while the taxpayer has a Notice of Objection outstanding on the same issue so this process may have to follow the ultimate resolution of the Notice of Objection process.

Likelihood of Success

Fighting the CRA can be a very frustrating process. I am not optimistic of the employees' chances of success at the Notice of Objection level and caution against spending too much money in this pursuit. Having said that, I truly believe that the CRA has shown no reasonableness in their approach to this audit. This is because the CRA's Appeals Division is likely to merely "rubber-stamp" and confirm any assessment that is in accordance with their published position. If any employee has the ability to fight this process through the Tax Court of Canada (it is possible to self-represent under the Tax Court's informal procedure), I suspect that they would have a decent change of success for a variety of reasons including the fact that they are clearly within the policy intent of these rules and the actual allowance is most likely a reasonable approximation of the employee's actual travel expenses.

Going Forward

1. I suspect that the CRA will only be willing to consider the overtime meals to be non-taxable if they do not exceed \$17. It may be possible to see if the CRA is willing to increase his amount for manual labour but I suspect that this sort of negotiation would have to occur with the CRA at the national level.

2. With respect to the travel allowances, the main problem appears to be that the allowance was not based on the distance from the employee's place of residence. Although it is arguable that a reasonable allowance could still exist without the calculation being based on the distance from the employee's residence to the special work site, I doubt that the CRA is willing to assess on any other basis.

If you have any questions on any of these issues, please call me.

Hugh Woolley

OBJECTION - INCOME TAX ACT

Clear Data

Help

Protected B when completed

You can use this form to file an objection to a notice of assessment or a notice of determination issued under the Income Tax Act.

Deliver or mail your completed form to the Chief of Appeals at your tax services office or tax centre.

Filing deadlines - If you are an individual (other than a trust) or filing for a testamentary trust the time limit for filing an objection is whichever of the following two dates is later: one year after the date of the return's filing deadline; or 90 days after the day we sent the notice of assessment or notice of determination. In every other case you have to file an objection within 90 days of the day we sent the notice of assessment or notice of determination.

Large corporations - In addition to providing facts and reasons for objecting, large corporations have to describe each issue and specify the relief they want for each one.

Collection action - We usually postpone collection action on amounts in dispute until 90 days after we mail the Minister's decision. In some situations we will not postpone collection action on disputed amounts, such as for taxes you had to withhold and remit. In all cases, interest will continue to accrue on any amount payable.

For more information contact the Appeals Division at your tax services office or tax centre.

APPENDIX "A"

To: Chief of Appeals
Address (as shown on your notice)

Name
From:
Address

Telephone (including area code)

Business

Name and address of any authorized representative (if applicable)

Telephone (including area code)

Please provide the following information or enclose a copy of your notice of assessment or notice of determination.

Date of notice: Year, Month, Day; Number of notice (if printed on notice); Tax year (for T2s show fiscal period end); Social insurance number or Business number

Please state the relevant facts and reasons for your objection (if you need more room, attach a separate sheet).

SAMPLE WORDING

FACTS

...the employee must enter the amount that they were reassessed (by issue if possible).

REASONS

1. With respect to overtime meal allowance, it is the CRA's position that no employee benefit arises in respect of an overtime meal provided that the amount does not exceed \$17 or such higher amount as is reasonable in the circumstances considering factors such as food costs in the particular area or other extenuating circumstances. Due to the remoteness of the special work sites, food costs are much higher than in major metropolitan cities. Also, due to the physically demanding nature of construction work, it is "reasonable" for the employer to pay a higher allowance. The construction industry at special work sites is clearly an "other extenuating circumstance" that justifies an allowance in excess of \$17.

2. With respect to the travel allowance, all amounts received were "reasonable" as is required by subsection 6(6) of the Income Tax Act. In a private technical interpretation dated December 30, 2013 the CRA stated that for the purposes of subsection 6(6) of the Income Tax Act that it was a "question of fact" what is a reasonable allowance and that any "allowance that approximates the transportation expenses to be incurred by the employee would generally be considered reasonable". Although paragraph 18(1)(r) of the Income Tax Act statutorily limit that an employer can deduct to specific amounts per kilometer, the Income Tax Act does not similarly limit the amount that an employee may receive as a non-taxable allowance. All allowances received were intended to reasonably approximate to the actual costs of the employee travelling to the special work site. The union contract uses a base other than the employee's residence as an administrative concession to avoid employer having to keep track of the distance to the special work site from the homes of thousands of potential employees that may constantly change from contract to contract. However, in no way does this mean that the amount received by the employee was not reasonable in the circumstances.

Your signature (or of an authorized person, if a corporation or trust is filing the objection)

Date

Year Month Day



STATEMENT OF EMPLOYMENT EXPENSES

Guide T4044, *Employment Expenses*, has information to help you complete this statement and the schedule on the back. The chapters we refer to below are chapters in the guide. Include a copy of this form with your return.

Expenses			
Accounting and legal fees		8862	
Advertising and promotion		8520	
Allowable motor vehicle expenses (from line 16 below)		9281	XXX
Food, beverages, and entertainment expenses (see Chapter 2 or 3, as applicable)	x 50% =	8523	
Lodging		9200	
Parking		8910	
Supplies (for example, postage, stationery, other office supplies)		8810	
Other expenses (please specify)		9270	
Tradesperson's tools expenses, up to a maximum of \$500 (see Chapter 7)		1770	
Apprentice mechanic tools expenses (see Chapter 7)		9131	
Musical instrument expenses (see "Part 2" in Chapter 6)		1776	
Capital cost allowance for musical instruments (see "Part A" on the back of this form)		1777	
Artists' employment expenses (see "Part 1" in Chapter 6)		9973	
	Subtotal		2
Add work-space-in-the-home expenses (enter the lower amount of line 24 or 25 below)		9945	
Total expenses (enter this amount on line 229 of your return)		9368	

Calculation of allowable motor vehicle expenses

Enter the make, model and year of motor vehicle used to earn employment income _____

Enter the kilometres you drove in the tax year to earn employment income aa 3

Enter the total kilometres you drove in the tax year bb 4

Enter the motor vehicle expenses you paid for:

Fuel (gasoline, propane, oil)	XXX	5
Maintenance and repairs	XXX	6
Insurance	XXX	7
Licence and registration		8
Capital cost allowance (see schedule on the back)	XXX	9
Interest (see "Interest expense" in Chapter 8)	XXX	10
Leasing (see "Leasing costs" in Chapter 8)	XXX	11
Other expenses (please specify)		12
Add lines 5 to 12		13
Employment-use portion ($\frac{\text{line 3}}{\text{line 4}}$) x line 13 =		14
Enter the total of all rebates, motor vehicle allowances, and reimbursements for motor vehicle expenses you received that are not included in income. Do not include any repayments you used to calculate your leasing costs on line 11. (see "Allowable Motor Vehicle Expenses" in Chapters 2 and 3)		15
Allowable motor vehicle expenses (line 14 minus line 15)		16

Enter the amount from line 16 on line 1 in the "Expenses" area above.

Calculation of work-space-in-the-home expenses

Electricity, heat, and water		17
Maintenance		18
Insurance (commission employees only)		19
Property taxes (commission employees only)		20
Other expenses (please specify)		21
Add lines 17 to 21	Subtotal	22
Subtract personal-use portion		23
	Subtotal	
Add amount carried forward from previous year		
	Subtotal	24
Enter your employment income		
Subtract the amount from line 2 above as well as any amount from line 207 and line 212 of your return that relates to this income		
Subtotal (if negative, enter "0")		25
Work-space-in-the-home expenses available to use in future years (line 24 minus line 25; if negative, enter "0")		

**CAPITAL COST ALLOWANCE (DEPRECIATION)
SCHEDULE FOR EMPLOYEES**

Protected B
when completed

For information to help you complete this schedule, see the section called "How to calculate capital cost allowance" in Chapter 9 of Guide T4044, *Employment Expenses*.

Part A – Classes 8 and 10

1 Class no. *	2 Undepreciated capital cost at the beginning of the year **	3 Cost of acquisitions during the year	4 Proceeds of disposition during the year	5 Undepreciated capital cost after acquisitions and dispositions (col. 2 + 3 - 4)	6 Adjustments for current-year acquisitions (1/2 × (col. 3 - 4)) (if negative, enter "0")	7 Base amount for capital cost allowance claim (col. 5 - 6)	8 Rate %	9 Capital cost allowance (CCA) for the year (col. 7 × 8, or a lesser amount)	10 Undepreciated capital cost at the end of the year (col. 5 - 9)
8							20%		
10							30%		

- * Class 8 includes musical instruments. Class 10 includes all vehicles that meet the definition of a motor vehicle, except for a passenger vehicle included in Class 10.1 (see "Part B" below).
- ** This amount must be reduced by the portion of any goods and services tax/harmonized sales tax (GST/HST) rebate received in the year that relates to CCA on the vehicle or musical instrument.

Part B – Class 10.1

- For details about the Class 10.1 limits, see Chapter 9 of Guide T4044, *Employment Expenses*.
- List each passenger vehicle on a separate line.

Date acquired	Cost of vehicle	1 Class no.	2 Undepreciated capital cost at the beginning of the year *	3 Cost of acquisitions during the year	4 Proceeds of disposition during this year	5 Base amount for capital cost allowance claim **	6 Rate %	7 Capital cost allowance (CCA) for the year (col. 5 × 6, or a lesser amount)	8 Undepreciated capital cost at the end of the year (col. 2 - 7, or col. 3 - 7) ***
		10.1					30%		
		10.1					30%		
		10.1					30%		

TOTAL

- * This amount must be reduced by the portion of any GST/HST rebate received in the year that relates to CCA on the vehicle.
- ** a. Enter the amount from column 2 in column 5 if you owned the vehicle in the previous year and still owned it at the end of the current year.
b. Enter 1/2 of the amount from column 3 in column 5 if you bought the vehicle in the current year and still owned it at the end of the current year.
c. Enter 1/2 of the amount from column 2 in column 5 if you sold the vehicle in the current year and you owned the vehicle at the end of the previous year.
d. If you bought and sold a Class 10.1 vehicle in the current year, enter "0" in column 5 for that vehicle.
- *** Enter "0" in column 8 for the year you sold or traded a Class 10.1 vehicle, since the recapture and terminal loss rules do not apply.

See the privacy notice on your return.

