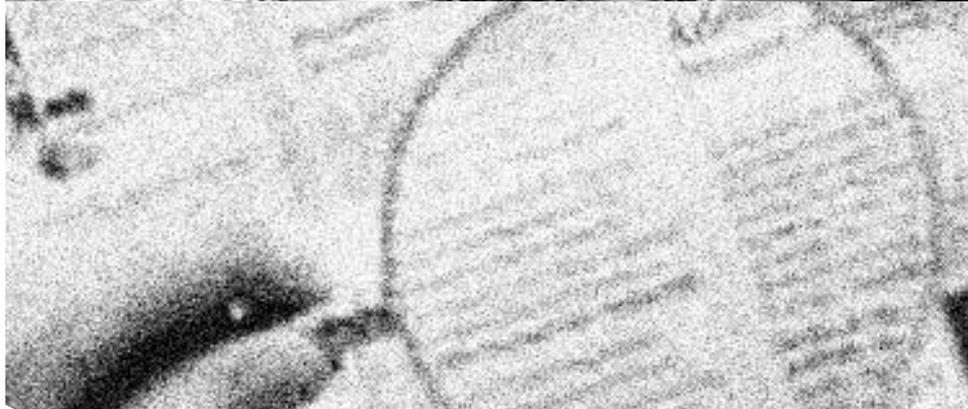


Tax Issues for self-employed members

CANADIAN ACTORS' EQUITY ASSOCIATION



This briefing was developed in discussions with professional tax preparers who are experienced in performing arts matters. It is a general guide intended to help you organize your affairs as you work through the year. The tax issues addressed are based on the tax legislation in effect at the time of printing.

Performers such as actors, dancers, singers when they are self-employed are the main focus of this briefing. Much of it may also apply to theatre directors, choreographers, stage managers, assistant stage managers, stunt and fight coordinators, musicians and others concerned with live and recorded performance if they are self-employed. Simply put, being self-employed means that you have set yourself up as a business and that expenses related to earning income may be deducted before determining your taxable income. Self-employed individuals may also be referred to as "independent contractors" or as being engaged under a contract for services.

All persons, both resident and non-resident earning income in Canada must file a Canadian income tax return. Foreign artists earning income in Canada may be required to file a Canadian tax return. U.S. artists working in Canada may be required to file both Canadian and American returns. Canadian artists working outside Canada may be required to file elsewhere as well as a Canadian return. Foreign artists working in Canada should seek professional help, and Canadian residents should certainly do so before accepting work outside Canada. We will deal with foreign performing artists working in Canada in a separate chapter [below].

This is just general advice about filing income tax returns and is not intended to address individual circumstances or other tax liabilities such as the Goods and Services Tax (GST), the Harmonized Sales Tax (HST) the Quebec Sales Tax (QST) or corporate taxes. The calculation of income, expenses and taxes owing may not be a straightforward matter. Self-employed professionals often rely on a tax professional to prepare their tax returns. You are still personally liable for what your tax return says, however and this briefing will help you understand what is being done for you. This briefing is not meant to provide the skill you

need to prepare your own income tax return. It will help you organize yourself and should you decide to seek professional help, it will help your preparer to do the best job for you.

Performing artists who are members of Equity and ACTRA, as well as others in the performing arts business, are normally considered to be self-employed. Even though this is the industry standard, The Canada Revenue Agency (CRA) has the ability to assess the status of any engagement and based on the circumstances of the situation, make a determination that you were or were not self-employed. To be self-employed you do not need to register a business name or incorporate yourself or become a union member. According to CRA guidelines, a performing artist who is self-employed is considered to be operating a business, provided there is a reasonable expectation of profit. Accordingly, such an artist is entitled to deduct reasonable expenses incurred in connection with earning income from that business, except to the extent they are denied or limited by provisions of the Income Tax Act . The expenses that are deductible by a self-employed performing artist are discussed below.

Most ACTRA and Equity members work as employees part of the time, either doing their regular professional job or supplementing their professional income. Artists who are employees have the benefit of coverage by their employers for Employment Insurance and the Canada Pension Plan (CPP) by statute law. Employers are legally bound to send forms (T4s), containing the details of amounts deducted from your wages, to you and the CRA once a year. Self-employed artists are not covered under the Employment Insurance Act [Note: Non-payment of EI premiums could cause denial of EI benefits]. However, you are covered by, and must pay all the contributions required under, the Canada Pension Plan based on their net self-employed earnings. Artists who perform services as employees in the Province of Quebec contribute to the Quebec Pension Plan on remuneration received from any such source. Self-employed artists who reside in that province on the last day of any year also contribute to the Quebec Pension Plan. Taxpayers who perform services as artists in the Province of Quebec should consult Revenu Québec concerning their status under Quebec law.

In a series of successive arrangements or contracts, an artist may be an employee for a certain period and, upon termination of the contract as an employee, subsequently become self-employed. In other circumstances, an individual can be an employee under one arrangement or contract and, over the same period of time, can be self-employed under a second arrangement. An individual, however, cannot be both an employee and self-employed under the same arrangement or contract.

Many factors must be taken into consideration in establishing whether an individual is an employee or is self-employed. The question to be decided is whether the contract between the parties is a contract of service that exists between an employer and an employee, or is a contract for services, that is, the engagement of a self-employed individual. A contract of service generally exists if the person for whom the services are performed has the right to control the amount, the nature, and the management of the work to be done and the manner of doing it. A contract for services also, exists when a person is engaged to achieve a defined objective and is given all the freedom required to attain the desired result. Most theatre professionals are in business on their own account because they are engaged to bring a unique and creative expression in the development of the work, they retain control of the artistic expression and intellectual property rights, they retain the services of others such as agents and have ongoing expenses in developing work opportunities. If you have any doubt as to your status employed or self-employed, advice can be obtained from a CRA tax services office. However, the CRA will tend to give more weight to factors leading to a conclusion of employee status. For this reason and because of the complexities of this type of determination, a tax professional may be the best one to guide you and in turn save you a lot of money.

If you or your spouse, are self-employed, your tax returns are due on June 15, otherwise April 30 is the due date. Despite the later filing date for self-employed individuals, interest is calculated on taxes owing for the previous year that are not paid by April 30. Late or missing returns can be expensive. Many tax credits can't be claimed more than three

years after the end of the tax year, and CRA charges penalties and interest as a percentage of tax due. It is important to realize that late filing means penalties and interest. As well, the return will be scrutinized individually by hand instead of computer screening.

The following is a list of important tax dates for the upcoming year:

- ▶ February 28, Final date for employers to mail T4 and T4A slips
- ▶ March 1, Final date for RRSP contributions for previous year
- ▶ March 15, Quarterly tax installment due for current year
- ▶ April 30, Final date for tax payment on previous year's tax
- ▶ June 15, Final date for submitting tax return if self-employed
- ▶ June 15, Quarterly tax installment due for current year
- ▶ September 15, Quarterly tax installment due for current year
- ▶ December 15, Quarterly tax installment due for current year
- ▶ December 31, Final date for transactions in current tax year

People with self-employed income need to keep their own records, not only for the current year but for six years. [eg. The CRA could decide to audit you in 2007 for the 2002 taxation year.] It is important to keep your records in a manner that will allow for future verification. Throwing all of your pay stubs and receipts into a shoe box is not the best method. Organizing yourself from the beginning will pay off in the future. Engagers may or may not issue a T4A to document self-employed income. Whether or not you receive a T4A, it is important to reconcile your income. Income includes your gross fees and fringe benefits that are paid for by the engager such as a portion of the RRSP contributions or insurance premiums. In the absence of a T4A, agent's records, contracts and pay stubs prove your income. Undeclared income can be tracked by the CRA in many different ways and penalties can be quite severe. It is best to create a schedule of who paid you, how much and whether or not a T4A was issued for that income.

Your "business" must have "a reasonable expectation of profit". The CRA has been briefed on artists' income patterns, but a very low income, and particularly a loss, over a number of years may be investigated. If you continually sustain a business loss, you may eventually be refused any expenses that exceed your professional income. This is especially likely if you have income from another job. Good record-keeping and a full professional journal or work diary, may enable you to show a sufficiently high level of business activity to continue to be allowed a business loss. Deductions for expenses may be disallowed if there isn't sufficient documentation.

An expense doesn't have to produce income, but that must be its intention. The CRA is not obliged to accept expenses that aren't properly receipted. Each receipt should show, as a minimum, the name and address of the seller, the date and amount. If possible, have the vendor include your name, address and what was bought. Write the business purpose on your receipt as well as any of the above information that is missing. A credit card slip or statement, a vendor's statement or a cancelled cheque are not official receipts. Although they must be retained as supporting documentation for business-like record keeping, they should be avoided as primary evidence of an expense. If a receipt is impossible, for business travel on public transit for example, note the expense in your work diary.

Your gross income and your tax payable are reduced by deductible work-related expenses. When it comes to claiming specific operational expenses, the CRA has also shown tolerance for the specific circumstances of the artistic community. "Reasonable" business expenses may be deducted from income if the expense is incurred in connection with the earning of income and as long as it is not specifically excluded by legislation or is capital in nature. A capital expenditure is any costly item you have purchased that could be used over a period of years (see Capital Cost Allowance under expenses).

If an expense is partly business and partly personal, you can't deduct the personal part. With these sorts of expenses, it is wise to retain all

receipts including the exclusively personal ones to demonstrate the reasonableness of your business allocation.

Form T2124, Statement of Business Activities available from the CRA, [available on the web at: <http://www.cra-adrc.gc.ca/E/pbg/tf/t2124/>] provides the framework on which to organize your tax return. It is recommended that you use the following arrangement of your expenses to fit the CRA's format as closely as possible.

Headings in Form T2124

ADVERTISING:

Includes: audio and visual demo tapes and CDs; publicity expenses consisting generally of the cost of having photographs made and sent with a descriptive commentary to producers and the media, and including the cost of advertisements in talent magazines; professional gifts; Web-site construction & maintenance; resumes (production and printing); PR firms' fees; tickets you purchase to give to people to see your work.

AGENT'S COMMISSION:

See: MANAGEMENT & Administration Fees

BAD DEBTS:

Fees should be declared as income in the year they are earned whether or not you were paid. Bad debts are fees that you cannot collect. Get advice about when to call an unpaid fee a Bad Debt. You cannot claim a bad debt as an expense unless you previously reported the income.

BUSINESS FEES

Membership in professional groups fees such as ACTRA and Equity and any other union dues.

DELIVERY, FREIGHT

Postage and Courier costs. Can alternately go under: Office expenses

HAIR & MAKEUP

See: Supplies

INSURANCE

Includes: insurance premiums on musical instruments and other performance equipment; does not include life or vehicle insurance.

INTEREST

Includes: interest on loans to buy items for business use; on business bank accounts, lines of credit and credit cards used exclusively for business;

Claim bank charges on business accounts. Claim home mortgage interest under Business Use of Home and car loans under Motor Vehicle.

MAINTENANCE & REPAIRS

Includes: cost of maintenance on performance equipment and office equipment; cost of repairs and maintenance of luggage; wardrobe including dry cleaning as long as it is business related: See also Wardrobe

MANAGEMENT & ADMINISTRATION

Business managers fees also includes remuneration to substitute or assistant. (dresser)

MEALS & ENTERTAINMENT

There is no flat rate per diem allowance for claiming meals. The CRA is not obliged to accept meal claims without receipts. Claim 50% of the cost of meals bought in the process of earning income. This includes networking and interviews, and where work or auditions makes restaurant food necessary. Keep records of who is being treated and be ready to justify the expense as promoting the business. Meals including liquor, provided at home for business contacts can be justified with full details. Claim meals purchased while on tour under TRAVEL.

MOTOR VEHICLE

All the costs of running the car are deductible in the proportion that the car is used for business. The CRA asks for a mileage log showing, at a minimum, the date, destination and distance for each trip. A proportionate share of the cost of gas, parking, repairs and maintenance, leasing costs and insurance may be claimed. A detailed work diary may justify the level of car use. Fines are generally not deductible.

OFFICE EXPENSES

Stationery and printing supplies can be claimed under this account. See Capital Cost Allowance for large equipment and computer software.

SUPPLIES

Includes: Dressing room duplicates of pharmacy sundries; Vitamins, supplements and alternative remedies are a personal medical expense and are deductible if prescribed; Small properties and wardrobe accessories; Hair care and make-up supplies for business use: Note: To demonstrate the reasonableness of your claim, it is important to maintain all receipts including those for items not used for business and therefore not claimed as a business expense.

LEGAL, ACCOUNTING AND OTHER PROFESSIONAL FEES

Includes: Accounting fees and Legal fees in connection with a contract or acquiring travel documents;

PROPERTY TAXES

Are deductible only if you maintain a separate office, studio, storage or work space away from your home.

RENT

Is deductible only if you maintain a separate office, studio, storage or work space away from your home.

SALARIES, WAGES AND BENEFITS (PAID)

Fees paid to understudies, replacements, deps, accompanists, paid

staff of self-production project. Family members can be hired to provide services if (a) the services are really provided, and (b) the fees paid are "reasonable". NOTE: The category Salaries and Wages should only be used if you are a registered employer.

TRAVEL

Includes: transportation expenses related to an engagement (including an audition) in a situation where:

- ▶ the engagement is out of town, in which case, board and lodging would also be allowed;
- ▶ a large instrument or equipment must be carried to the engagement; (includes taxis or rental car)
- ▶ dress clothes must be worn from a residence to the place of engagement, or
- ▶ one engagement follows another so closely that a car or taxi is the only means by which the engagement can be fulfilled;

You should claim fares, hotels or other paid accommodation. Meals should be claimed at 50%. Taxis and/or rental cars while out of town.

TELEPHONE & UTILITIES

Basic personal residential service may be partially deductible. All work related long distance charges and features such as cellular telephone, pagers, Call Answering service, second basic service when out of town, second line for business use and your internet provider. Claim utilities only for work space outside the home.

OTHER

On blank lines on the T2124, many preparers use other headings for expenses which may include:

Local Transportation

Claim transit, taxi, and bicycle costs relating to business trips in town. If your home is your principal place of business, you may claim all transportation costs to and from work engagements.

Professional Development

You may claim the cost of music, acting, dancing or other lessons incurred for a particular role or part or for the purpose of general self-improvement in your field. This may also include a person trainer.

Gym membership is considered at least partly personal, and may be disallowed if, like the "Y", the organization offers other advantages to its members. Tickets to see others work.

Research

Industry related periodicals and subscriptions. Cable TV, museum trips (if well documented). Scripts, books, videos, etc. if small in total value, otherwise claim under Capital Cost Allowance

Wardrobe

Claim under Capital Cost Allowance.

CAPITAL COST ALLOWANCE

Any expenditure with continuing value at the end of the year is a capital cost. Car, computer, software, audio and video equipment, and office furniture are examples of capital costs. You may only claim an amount prescribed under the Income Tax Act on certain items of capital expenditure depending on its "class". This is called the Capital Cost Allowance. Examples of the prescribed classes are Class 8 at 20% on equipment, furniture, instruments, wardrobe and scripts; Class 10 at 30% on computer hardware and cars with a value less than \$24,000; Class 12 at 100% on computer software. Items less than about \$200 may generally be claimed in full. High tech equipment over \$1,000 should be tallied separately.

USE OF PART OF YOUR HOME FOR BUSINESS

You may deduct expenses related to an area of your home that is used for business. The work space must be either (a) the principal place of the business, or (b) used exclusively to earn income, and on a regular and continuous basis for meeting clients or contacts in respect of business. The claim for the business cost must be made on a reasonable basis such as the percentage of floor space used. Claim the business portion of common costs such as rent, taxes,

mortgage interest, utilities, insurance, maintenance and cleaning. Business use of Home may not be used to cause or increase a business loss, but the unused portion may be carried forward to be claimed against future years' profit.

NON-RESIDENT ACTORS

Legislation was passed in Parliament on June 14, 2001 which set the withholding tax on acting income earned by non-resident actors at 23%. The legislation applies to non-resident actors in film or video production, such as feature films, movies of the week, television series, documentaries, video productions, and commercials, in Canada.

The legislation does not apply to artists working in theatre nor does it apply to other people employed or providing services within the movie industry, such as directors, producers, and other personnel working behind the scenes or in other sectors of the entertainment industry. If a non-resident person earns other income in Canada for services in theatre, this income is subject to withholding at the rate of 15% and the person is required to file a tax return.

If the film/video acting income is your only source of Canadian income, you are not required to file a tax return. However, you may be able to reduce your tax obligation by electing to file an income tax return. Electing to file a return allows you to pay tax on your net Canadian-source acting income at graduated individual or corporate rates, instead of paying tax on the gross amount at the 23% rate. Depending on the amount of your income and expenses, the tax calculated on the net income may be less than the 23% withholding tax on gross earnings.

To allocate income to Canada, you have to calculate the following:

▶ Number of days inside Canada - This is the number the days you were present in Canada to provide the services specified under the acting contract, whether or not you actually provided the services on all of those days. It therefore includes the days you arrived in and departed from Canada, weekends, statutory holidays, days you were on "standby," days you were "on call," and short breaks if you remained at or near your work location. The CRA considers that you have to be in Canada on such days to be able to provide the services. They are therefore relevant to determining the amount of income you earn in Canada.

▶ Number of days outside Canada - This is the number of days you spent outside Canada providing services under the contract, multiplied by 7/5.

▶ Total number of days on the production - The "number of days inside Canada" plus the "number of days outside Canada" equals the "total number of days on the production." This number should be consistent with the time periods identified in the contract for services.

▶ Percentage (%) of days inside Canada - This is the percentage represented by the following formula:

$$\frac{\text{Number of days inside Canada} \times 100}{\text{Total number of days on the production}} = \% \text{ of days inside Canada}$$

Total number of days on the production

▶ Acting income allocated to Canada - To calculate the amount of acting income to allocate to Canada, multiply your income under the contract that is attributable to acting services by the "percentage (%) of days inside Canada."

Amounts paid to non-resident actors not subject to the 23% withholding tax include: (all amounts are quoted in Canadian \$)

▶ (a) reasonable travel expenses (airfare, hotels) paid directly to third parties on behalf of the non-resident actor, and

▶ (b) reasonable travel expenses reimbursed to the non-resident actor provided they are adequately supported by vouchers, maintained by the payer. (Reimbursement of meals including incidentals to a maximum \$100/day will not require receipts.)

Amounts above \$100/day reimbursed for meals will require that the payer retain receipts from the non-resident actor. If receipts for the full amount paid are not retained, withholdings of 23% on the amount in excess of the total receipts retained are required.

Amounts of \$100/day or less paid as a reimbursement of meals expenditures will require only that the payer obtain an attestation from the non-resident actor that such amounts were incurred. However, the non-resident actor is required to retain the receipts for possible subsequent verification by the CRA..

It would be helpful for non-resident actors to seek the advice of a Canadian tax professional. Further information from the CRA is available on the web at: <http://www.cca-adrc.gc.ca/tax/nonresidents/film>

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OTHER SOURCES:

- Revenue Canada Publications, IT-525R Income Tax Act, Performing Artists
- Revenue Canada Publications, IT-514 Income Tax Act, Work Space in Home Expenses
- Revenue Canada Publications, Information Circular 75-6R Required Withholding from amounts paid to non-resident persons performing services in Canada

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