

CAUT Legal Advisory

CRA's T2200 Tax Form and the Professor

Introduction

This advisory addresses taxation issues related to employment expenses incurred by an employee but not reimbursed by the employer, or expenses arising from the conduct of research under a grant from a funding agency. In both situations, a Canada Revenue Agency (CRA) form, T2200, will be required.

This advisory is meant to be a source of information for determining when a member should seek help to obtain a T2200, or specific advice from a tax lawyer. It is not meant to be specific tax advice for any particular situation. If the employer has refused to sign a T2200 form, challenge the decision. If the expenses are bona fide, then the employer should not refuse to provide a signed form. The denial may be an unreasonable exercise of management rights, and a possible violation of the terms of work contained in your collective agreement.

Employment Expenses not Reimbursed

Academic staff are required to remain up to date within their field, publish and edit texts or articles, conduct research, attend conferences, teach, maintain an office, and sometimes travel. Under most collective agreements,

these expenses are covered or reimbursed by the institution.

In cases where the employer does not reimburse a member for bona fide employment expenses, then the member may submit a signed T2200 form with their tax return. Problems arise when the member and the employer have different ideas of what is truly an employment expense.

The T2200 Form

Section 8(1) of the *Income Tax Act* requires a T2200 certificate or form from the taxpayer's employer. CRA requires this form when a taxpayer claims employment expenses against their income (deducting employment expenses).¹ A common case is where an employee has to travel for work, or maintain an office space off-site, but the employee is not reimbursed for those expenses.

The CRA's interpretive guide states that they expect employers to complete a T2200 in situations where the employees have reasonable grounds to make the related claims, and there is an express or implied requirement in the employment contract for the employee to work at home or pay for the employment expenses in question.²

1. The current form can be found at <https://www.canada.ca/en/revenue-agency/services/forms-publications/forms/t2200.html>

2. CRA Technical Interpretation 2008-0276151E5, Sept. 26, 2008.

The CRA is not bound to accept the characterization of expenses found in the T2200.

Without a signed T2200, the member can still claim the deductions with the understanding that they are almost certain to be refused, and that the matter may require litigating in tax court. In their analysis, the courts will look at the expenses and the member's efforts to obtain a signed T2200 form in a timely manner.

Some academic staff are able to claim employment expenses as deductions, but most are not. Members who claim employment expenses should keep detailed records, as the CRA appears to be generally skeptical of employees who make employment expense claims.

If a member is claiming employment expenses, they will need to obtain a signed T2200 form from the employer. They will keep the form if filing online, or submit the form if filing by paper. See below for guidance on what to do if the member cannot get a signed T2200 form. Unfortunately, employers are not required to sign the T2200 upon request. CAUT has received several requests for guidance on how to handle an employer's refusal to do so.

Under no circumstances should associations provide tax advice assistance to a member. A member's obligations as a taxpayer are not the association's responsibility. Providing advice might lead to expanded responsibilities and liabilities under labour law. The association's involvement should be limited to helping to obtain the T2200.

What if the employer refuses to sign the T2200?

The first step is to challenge the refusal through any internal dispute resolution process – e.g. advocating with human resources, escalating to senior decision makers, considering a grievance, or some form of mediation. This must be done in a timely manner. The member should document all communication and attempts to obtain the signed form. If the employer continues to refuse, and the dispute resolution processes are exhausted, the member may still consider claiming the expenses. The member should be aware that the CRA will most likely deny the claim at the notice of assessment stage.

Following a denial, the member will need to file a Notice of Objection to the assessment. In most cases, this internal administrative appeal will normally also be denied, and the only recourse is for the member to file a further appeal under the informal procedure at the Tax Court of Canada. The member should hire a lawyer to assist once the CRA issues the first denial. Judges have denied valid expenses where the taxpayer did not try to obtain a T2200 within a reasonable period of time, or could not prove so.

Assessing the Expense

For academic staff who seek to deduct employment expenses on their annual tax return, the question that the CRA (and perhaps ultimately the courts) will ask is:

Based on the facts (e.g. employment contract, collective agreement, employer policy and practice, performance evaluation, job description, etc.), would the failure to meet the requirement that occasioned the expenses result in the cessation of employment, poor performance evaluation or other disciplinary action by the employer?

In other words, is the action that led to the expenses a requirement of the academic staff member's job or role? Every determination of this will be fact-specific.

Some of the questions that should be asked are:

- Is the expense reasonable in the circumstances? An unreasonable amount for an otherwise acceptable purpose may be a red flag for the CRA.
- Did the member pay for the expense out of pocket?
- Was the expense for the purpose of employment (e.g. required teaching, research, publication, professional development, etc.)? The expense must be connected to fulfilling responsibilities, duties, or tasks that are part of the member's normal employment.
- What would happen if the member did not pursue the activity that occasioned the expense (e.g. discipline, demotion, lower evaluation, lower raise or wages)?
- Do the terms of employment (contract, appointment letter, policy, or collective agreement) require the member to pay for the expense?

- Does the expense meet the statutory requirements of s. 8(1) of the Income Tax Act?³ This subsection of the Act sets out the requirements for various categories of employment expenses.
- Was the member reimbursed for the expense? Expenses for which the member received reimbursement cannot be claimed.

Types of Employment Expenses

Travel Expenses

Travel, for research purposes or conferences, may be required as part of regular employment duties, or as part of grant-funded research. In either case, travel expenses must satisfy subsection 8(1)(h) of the *Income Tax Act*.

Generally, the expense must be for travel to a place different from the normal place(s) of business, be required for the work to be done satisfactorily, be paid by the member and not reimbursed by the employer (expenses that are covered through a pay and submit receipts system, or through a travel allowance cannot be deducted against income). Meals cannot be claimed unless the member was away from the municipality of their usual workplace for at least 12 hours.⁴

It is important to note that commuting expenses – travel from residence (even temporary) to work – is not a valid travel expense. Similarly, travel between normal places of business is not allowable, if it is an expected part of the job. For example, expenses cannot be claimed in a case where a member is required to teach at a satellite campus one day per week, while teaching and maintaining an office at the main campus.

Office Expenses

Where a member is required to maintain an office at their own expense they may deduct the cost of rent, administrative assistance, and supplies used directly for performing work duties, again if not otherwise reimbursed. In most cases, office space and resources are supplied by the institution, and working from a home office would not likely be a required expense for most members. However, many contract academic staff may not be provided office space on campus and may be

eligible to deduct the costs associated with maintaining an office.

If the office is at home or in a shared space, then the member must use the space for work at least 50% of their working time, and can only claim a proportionate share of the overall costs. For many members, with the exception of contract academic staff, it will be unlikely that they perform office work at their home office for at least 50% of the time. Therefore, they will not be able to claim office expenses as employment expenses.

For Contract Academic Staff

Many contract academic staff do not receive the same degree of office space, resources, or re-imbursement of costs as regular academic staff. It is advisable to discuss with the employer how to ensure that contract academic staff who incur bona fide employment expenses receive a signed T2200.

The same assessment applies for expenses incurred by contract academic staff.

- Is the expense a valid deduction for employment purposes (see above)?
- If claiming a home office, was at least 50% of the member's office work required to be done there? Is there alternative office space (even shared) on campus that the employer has made available for the member?
- Are travel expenses related to commuting to different campuses, or for regular meetings? If so, then these are not deductible from employment income.

For contract academic staff, the major pitfall could be mistaking convenience or preference for necessity.

It may be more convenient for the member to complete office tasks at home, but there is space and resources on campus. This would mean that computer expenses, office supplies, and other related expenses would not be considered "required" for employment.

3. Section 8(1) sets out the allowable employment expenses for various kinds of work and professions. Some examples include travel expenses, musical instruments, home office, and tools. The

expense must be connected to something that the member is required to do, but cannot be reimbursed by the employer.
4. *Income Tax Act*, section 8(4).

Similar considerations apply to research and travel expenses. Is it a requirement for the contract academic staff member to conduct research and travel? If so, is it possible to conduct the research on campus, without cost to the member? For travel, it may be the member's preference to attend a conference or symposium, but the employer does not require such academic contributions. In these situations, the expenses would not be considered "required" for employment. As always, the contract academic staff member must not be able to be reimbursed by the employer for the expenses.

For Artists and Tradespersons

Members who are required to maintain an artistic or professional body of work or presence may be able to claim materials and supplies, but not equipment. The work must be done in order to satisfy a requirement of their job. This can often be difficult to determine. It may be the case that a member received a post due to an impressive body of work, but continued artistic output is not required. In this case, they would not be able to claim artist's expenses as employment expenses. As always, the member must not receive reimbursement for the expenses.

Research Grant Expenses

In some cases, academic staff may claim expenses arising from grant funded research. This refers to research conducted outside the auspices of the employer and where expenses are therefore not employment expenses. This situation could arise in cases of a member conducting a research project while on sabbatical, after hours, or as a collaborator with another institution.

If a member plans to claim research expenses against grant funding, then the amount of the grant must be included as income. Consequently, it will be taxed as income. The member can only claim expenses up to the amount of the grant.

If, for example, a member receives a grant for \$5,000 for research that is separate from the research they may be otherwise conducting in the course of their employment, they must add the value of that grant to their total

income. The member can then claim up to \$5,000 of expenses that are specific to that separate research. Expenses must be for allowable purposes, as set out in the *Income Tax Act*.

The member cannot claim expenses for non-grant research since they are already receiving employment wages for that work.⁵

Summary

Most members will have their employment expenses covered by their institution. In cases where the member exceeds the reimbursable amounts, and where the activity that occasioned the expense is *required* for work, then the member may be able to deduct these from income. Expenses from grant-funded research may only be claimed if the grant is included as income, and if the expenses are equal to or less than the amount of the grant.

Members should be diligent about requesting a signed T2200 from the employer. If the employer refuses, the member should seek the assistance of their association to challenge or dispute the refusal. The member can still claim these expenses on their tax return, but should expect to have their claim denied and be prepared to object and appeal the CRA's assessment. This may involve going to tax court.

5. For research conducted on their own time (non-grant, non-employment), the member should seek tax advice about how and when to claim those expenses, if at all.