

## MUNICIPALITY OF THE COUNTY OF ANTIGONISH

**TOPIC: Councillor Meeting Mileage Reimbursement as a Non-Taxable Benefit Policy**

**POLICY NUMBER: 33**

**DATE APPROVED: September 16, 2008**

**DATE REVISED:**

### **PURPOSE**

The purpose of this policy is to clarify and provide guidance to Councillors with regards to Councillor meeting mileage claim stipulations for consideration as a non-taxable benefit.

### **SCOPE**

This policy covers rules and requirements that should be satisfied in order for Councillor mileage claims (from their perspective homes to meetings) to be considered as a non-taxable benefit.

1. Conditions for non-taxable benefit consideration.

### **RESPONSIBILITIES**

This Statement of Policy and Procedure is the responsibility of both the Municipality of the County of Antigonish and the Councillors that claim mileage to meetings.

#### **1. Conditions for Non-Taxable Benefit Consideration**

It is a well-established principle of Canadian income tax law that a reimbursement received by an employee from an employer in respect of personal expenses is considered to be a form of remuneration paid by the employer to the employee, and hence is subject to taxation. It is also, well-established that, *in general terms*, the cost of travel from an employee's home to his or her place of employment is a personal expense.

Corporate directors, municipal councillors and elected school board officials would all typically be considered an "employee" of the body they serve for the purposes of applying the Income Tax Act. They may be part-time employees, but employees nonetheless.

For the most part, CRA's position in such cases is technically sound pursuant to the Act as it presently reads; however, there are two circumstances that can lead to the conclusion that the amounts in question do not represent employment income in the hands of the recipients.

- 1) When employees are required to travel more than 80 km to attend to their duties of employment, provided other requirements are also satisfied. The exemption will apply where the individual performs part-time employment services for an arm's length employer during a period when he/she has other employment or was carrying on a business, and in connection with the part-time employment he/she is required to travel a distance which is at least 80 km away from both his/her residence and principle work location.

- 2) The other exemption, although not expressly legislated in the Income Tax Act, can arise where the employee is effectively travelling from the place of employment to another. There have been circumstances where the employee travelling fewer than 80 km to attend his/her duties has had mileage reimbursement excluded from their taxable income. Specifically, there have been cases where individuals who serve as corporate directors or school board members maintain offices in their home and do a substantial portion of the work relating to those part-time functions at their home offices.

Exert from the Income Tax Act - "As a general rule, the CRA insists that travel from home to work and back is a personal expense and any allowance for this purpose is taxable, subject to the rather narrow exceptions in P352f. In *Campbell et al. v. The Queen*, (T.C.C.) 2003 DTC 420, members of a Nova Scotia School Board is given an allowance for travelling from their homes to school board meetings. The Court found as fact that the appellants maintained offices in their homes and could not maintain offices at the school board building. Accordingly, both places were places of work, and the allowance for travel between them was not taxable."

In order for the Municipality of the County of Antigonish to consider that mileage reimbursement for Councillors to and from meetings (from home) to be non-taxable the following requirements must be met:

- The Municipality of the County of Antigonish must maintain that there is no available space at the main office for the Councillors to have an office to work out of;
- As a result, the Councillors must use a designated area of their homes to perform a substantial portion of the work related to the County and their Councillor duties (ie. Check e-mails, answer phone calls, have meetings, etc). Note that home offices do not qualify for the deduction where a Councillor has been reimbursed or is entitled to be reimbursed such expenses. It is CRA's view that where individuals receive an allowance for expenses incidental to the discharge of their duties which is tax free under the provision, they have in effect been reimbursed for their home office expenses and they would not be entitled to claim deduction for such expenses.

In summary, it does not clearly state in the Income Tax Act that mileage reimbursements of this nature will be considered non-taxable if a certain amount of sundry requirements are met. But there are actual cases where CRA has acknowledged these reimbursements as business expenses which are not considered taxable as employment income. The Municipality of the County of Antigonish takes the position that Council meeting mileage reimbursement should be considered a non-taxable benefit based on the conditions/considerations set stated (above) in this policy.