NO.: **IT-525R (Consolidated)** DATE: See *Bulletin Revisions* section

SUBJECT: INCOME TAX ACT
Performing Artists

REFERENCE: Paragraphs 8(1)(*p*) and (*q*) (also sections 8, 18, 67, 67.1, 67.2, 67.3, 67.4, and 67.5, paragraphs 8(1)(*j*), 13(7)(*a*), (*b*), and (*c*), and subsection 1100(2) of the *Income Tax Regulations*)

Latest Revision – ¶ 8

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Bulletin Revisions

Application

This bulletin is a consolidation of the following:

- IT-525 dated August 17, 1995; and
- subsequent amendments thereto.

For further particulars, see the "*Bulletins Revisions*" section near the end of this bulletin.

Summary

This bulletin discusses the criteria used by the Canada Customs and Revenue Agency (CCRA)[1] to distinguish a performing artist who is an employee from one who is self-employed. This distinction is important in determining the expenses that are deductible in computing the artist's income.

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 by section 18 or limited by provisions of the Act such as sections 67 to 67.5. The expenses that are deductible by a self-employed performing artist are discussed in this bulletin.

A performing artist who is an employee is limited to the deductions described in section 8 of the Act in determining income from employment. In particular, such an employee may deduct musical instrument costs (paragraph 8(1)(*p*)) and artists' employment expenses (paragraph 8(1)(*q*)), subject to certain limitations. These deductions are discussed in this bulletin. In addition, a list of other interpretation bulletins which discuss other expenses deductible by employees can be found at the end of the bulletin.

The word “artist” in this bulletin refers to a performing artist, such as a musician, an actor or other performer. For information on issues concerning visual artists and writers, please refer to the current version of IT-504, *Visual Artists and Writers*.

Discussion and Interpretation

Employee or Self-Employed Artist

¶ 1. Artists who are employees have the benefit of coverage by their employers under both the *Employment Insurance Act*[2] and the Canada Pension Plan. Self-employed artists are not covered under the *Employment Insurance Act*, but 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 (see the current version of *“Interprétation Revenu Québec”* IMP. 80-3).

¶ 2. 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, be self-employed under a second arrangement. An individual, however, cannot be both an employee and self-employed under the same arrangement or contract.

¶ 3. 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 exists when a person is engaged to achieve a defined objective and is given all the freedom required to attain the desired result.

¶ 4. When dealing with persons of particular skills and expertise, such as artists, supervision and control of the manner in which the work is done may not be a critical and decisive factor. However, the determination of whether or not an artist is under a contract of service or a contract for services is a question of fact, and will depend on the nature and the terms of the contract or arrangement (written or oral), its duration, and all the elements that constitute the relationship between the parties.

¶ 5. In some cases it will be clear whether an artist is carrying on a business or is an employee. For example, a member of the full-time staff of a radio or television station or network would typically be an employee, whereas an artist who operates on a completely free-lance basis, seeking and obtaining a variety of engagements, would be self-employed. However, in other situations the circumstances may fall somewhere between these extremes and the determination of the question is more difficult. Thus, it is not possible to give one criterion or even a group of criteria that can absolutely determine, in all cases, whether or not an artist is an employee. The following two paragraphs give guidelines or factors which will help in the determination of the artist’s status.

¶ 6. There is an indication of status as an employee and therefore of a contract of service between an artist and, for example, a party such as a symphony or other type of orchestra, a ballet company, an orchestra leader, a film or theatre producer, or a television company, where that party has, according to the terms of the engagement:

(a) the right to decide on or change the size of the group with which the artist performs;

(b) the right to choose the nature of the artist’s performance (opera, ballet, theatre, films, musicals, concerts, classical, popular, jazz) without obtaining the artist’s agreement;

(c) the continuing authority to dictate the time and place of the artist’s performance including rehearsals, again, without obtaining the artist’s agreement;

(d) the unilateral right to change the dates, times, and places from those ordinarily scheduled, or increase the number of rehearsals or performances;

(e) the obligation to pay overtime; or

(f) the responsibility to provide or authorize transportation for the artist.

¶ 7. On the other hand, there is an indication that the artist could be a self-employed individual carrying on a business if the artist:

(a) has a chance of profit or risk of loss;

(b) provides instruments and other equipment;

(c) has a number of engagements with different persons during the course of a year;

(d) regularly auditions or makes application for engagements;

(e) retains the services of an agent on a continuing basis;

(f) can select or hire employees or helpers, fix their salary, direct them or dismiss them;

(g) can arrange the time, place, and nature of performances; or

(h) is entitled to remuneration that is directly related to particular rehearsals and performances.

¶ 8. A decision on June 18, 1986, by the Federal Court of Appeal, in *Wiebe Door Services Ltd. v. M.N.R.*, 87 DTC 5025, [1986] 2 CTC 200, is considered to be the most significant precedent which the CCRA follows in resolving issues concerning the status of an individual as an employee or self-employed person.

In determining whether an individual is an employee or self-employed person, the CCRA will apply the use of a four-in-one test, which involves the consideration of the following criteria:

(a) the extent to which the worker is subject to the control of the payor;

(b) whether the worker provides his or her own tools;

(c) whether the worker has a chance of profit or risk of loss; and

(d) whether or not the worker is employed as part of the business and performing services integral to the business.

In applying the four-in-one test, it is the complete interaction between the worker and the payor that must be considered. No one criterion determines whether a person is an employee or independent contractor, all the criteria are considered relevant. The CCRA publication RC4110, entitled *Employee or Self-Employed?*, further elaborates on these criteria.

¶ 9. In any case of doubt as to the status of an artist, advice should be obtained from a CCRA[3] tax services office.

Expenses of Self-Employed Artists

¶ 10. Where an artist is self-employed, the expenses incurred to earn professional income are deductible, to the extent that they are reasonable in the circumstances. Examples of such expenses are as follows:

(a) insurance premiums on musical instruments and equipment;

(b) the cost of repairs to instruments and equipment, including the cost of new reeds, strings, pads, and accessories;

(c) legal and accounting fees;

(d) union dues and professional membership dues;

(e) an agent's commission;

(f) remuneration paid to a substitute or assistant;

(g) the cost of makeup and hair styling required for public appearances;

(h) 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;

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

 (i) the engagement is out of town, in which case, board and lodging would also be allowed (see the current version of IT-518, *Food, Beverages and Entertainment Expenses*),

 (ii) a large instrument or equipment must be carried to the engagement,

 (iii) dress clothes must be worn from a residence to the place of engagement, or

 (iv) one engagement follows another so closely that a car or taxi is the only means by which the engagement can be fulfilled;

(j) the cost of videotaping or recording performances where required for their preparation or presentation;

(k) telephone expenses, including an applicable portion of the cost of a telephone in a residence where the number is listed as a business phone;

(l) capital cost allowance (CCA) (class 8 – 20% declining balance) on instruments, sheet music, scores, scripts, transcriptions, arrangements and equipment;

(l.1) CCA (class 8 – 20% declining balance) on wardrobe that is acquired by the artist specifically to earn self-employment income and that is used solely for performances, when the cost of such wardrobe gives rise to an enduring benefit to the artist (see the current version of Interpretation Bulletin IT-128, *Capital Cost Allowance – Depreciable Property*, for a discussion of the meaning of "enduring benefit");

(l.2) the cost of wardrobe used solely for performances when such cost does not give rise to an enduring benefit to the artist;

(m) the cost of repairs, alterations, and cleaning of clothes for the purpose of their use in self-employment, or required as a result of such use;

(n) costs to maintain that part of the artist's residence used for professional purposes (see the current version of IT 514, *Work Space in Home Expenses*);

(o) the cost of music, acting or other lessons incurred for a particular role or part or for the purpose of general self-improvement in the individual's artistic field; and

(p) the cost of industry-related periodicals.

Where the artist uses a personal motor vehicle in one of the situations described in (i), see also the current version of IT-521, *Motor Vehicle Expenses Claimed by Self-Employed Individuals*.

¶ 11. The following deductions are not allowable because they are either capital expenditures or they are personal or living expenses:

(a) the cost of musical instruments or other equipment necessary for the artist's performance (however, CCA may be deducted as explained in ¶ 10(l)above);

(b) the cost of sheet music, scores, scripts, transcriptions, arrangements, phonographs, other recordings, or "air checks" (again, however, see the comments in ¶ 10(l) above regarding CCA);

(c) videotaping and recording costs incurred specifically for the purpose of study and general self-improvement (however, if the preparation or presentation of a particular performance requires that it be videotaped or recorded, see ¶ 10(j) above).

¶ 12. Where, under different contracts or arrangements during a year, an artist is self-employed for one period and an employee for another period (see ¶ 2 above) and the expenses incurred apply to both periods, an allocation should be made, on a time basis, to determine the portion of expenses which are deductible for purposes of calculating the self-employment income. The amount of expenses so deductible will be that proportion of the total expenses otherwise allowable that the working time to earn income from self-employment is of the total working time. While the CCRA[4] normally adopts time as the basis for allocating expenses, it will consider any other justifiable basis.

Example:

Total expenses incurred to earn income	$3,000
Period of self-employment in the year	160 days
Period as an employee in the year	80 days
Total	240 days

Expenses allocable to period of self-employment:

$$\frac{160}{240} \times \$3,000 = \$2,000$$

Expenses of Employed Artists

¶ 13. Artists who are employees are not allowed to make any deductions in computing income from an office or employment other than those provided in section 8. In particular, paragraph 8(1)(*p*) provides that an employee who is

(a) employed in the year as a musician, and

(b) required, as a term of the employment, to provide a musical instrument for a period in the year,

may deduct the following amounts related to the musical instrument. Where the instrument is owned by the musician, capital cost allowance (class 8 – 20% declining balance) may be claimed. In addition, amounts paid before the end of the year in respect of that period for the maintenance, rental and insurance of the instrument may be deducted in computing the musician's income from the employment. However, the total deduction for the year provided under paragraph 8(1)(*p*) for the maintenance, rental, insurance, and capital cost allowance for the instrument cannot exceed the taxpayer's income for the year, determined prior to any deduction under that paragraph, from employment in which the conditions under (a) and (b) above are met. Consequently, the deduction under paragraph 8(1)(*p*) cannot create or increase a loss from such employment.

Where a musician is both self-employed and an employee in the year, capital cost allowance for the instrument may be claimed as a deduction in computing income from business (in self-employment) and under paragraph 8(1)(*p*) in computing income from employment. In such event, however, the total of capital cost allowances claimed for the year in respect of the instrument, in computing income from both sources, cannot exceed 20% of the undepreciated capital cost of the instrument as allowed for property in class 8 of the *Income Tax Regulations*. The amounts of capital cost allowance, maintenance, rental, and insurance expenses deductible for the instrument in computing the musician's income from employment are limited to the portion of those expenses applicable to earning such income as allocated in the manner discussed in ¶ 12 above.

¶ 14. A musician may be subject to the "change-in-use" rules under paragraphs 13(7)(*a*), (*b*) and (*c*) of the Act in respect of a musical instrument. An application of these rules is illustrated in the following example. The term "50% rule" used in the example refers to the limits, under Regulation 1100(2), placed on capital cost allowance (CCA) claims for acquisitions of most depreciable property in a taxation year. Under Regulation 1100(2), the CCA claims are limited to the amount otherwise available less one-half of the CCA attributable to the "net acquisitions" in the year, determined on a class by class basis. (See the current version of IT-285, *Capital Cost Allowance – General Comments*, for further information on the "50% rule").

Example:

A musician who purchased a musical instrument and used it exclusively for personal purposes, changes the use of the instrument to earning income from employment. The instrument is the only property in the class (class 8 – 20% declining balance), the original cost of the instrument to the musician was $2,000 and the fair market value at the time of the change in use is $1,000.

For CCA purposes:

(i) there is a "change-in-use" under subsection 13(7) of the Act;

(ii) the deemed acquisition of the instrument is at a capital cost computed under paragraph 13(7)(*b*)—in this case, at fair market value (FMV);

(iii) the CCA "50% rule" under Regulation 1100(2) applies.

CCA for the taxation year in which the change in use occurred:

Deemed Acquisition Cost (FMV)	$1,000	
Less 50% (Regulation 1100(2))	500	
CCA at 20% of:	$ 500	= $100

Taxpayers should also be aware that capital gains or recaptures of capital cost allowance may arise from a "change in use" of the instrument and should consult their CCRA[5] tax services office in this respect.

In the above example, the instrument's deemed capital cost for purposes of claiming CCA is equal to its FMV at the time

of the change in use because that FMV is less than the original cost. If the FMV at the time of the change in use had been more than the original cost, the deemed capital cost for CCA purposes would have been less than that FMV—see the formula in paragraph 13(7)(*b*).

¶ 15. Paragraph 8(1)(*q*) allows a deduction for a taxpayer's expenses paid to earn employment income from an artistic activity that falls into any of the following categories (hereinafter referred to as a "qualifying artistic activity"):

(a) creating (but not reproducing) paintings, prints, etchings, drawings, sculptures, or similar works of art;

(b) composing a dramatic, musical, or literary work;

(c) performing a dramatic or musical work as an actor, dancer, singer, or musician; or

(d) an artistic activity in respect of which the taxpayer is a member of a professional artists' association that is certified by the Minister of Canadian Heritage[6].

Where an artist is, during a taxation year, self-employed for a period and an employee for another period, the expenses which relate to both periods should be allocated in the manner discussed in ¶ 12 above in order to determine the portion of expenses that were paid to earn employment income from qualifying artistic activities.

¶ 16. The expenses which can be deducted under paragraph 8(1)(*q*) cannot exceed a limit for each taxation year. The limit is calculated by taking the lesser of:

(a) $1,000; and

(b) 20% of **all** the taxpayer's employment income for the year, before claiming any deductions under section 8, from **all** qualifying artistic activities;

and then subtracting the amounts deducted for the year, in calculating employment income from those qualifying artistic activities, under paragraph 8(1)(*j*) (interest or capital cost allowance for motor vehicles or aircrafts) and 8(1)(*p*) (musical instrument costs).

¶ 17. Any expenses paid in the year to earn employment income from qualifying artistic activities that are not deductible for the year under paragraph 8(1)(*q*) because they exceed the limit described in ¶ 16 above, and that are also not deductible under any other provision of the Act, are carried forward to the immediately subsequent year by virtue of paragraph 8(1)(*q*). In the subsequent year, the expenses carried forward plus any new expenses paid in the year (to earn employment income from qualifying artistic activities) are deductible under paragraph 8(1)(*q*), subject to its limit as calculated for that year. Again, any undeductible amount would be carried forward.

¶ 18. The following example illustrates the rules discussed in ¶s 15 to 17 above:

A musician was employed by both Employer A and Employer B during the same taxation year as a performer of musical works (subparagraph 8(1)(*q*)(iii)). The following information relates to that taxation year:

	Employer A	Employer B	Total
Income received in the year	$ 15,000	$ 7,500	$ 22,500
Related expenses paid in the year:			
Advertising & promotion	400	300	700
Travel*	800	500	1,300
Total	$ 1,200	$ 800	$ 2,000
Capital cost allowance on musical instrument deducted under paragraph 8(1)(*p*)	$ 250	$ 100	$ 350

* The taxpayer meets the requirements of paragraph 8(1)(*h*); consequently, the travel expenses are **deductible** under that provision.

The amount deductible under paragraph 8(1)(*q*) for the current year is calculated as follows:

Eligible artists' employment expenses (amount paid for advertising & promotion – see note below)		$ 700
Limit under paragraph 8(1)(*q*): The lesser of:		
(i) $1,000, and		
(ii) $4,500 (20% of $22,500);		
That is,	$ 1,000	
Less: capital cost allowance	350	$ 650
Amount deductible under paragraph 8(1)(*q*) for the year (the eligible expenses of $700, but not exceeding the limit of $650)		$ 650
Eligible artists' employment expenses to be carried forward to the subsequent year ($700 eligible – $650 deductible)		$ 50
Deductions allowed in computing the current year's employment income:		
Capital cost allowance (paragraph 8(1)(*p*))		$ 350
Artists' employment expenses (paragraph 8(1)(*q*))		650
Travel expenses (paragraph 8(1)(*h*))		1,300
Total		$ 2,300

Note: Since the travel expenses of $1,300 were paid to earn employment income from a qualifying artistic activity, the taxpayer could choose to include them in the eligible artists' employment expenses instead of deducting them under paragraph 8(1)(*h*) (the eligible artists' employment expenses would therefore be $2,000 instead of $700). However, the amount deductible under paragraph 8(1)(*q*) for the year would remain $650 due to the above limit. In addition, the $1,300 of travel expenses could not be included in the amount to be carried forward by virtue of paragraph 8(1)(*q*), since they are deductible in the current year under paragraph 8(1)(*h*) (even though not actually deducted). Consequently, the artists' employment expenses to be carried forward

would remain $50 ($2,000 eligible – $650 deductible under paragraph 8(1)(*q*) – $1,300 deductible under paragraph 8(1)(*h*)). In these circumstances, it would therefore be to the taxpayer's advantage to deduct the $1,300 under paragraph 8(1)(*h*).

¶ 19. For a discussion on certain other expenses which may be deducted under section 8 by employees, in computing income from an office or employment, refer to the current version of the following interpretation bulletins:

IT-103 *Dues Paid to a Union or to a Parity or Advisory Committee*

IT-158 *Employees' Professional Membership Dues*

IT-352 *Employee's Expenses, Including Work Space in Home Expenses*

IT-518, *Food, Beverages and Entertainment Expenses*

IT-522, *Vehicle, Travel and Sales Expenses of Employees*

Bulletin Revisions

¶s 1 to 7, 9 and 11 to 19 have not been revised since the issuance of IT-525R on August 17, 1995.

¶ 8 was revised to take into consideration that the decision in *Wiebe Door Services Ltd. v. M.N.R.* is the most significant precedent to be relied upon in determining the status of an individual as an employee or self-employed person.
[April 24, 2002]

In ¶ 10, the following changes were made:

- ¶ 10(g) was revised to delete the word "special". Any makeup or hair styling expenditures incurred to earn professional income are deductible to the extent that they are reasonable in the circumstances. [April 11, 2001]
- ¶ 10(l)was revised to exclude the discussion of the tax treatment of the cost of wardrobe. [April 11, 2001]
- ¶s10(l.1) and (l.2) were added to deal with the tax treatment of the cost of wardrobe, which was discussed in former ¶ 10(l). [April 11, 2001]

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[1] Corrected on [April 24, 2002]

[2] Corrected on [April 24, 2002]

[3] Corrected on [April 24, 2002]

[4] Corrected on [April 24, 2002]

[5] Corrected on [April 24, 2002]

[6] Corrected on [April 24, 2002]

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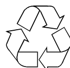

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