



Bob Aaron bob@aaron.ca

February 16, 2002

Home office tax breaks

Montreal doctor wins right to deduct costs of second office in house

If you are self-employed, can you deduct home-office expenses from your taxable income if you have another office elsewhere? That's what Dr. Thomas Vanka of Montreal wanted to do, and he took the government to court to make his point.

Under the Income Tax Act, home office expenses are deductible for income tax purposes only if your home is your principal place of business, or if the home office is used exclusively for your business and is used "on a regular and continuous basis for meeting clients, customers or patients."

In their February Tax Letter, Markham accountants Kestenberg, Rabinowicz & Partners explain that if the "regular and continuous" test is met, a taxpayer can deduct expenses based on the fraction of the home that is used for the office.

So if your home office measures, say, 200 square feet, and the home or condominium is 2,000 square feet in total, 10 per cent of the home expenses may be deductible.

Among the expenses that can be claimed are rent, mortgage interest, home insurance, property taxes, electricity, heat, water, gas, telephone, gardening, snow removal, maintenance and minor repairs.

Until now, it was generally accepted by experts in the tax field that the "regular and continuous" test required customers, patients or clients to be physically in your home office on a regular and continuous basis.

That rule, however, appears to have changed thanks to the income tax appeal by Vanka.

In a recent decision involving the doctor's 1994 and 1995 tax returns, the Tax Court of Canada allowed the doctor to deduct home office expenses, even though he had his primary office elsewhere.

Vanka has his main downtown office on Drummond St. He sees patients there Monday to Friday between 8 a.m. and 7 p.m. His home office is a self-contained unit measuring nine feet square in a two-bedroom cottage in the Town of Mount Royal.

Vanka has been a family physician for the past 25 years. His patients are primarily elderly and psychologically unstable, and they require constant access to their family doctor.

When his case went to tax court, Vanka told Judge Lamarre Proulx that he receives an average of seven calls every evening, and sees one patient per week at his home office.

Vanka explained he considered his home office to be an extension of his downtown office. The phones and computers in each location are linked, and the computerized patient files can be accessed from Vanka's home as well as the office.

When a patient calls him at home, the doctor can check the effectiveness of the patient's medication, call in new prescriptions, monitor the patient's progress, discuss the case with the family involved, listen to problems and provide medical advice.

In problem cases, correspondence with specialists is completed in the home office.

Vanka also uses his home office for administration purposes, since there is seldom time for that part of his work while he is downtown.

Despite the good arguments in favour of deducting the home expenses, the Scrooges at Canada Customs and Revenue Agency (CCRA) denied Vanka the deduction, so he appealed to the tax court.

In an outburst of common sense, the court ruled that seven phone calls every evening were enough to constitute "regular and continuous" use of the office, and Vanka's home expenses were allowed. A meeting, said the court, did not require the patient to be physically present. Meetings could take place by telephone, or presumably by computer in appropriate cases.

"It is my view," wrote the judge, "that if the seeing of a patient on an average of once a week at the home office could not suffice to make it a regular and continuous use of the home workspace, the receiving of an average of seven phone calls an evening by patients may be considered such a regular and continuous use of a home workspace."

The phone calls could not be taken without the use of the home workspace since the patients' files have to be reviewed and completed."

According to the Kestenberg Rabinowicz Tax Letter, the case is a surprising but welcome development. Even if it is not appealed, CCRA could still choose to ignore the case because it was decided under the court's informal procedure.

In fact, Vanka won his case without being represented by a lawyer, and CCRA suffered its loss while being represented by a law student.

More and more employees and self-employed people in today's workforce use their home offices in addition to a conventional office elsewhere.

The City of Toronto recognized this development several years ago when it created a live/work designation in the city's zoning bylaws. With this zoning, it is legal to use a home office as a workspace and a place for meeting clients where previous zoning regulations would have made this kind of use technically illegal.

As tax season approaches, the Vanka case provides two useful reminders.

First, if you are self-employed and have a second office in your home, and you use it for telephone meetings or possibly even online meetings via computer with your clients or customers, you might be able to deduct home office expenses when filing your tax return.

Second, and even more important than the first reminder: Income tax is a very complicated area, containing minefields for taxpayer and government alike. Always see a professional accountant with income tax experience. In the long run, it's worth the expense.