

Taxation LAWYERS

James Rhodes
james@taxationlawyers.ca
226.499.9797 x2

WSIH'D
Work Space In Home Deductions

Taxation LAWYERS



James Rhodes

james@taxationlawyers.ca

226.499.9797

James Rhodes operates a boutique taxation firm in Ontario. James' firm focuses mainly on representing clients against the CRA, both at the audit and objection levels and litigating issues in Tax Court.

He has a Master of Tax from the University of Waterloo, worked for the Department of Justice carrying on tax litigation, and conducted over a hundred trials before the Tax Court including appearing before the Federal Court of Appeal.

James is also the founder of the LinkedIn group 'Canadian Taxation Professionals' which has over 6,500 members who work together to assist one another in navigating and resolving taxation problems.

Canadians Working from Home due to COVID-19

Per Statistics Canada*

- Approximately 4.7 million Cdns who do not usually work from home did so during week of March 22 to 28
 - Of those ... 1.9 million lived with a child under age of 18

*See “Canadian Perspectives Survey Series 1: COVID-19 and working from home, 2020”

Also from Statistic Canada

During week of March 22 to 28:

- 4 in 10 workers worked from home [includes those who do usually work from home and those who do not]
- 4 in 10 workers worked at locations **other than home**
- 2 in 10 workers were absent from their jobs, with 1.5 of those workers being absent due to COVID-19

Will 4 in 10 worker will be looking to claim the **Work Space in Home Deduction (WSIH'D)** for the first time??

Preparation for Tax Season

Primary Consideration – WHO is seeking the Deduction?

1. Employee ('EE')
2. Independent contractor ('IC')/ Self-employed/ Sole Proprietorship
3. Incorporated/ operating through a corporation

EMPLOYEE CHOICES

NEW: Temporary Flat Rate Method

OPTION 1

1. No T2200 or T2200S Required [Statement from Employer that you were required to work from home]
2. Must complete T777S Statement of Employment Expenses for Working at Home due to COVID-19 with T1 tax return
3. No documents need to be kept to support claim
4. Assumption is that employee has incurred expense – at least for the ‘space’ and that there has not been a full reimbursement by employer - ! Danger with Employer Allowance!
5. CANNOT claim for Employment Expenses any other way
6. Claim \$2/day for each day worked at home due to COVID-19 to maximum of \$400
7. Multiple people in the home can make this claim!
8. [At this point] This is only for 2020! So keep WSIH receipts for 2021!!

Flat Rate Method

TEST

1. For a period of at least four consecutive weeks in 2020 you had to have worked from home for at least 50% of the time

<https://www.canada.ca/content/dam/cra-arc/formspubs/pbg/t777s/t777s-20e.pdf>

2. It is **not** necessary for your employer to have required you to work from home due to COVID;

Test is met if your employer provided you the choice to work from home due to COVID **and** you took advantage of that offer for at least 4 consecutive weeks in 2020

What counts as a work day to be included for \$2/day

- days you worked full-time hours from home
- days you worked part-time hours from home

What days do not count to be included for \$2/day

- days off
- vacation days
- sick leave days
- other leave or absence

NEW: Temporary Detailed Method

OPTION #2

1. Employer must complete T2200S for you
2. You must complete T777S Statement of Employment Expenses for Working at Home due to COVID-19 and include with T1 tax return
3. Must keep supporting documents of eligible expenses
4. Cannot claim for expenses reimbursed to you by Employer
5. Expenses claimed for must have been used directly in your work during the period
6. **WATCH** out for EMPLOYER allowances vs reimbursement!
7. If Multiple People in HOME no duplication allowed of same expense(s) – i.e. two people working in same room cannot both claim electricity for room

T2200S:

<https://www.canada.ca/content/dam/cra-arc/formspubs/pbg/t2200s/t2200s-20e.pdf>

Detailed Method

SAME TEST as Flat Rate Method

1. For a period of at least four consecutive weeks in 2020 you had to have worked from home for at least 50% of the time

<https://www.canada.ca/content/dam/cra-arc/formspubs/pbg/t777s/t777s-20e.pdf>

2. It is **not** necessary for your employer to have required you to work from home due to COVID;

Test is met if your employer provided you the choice to work from home due to COVID **and** you took advantage of that offer for at least 4 consecutive weeks in 2020

What counts as a work day to be included for \$2/day

- days you worked full-time hours from home
- days you worked part-time hours from home

What days do not count to be included for \$2/day

- days off
- vacation days
- sick leave days
- other leave or absence

What does CRA consider an acceptable WSIH expense (for employees)

- Reasonable Part of Rent related to Work Space
- Electricity
- Heat
- Water
- Reasonable and related maintenance and repair to Work Space
- Envelopes
- Folders
- Highlighters
- Ink Cartridges
- Notebooks
- Paper clips & Binder Clips
- Pens & Pencils
- Printer Paper & Other Specialty Paper
- Stamps or Postage
- Stationary Items
- Toner
- Sticky Notes
- **Basic cost of a phone plan***
- **Home Internet Access***

*assuming that both plan cost and business-personal apportionment is reasonable

*cannot claim connection fees or amounts for lease of modem/router

<https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/deductions-credits-expenses/line-229-other-employment-expenses/work-space-home-expenses/expenses-can-claim.html>

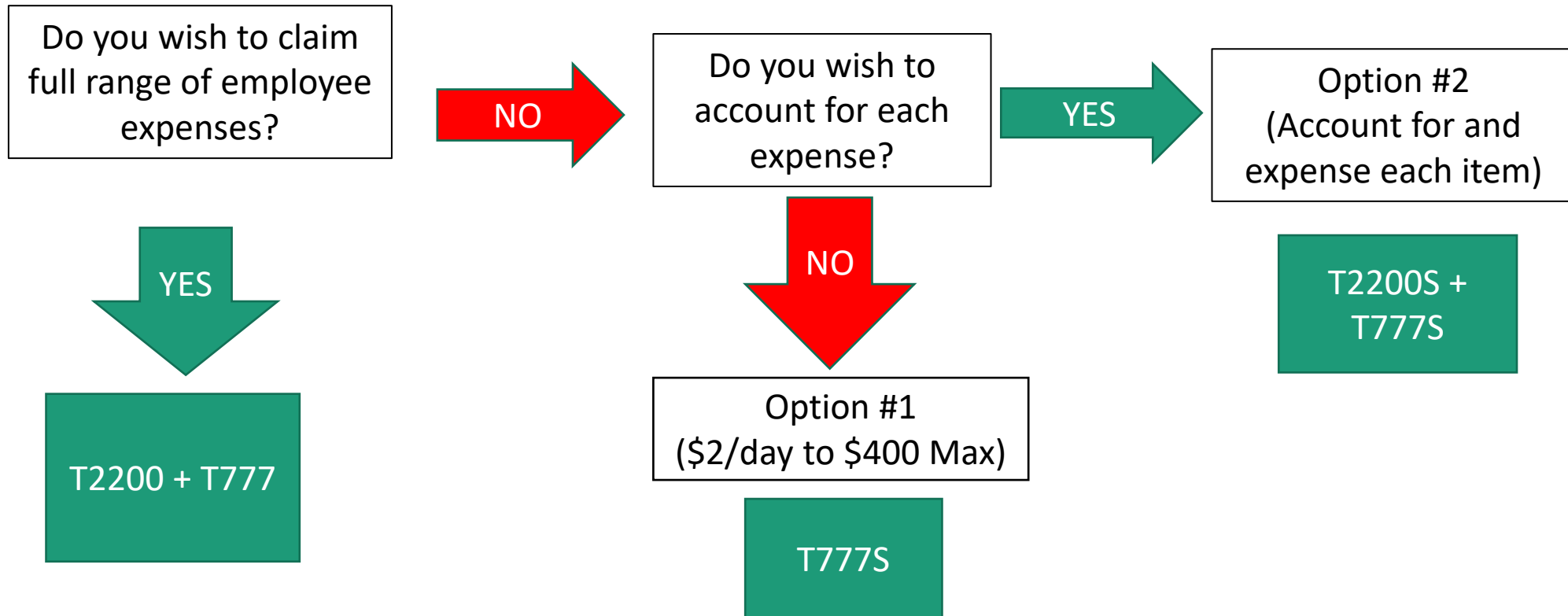
What does CRA consider NOT acceptable WSIH expense (for employees)

- *Office Furniture (desk, chair, lamp, etc.)
- *Office Equipment (printer, fax machine, etc.)
- *Computer and accessories (monitor, keyboard, mouse, webcam, headset)
- Mortgage interest and payments of mortgage principal
- Home Internet Connection Fees
- Other Capital Expenses or expenses to extend useful life of property
- Home Land-Line or Telegraph Machine 😊

*for 2020 there was a one-time CRA allowance of \$500

- <https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/deductions-credits-expenses/line-229-other-employment-expenses/work-space-home-expenses/expenses-can-claim.html>

WSIH Deduction- Which Form to Complete?



KEEP YOUR SIGNED T2200(S) and Receipts IN A SAFE PLACE FOR AT
LEAST 6 YEARS FROM DATE OF YOUR 2020 ASSESSMENT as it is a
'record' to prove your tax filing is correct

EXISTING WSIH DEDUCTION FOR EMPLOYEES

#1 Hurdle

Expense Deduction must be Permitted

1st rule of Tax Filing: No deductions allowed unless specifically* allowed under ITA

8(1) Deductions allowed

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:

...

(2) General limitation Except as permitted by this section, **no deductions shall be made** in computing a taxpayer's income for a taxation year from an office or employment.

* Description of what is 'specific'

#2 Hurdle

Employer Must certify it was condition of employment –
T2200 must be obtained from employer!

8(10) Certificate of employer An amount **otherwise** deductible for a taxation year under paragraph 8 (1)(c), 8(1)(f), 8(1)(h) or 8(1)(h.1) or subparagraph 8(1)(i)(ii) or (iii) by a taxpayer **shall not be deducted unless** a prescribed form, signed by the taxpayer's employer **certifying** that the conditions set out in the applicable provision were met in the year in respect of the taxpayer, **is filed** with the taxpayer's return** of income for the year.

#3 Hurdle

Any Restrictive Provisions must be met

Even if its permitted and your ER certifies the expenditure was required there might be still more hurtles to get over!

1. Main restrictive provision for WSIH is ss. 8(13)
2. Less restrictive s.67 (reasonableness)

Two main deduction sections to consider for WSIH:

1. Sales Expenses of Commissioned Employee – 8(1)(f) ITA

Where the employee sold property/ negotiated contracts for employer AND criteria (i) to (iv) apply - then amounts expended with required purpose are deductible to extent not caught by (v) to (vii)

2. Dues and Other Expenses of performing duties – 8(1)(i) ITA

An amount paid by employee or on employee's behalf (if it is required to be included in employee's taxable income) – then 'specific' deductions in (i) to (vii) are deductible*

** note the restrictive [post amble](#) for each [\(see next page\)](#)

Deductions that can be taken

8(1)(i)(iii) - the cost of **supplies** that were **consumed directly** in the performance of the duties of the office or employment **and** that the officer or **employee was required** by the contract of employment **to supply and pay for,**

Considerations:

- Capital purchases are not consumed!
- Incurred and Consumed can be very different!
 - Stock piling truck loads of toilet paper is very different then using it ☺
- Pre-existing costs versus new increased? incremental costs
 - Try and evidence incremental increase for WFH
 - i.e. had 2g limit for cell phone data, cancelled plan and upgraded to 20g date – what should I deduct? Difference or all of it?

Restrictive Provisions

Section 8(13) is not permissive – it is restrictive!

It does not allow the WSIH deduction, **it stops it** unless you meet its specific tests

8(13) Work space in home – Notwithstanding* paragraphs 8(1)(f) and (i),

(a) no amount is deductible in computing an individual's income for a taxation year from an office or employment in respect of any part (in this subsection referred to as the “work space”) of a self-contained domestic establishment in which the individual resides, except to the extent that the work space is either

- Test 1 [Principally performs duties] or
- Test 2 [Used exclusively + used regular and continuous basis for meeting]

Use of WSIH Test

Can EE meet the requirements of subsection 8(13)?

(a) no amount is deductible ... in respect of any part (in this subsection referred to as the “work space”) of ... establishment in which the individual resides, except to the extent that the work space is either

(i) the place where the individual **principally** performs the duties of the office or employment, **or**

(ii) used **exclusively** during the period in respect of which the amount relates for the purpose of earning income from the office or employment **and used on a regular and continuous basis for meeting** customers or other persons in the ordinary course of performing the duties of the office or employment;

Final Restriction to Consider

Section 67 of ITA:

In computing income – no deduction shall be made in respect of an outlay or expense (which would otherwise be deductible) except to the extent the outlay or expense was **reasonable in the circumstances**

- This is where market research becomes crucial

Most Important Takeaway in fight with CRA:

Test is not whether the auditor would incur the expense – it is whether the reasonable business person would have incurred the expense in the circumstances

--- Auditors yelling from the bleachers what they would do is not permitted 😊

Example of WSIH deductions

Deduction	Commission Employee	Non-Commission Employee	Self-Employed
Electricity, Hydro, Heat, Water	Y	Y	Y
Repairs and Maintenance*	Y	Y	Y
Rent	Y	Y	Y
Mortgage Interest	N	N	Y
Property Taxes	Y	N*	Y
Home Insurance*	Y	N*	Y
Capital Cost Allowance on Home	N	N	Y*
Puppy Security Force	☺	☺	☺
Capital Purchase*	N	N	Y
* CRA admin position that employer can reimburse \$500	**purchase vs lease?		

Closing Point #1

Remember that if WSIH is EEs place of employment – driving to ER's place of employment can be deductible

See *Gardner*, 2018-2091(IT)I [see my post on Canadian Taxation Professionals]

- Judge followed the case he won when he was a lawyer
- Judge felt that FCA liked the decision but felt TCC loved – so of course he should follow it 😊
- Travel between two employment related locations was not personal but deductible as employment motor vehicle travel under 8(1)(h.1)(ii)

Closing Point #2

See CRA View 2011-0402581I7

CRA's position is that if ER pays an allowance for a WSIH – it is taxable under paragraph 6(1)(b) – **BUT** does not mean a deduction for WSIH is allowed!!

Per CRA:

In computing income from an office or employment, there is no connection between the income inclusion of an allowance under paragraph 6(1)(b) and the home office expense deduction under paragraph 8(1)(f) or (i). Therefore, an employee is required to include in computing his/her income from an office or employment under paragraph 6(1)(b) a home office allowance received in a given taxation year even if no home office expense is deductible because the requirements of paragraph 8(13)(a) are not met.

James' Considerations for Option Choice

You cannot use Option #3 unless it is a condition of your employment that you had to work from home

- If your employer's office was open and you were able to work at it, but you chose to work from home, Option #3 might not be available to you. Option #1 and #2 are available to you

James' Considerations for Option Choice

Assuming you meet the tests for Option #1 or #2

You will be considering Option #1 if:

- You don't want to keep receipts of expenses incurred for 6 years;
- Your employer is reimbursing you for all expenses except for the work space in your residence
- You owned your residence and don't want to figure out the reasonable amount of heat/hydro/water related to your using your residence for your work space
 - or the amount is equal to or less than \$2/day

James' Considerations for Option Choice

Assuming you meet the tests for Option #1 or #2

You will be considering Option #2 if:

- You are ok with keeping receipts safe for six years
- If you
 - **Rented** your residence where you had your work space [Rent is included in calculation under option #2]; or
 - Owned your residence [Mortgage interest and principal is not included in calculation under option #2] and your heat, hydro, water for work space are greater than \$2/day

James' Considerations for Option Choice

Assuming you meet the tests for Option #3

You will be doing Option #3 if you are paying for the following and not being reimbursed by your employer:

1. You employ a substitute or an assistant to work for you
2. You are renting a space away from your Work Space in Home
3. Travelling as part of your employment duties (outside of travelling to your employer's place of business due to working from home)
4. Incurring communication expenses (outside of those incurred from you having to work from home)
5. Paying for meals as part of your employment duties (where you are away for 12 consecutive hours from your regular municipality)
6. Are employed as trade-person, apprentice mechanic, forestry operations employee, or employee earning commission income and you required to incur expenses

Thank you!
Go to my website
taxationlawyers.ca to subscribe
for my free newsletter updates

Checkout LinkedIn Group:
“Canadian Taxation Professionals”
– 6,499 members

Taxation
LAWYERS