Docket: 2003-3618(IT)I

BETWEEN:

ROGER CHAPMAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard sequentially with the appeal of *Roger Chapman* (2003-3649(IT)I)
on May 14, 2004 at Calgary, Alberta

By: The Honourable Justice J.M. Woods

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	George Body

JUDGMENT

The appeal in respect of a reassessment made under the *Income Tax Act* for the 1999 taxation year is allowed and the reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that motor vehicle expenses of $9,310.03 are deductible in computing income.

Signed at Toronto, Ontario this 9th day of September, 2004.

"J.M. Woods"

J.M. Woods J.

Docket: 2003-3649(IT)I

BETWEEN:

ROGER CHAPMAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard sequentially with the appeal of *Roger Chapman* (2003-3618(IT)I)
on May 14, 2004 at Calgary, Alberta

By: The Honourable Justice J.M. Woods

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	George Body

JUDGMENT

The appeal in respect of a reassessment made under the *Income Tax Act* for the 2000 taxation year is allowed and the reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the late filing penalty be reduced to $3,379.75.

Signed at Toronto, Ontario this 9th day of September, 2004.

"J.M. Woods"

J.M. Woods J.

Citation: 2004TCC617
Date: 20040909
Docket: 2003-3618(IT)I
2003-3649(IT)I

BETWEEN:

ROGER CHAPMAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] These are appeals under the *Income Tax Act* heard sequentially pursuant to the Informal Procedure – an appeal for the 1999 taxation year concerning the deductibility of motor vehicle expenses incurred in travelling between home and work and an appeal for the 2000 taxation year concerning the calculation of a late filing penalty.

Motor vehicle expenses

[2] Roger Chapman, a resident of Calgary, Alberta, is a consultant who provides estimating services for engineering projects. During the 1999 taxation year, he was engaged on two projects, one lasting nine months and the other three months.

[3] The three month project was contracted though a placement agency called TRS Staffing Solutions (Canada) Inc. Under this contract, Mr. Chapman was assigned to provide services to Fluor Constructors Canada Ltd. in Joffre, Alberta. During the contract period, January 4 to April 1, 1999, Mr. Chapman commuted from Calgary on a weekly basis and during the week stayed at a hotel in Red Deer, near Joffre. In computing income for the 1999 taxation year, Mr. Chapman deducted motor vehicle expenses incurred in travelling to and from work as follows:

(a) every Sunday from his home in Calgary to Red Deer – a total of 140 kilometres;
(b) every Monday through Wednesday from Red Deer to Joffre and back to Red Deer – a total of 60 kilometres each day; and
(c) every Thursday from Red Deer to Joffre and from Joffre back to his home in Calgary – a total of 200 kilometres.

[4] The nine month project was contracted through a placement agency called The Design Group Staffing Services Inc. Under this contract, Mr. Chapman was assigned to provide services to Delta Hudson Engineering Ltd. in Acadia, south Calgary. This contract lasted from April 9, 1999 to December 24, 1999. Mr. Chapman travelled to work by car from his home in northeast Calgary and claimed a deduction for the motor vehicle expenses incurred. The distance travelled was approximately 50 kilometres for each round trip.

[5] The total mileage for the year to and from these work assignments was 15,710 kilometers. Mr. Chapman testified that one of his cars was used exclusively for business travel and he claimed a deduction for the entire cost of operating the motor vehicle during the year, $9,310.03.

[6] For purposes of the reassessment, the Minister of National Revenue took the position that Mr. Chapman was an employee of the placement agencies and disallowed the motor vehicle expenses on the ground that the provisions of paragraph 8(1)(*h.1*) were not satisfied. This position was changed in the pleadings. In the Reply, the Crown conceded that Mr. Chapman was self-employed and shifted focus from section 8 to section 18 of the *Act.*

[7] The question is whether the motor vehicle expenses incurred by Mr. Chapman in travelling to and from work assignments in Joffre and Acadia are deductible in computing income from a business. The Crown did not really take issue with Mr. Chapman's submission that one of his cars was used exclusively for business purposes and accordingly I have not considered whether there should be a proration between business and personal use.

[8] The Crown argues that the motor vehicle expenses should be disallowed by virtue of paragraphs 18(1)(*a*) and (*h*) on the ground that they were not incurred for the purpose of earning income and were personal expenses. These provisions read:

> (1) In computing the income of a taxpayer from a business or property no deduction shall be made in respect of

> (a) an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property;
>
> …
>
> (h) personal or living expenses of the taxpayer, other than travel expenses incurred by the taxpayer while away from home in the course of carrying on the taxpayer's business;

[9] The Crown did not provide any case law support that dealt with these particular statutory provisions and instead referred to the following cases dealing with employment income: *R. v. Diemert*, [1976] C.T.C. 301 (F.C.T.D.); *Hogg v. R.*, [2001] 1 C.T.C. 2356 (T.C.C.); and *Jenner v. R.*, [2004] 1 C.T.C. 2111 (T.C.C.).

[10] Although I was not referred to any jurisprudence that establishes that expenses incurred by a self-employed person in travelling to and from work are personal and not incurred for the purpose of earning income, this seems to be a reasonable inference from principles well-established in an employment context: *Daniels v. The Queen*, 2004 D.T.C. 6276 (F.C.A.).

[11] The facts in this appeal are different from the circumstances discussed in these employment cases, however, and I cannot agree that the same principle should apply. The conclusion that expenses incurred in travelling to and from work are personal is presumably based on the theory that where a person lives is a personal choice and therefore the cost of getting to work is to a large degree affected by personal considerations. The same theory does not apply to temporary work assignments where a person cannot reasonably be expected to move to be close to the temporary assignment. On a common sense view, expenses in travelling to temporary work assignments are not personal and are incurred for the purpose of earning income. The work assignments performed by Mr. Chapman were limited in duration, lasting three and nine months. In these circumstances, the expenses were not personal but were made in order to fulfill contractual commitments with the placement agencies.

[12] This approach is consistent with the approach by the Supreme Court of Canada in *Randall v. M.N.R.*, [1967] C.T.C. 236. In *Randall*, the taxpayer managed racetracks, mostly in the Vancouver area. He undertook an engagement to manage a racetrack in Portland, Oregon and sought to deduct the cost of travelling between Oregon and his home in Vancouver. The Crown argued that the expenses of

travelling from the taxpayer's home in Vancouver to Portland were personal because they were incurred in travelling to work. The majority decision gave short shrift to the Crown's argument and adopted a common sense approach – Mr. Randall's travel expenses should be deductible because they were necessary to fulfill contractual obligations. The facts in *Randall* are different from the facts in this case but in my view the common sense approach by the Supreme Court of Canada should equally apply to temporary work assignments where a person has to travel to different work locations to fulfill contractual obligations.

[13] This conclusion is sufficient to dispose of this appeal but I would note another line of cases that may provide further support for the deductibility of the expenses incurred by Mr. Chapman. The basis for this alternative argument is that Mr. Chapman's home should be considered his "base of operations." Neither party raised this argument, perhaps because Mr. Chapman had acknowledged that he did not work on the Fluor or Delta contracts at home. Although there was no evidence as to how and where Mr. Chapman's consulting business was generally conducted, it is likely that Mr. Chapman's home should be considered the focal point of his consulting business.

[14] The relevant principles are discussed in the cases of *Cumming v. M.N.R.*, [1967] C.T.C. 462 (Ex.Ct.) and *Canada v. Cork*, [1990] 2 C.T.C. 116 (F.C.A.).

[15] The facts in *Cork* are quite similar to the facts in this appeal. Through placement agencies, Mr. Cork was engaged on short term contracts as a draftsman. At all three levels of appeal, Mr. Cork's travel expenses, as well as home office expenses, were held to be deductible on the basis that the home was a base of operations. In the Federal Court of Appeal, Stone J.A. considers whether Mr. Cork's home could be considered a "base of operations" and concludes that it could:

> … Mr. Cork's business pursuits were conducted from his home. Whether he arranged work directly or through a placement agency he did so from his home where he could be found. He used his home as a base or focal point for that purpose as well as for the performance of his work in the field.

[16] The Court of Appeal in *Cork* quoted extensively from the English decision of *Horton v. Young (Inspector of Taxes)*, [1971] 3 All E.R. 412 (C.A.). The principle that emerges from *Horton*, I believe, is that the home is a base of operations if a person has no other place of business of his own and performs services at various places of business of his customers.

[17] Although there is an insufficient evidentiary basis in this appeal to make a finding as to Mr. Chapman's base of operations, I would have thought that Mr. Chapman's home likely was the base of operations for his consulting business and that expenses incurred in travelling to and from the clients' work locations should be deductible as ordinary business expenses.

[18] Before concluding on this issue, I would note that counsel for the Crown strenuously objected to the introduction of new facts by Mr. Chapman in written submissions received after the hearing. I agree with counsel that all facts should have been presented at the hearing when counsel had an opportunity to cross-examine. Accordingly, I have not taken the new facts into account in this decision.

Late filing penalty

[19] In a reassessment for the 2000 taxation year, the Minister imposed a late filing penalty in the amount of $8,979.77. At the hearing, Mr. Chapman acknowledged that he filed the 2000 tax return late and had no basis to dispute the imposition of a penalty. However, he stated that the amount of the penalty was excessive because it did not take into account a payment that had been made by cheque. It appears that the Minister, in reassessing, took the position that the cheque was not received in time to affect the calculation of the penalty. After the hearing, the Crown reviewed the matter and agreed to give Mr. Chapman the benefit of the doubt with respect to the timing of the payment. Accordingly it was agreed that the penalty should be reduced to $3,379.75.

[20] In response to this concession, Mr. Chapman submitted a new argument that, if accepted, would further reduce the penalty. It was argued that the Crown's calculation of tax owing did not take into account a carryover of minimum tax that was applied to the 1999 taxation year. Mr. Chapman's submission, however, failed to show how a carryover applied to the 1999 taxation year would impact the calculation of the late filing penalty for the 2000 taxation year. Accordingly, Mr. Chapman's further submission on the calculation of the penalty is rejected.

Conclusion

[21] For the above reasons, I would conclude that the motor vehicle expenses claimed by Mr. Chapman for the 1999 taxation year are deductible in computing income and the late filing penalty assessed for the 2000 taxation year should be reduced to $3,379.75.

Signed at Toronto, Ontario this 9th day of September, 2004.

"J.M. Woods"

J.M. Woods J.

CITATION:	2004TCC617
COURT FILE NO.:	2003-3618(IT)I and 2003-3649(IT)I
STYLE OF CAUSE:	Roger Chapman v. The Queen
PLACE OF HEARING:	Calgary, Alberta
DATE OF HEARING:	May 14, 2004
REASONS FOR JUDGMENT BY:	The Honourable Justice J.M. Woods
DATE OF JUDGMENT:	September 9, 2004

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	George Body

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Name:

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