UNITED ASSOCIATION
of Journeymen & Apprentices of the
PLUMBING & PIPEFITTING
Industry of the United States and Canada
Local Union 170 - Affiliated with AFL-CIO-CFL

January 18, 2017

Attention UA Local 170 Members

Re: [redacted] Audit and Reissued Amended T4's for 2013 and 2014

As Local 170 received many phone calls regarding the audit performed by Canada Revenue Agency on [redacted] the following action was taken. We spoke with Local 170's accountant to see if there was any relief or assistance that Local 170 could render in this very important matter. After much discussion, we decided to seek additional advice from Lewis and Company, a tax specialist who specializes in these types of matters. We met with Lewis and Company on January 11, 2017 and they provided the enclosed document. Rest assured, Local 170 is doing everything it can, however Local 170 is limited because of the Canadian tax laws. Local 170 makes no representation or warranties of any kind whether express or implied as to the content of the document provided by Lewis and Company dated January 11, 2017. Each individual should also seek their own tax advice.

If you require any questions, please contact a business agent at 604.526.0441.

Fraternally,

Joe Shayler

Joe Shayler
Business Manager | Financial Secretary

JS:sjcy

Encl.

moveUP

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CHARTERED PROFESSIONAL ACCOUNTANTS

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TO: **Mr. Joe Shayler, Business Manager & Financial Secretary of the United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry of United States and Canada.**

Mr. Brian Zdrilic, Business Manager of the Millwrights, Machine Erectors & Maintenance Union (Local 2736)

FROM: **Hugh Woolley**

DATE: **January 11, 2017**

SUBJECT: **Canada Revenue Agency Audit**

This afternoon we met at my office to discuss the actions that the Canada Revenue Agency ("CRA") has taken involving various employees to [redacted] that involve certain members of your respective unions.

I am in receipt of a letter dated June 30. 2016 written by the CRA's Penticton District Office which outlines findings of an "Employer Compliance Audit" undertaken in respect of the payroll account of [redacted]

This letter outlines four issues:

1. Overtime Meals
2. Travel Allowances
3. Glove Allowances
4. Fuel Payments

I understand that the "glove allowance" issue is very minor as it only pertains to work performed in Alberta and that you do not wish to further deal with this matter.

I understand that the fuel payments only apply to management employees and that you do not wish to further deal with this matter.

The letter indicated that [redacted] has 30 days to refute the CRA's findings otherwise the CRA would proceed to:

1. Penalize the employer [redacted], and
2. Issue new T4 slips for all affected employees that would generate Notices of Reassessment for all of these employees.

I understand that [redacted] either did not attempt to refute the CRA's findings or that the CRA did not agree with any arguments made by [redacted] and that many employees began receiving Notices of Reassessment in mid to late December 2016.

I understand that serval employees approached [redacted] in an attempt to determine the composition of the quantum of the amounts that their employment income had increased. I understand that [redacted] informed these employees that the figures used by the CRA did not agree to their internal accounting records and that is several cases the amounts used by the CRA were in excess of the amounts that [redacted] believed were correct.

Very generally, the basis of the CRA's reassessments can be summarized as follows:

Overtime Meals

Subsection 6(1) of the Income Tax Act requires that an employee include in their income the value of all benefits received by virtue of their employment. Generally, this includes the cost of free meals or a meal allowance.

It is generally agreed that an employee benefit does not arise when the benefit primarily accrues to the employer not the employee. A simple example of this would be workplace training. Even though the employees may benefit from the work-related training, the training is primarily for the benefit of the employer not the employee.

The CRA is willing to accept that an "overtime meal" (or an allowance in respect of an overtime meal) does not result in an employee benefit (presumably on the basis that the primarily beneficiary of the employee working overtime is the employer) if various conditions are met. These conditions are arbitrary imposed by the CRA and are not set out in the Income Tax Act. These conditions include that the cost of the meal (or allowance) doesn't exceed $17 unless the particular work location justifies a higher rate based on relative cost of food in that locale or there are "other significant extenuating circumstances".

This $17 is a threshold not an exemption. That means any meal (or allowance) over $17 is fully taxable rather than just the portion that exceeds $17. Put another way, an employee in a 40% marginal tax bracket receiving a $25 allowance will retain only 60% of the $25 (or $15) which is less than they would retain in they received a $17 non-taxable allowance.

I understand that the CRA included the value of all overtime meal allowances received as taxable employment income on the basis that the employees received an overtime meal allowance which exceeded the CRA's arbitrary $17 threshold.

Travel Allowance

I understand that travel costs are only reimbursed for out of town work.

Subsection 6(6) of the Income Tax Act excludes from an employee's income the an allowance for travel between the employees principal place of residence and a special work site (being a location at which the employee worked on a temporary basis and the employee could not reasonably be expected to return to their principal place of residence) PROVIDED that such allowance is "reasonable".

The Income Tax Act does not define what is a reasonable allowance. Although paragraph 18(1)(r) of the Income Tax Act states that the employer may not claim a tax deduction for amounts paid to employees that exceeds prescribed millage rates (54 cents per km in 2016), these limits do not dictate what an employee may receive as a non-taxable allowance.

In a private letter technical interpretation dated December 30, 2013 the CRA's head office stated that for the purposes of subsection 6(6) of the Income Tax Act that is a "question of fact" what is a reasonable allowance and that any "allowance that approximates the transportation expenses to be incurred by the employee would generally be considered reasonable".

I understand that employees are paid a per kilometre allowance for out of town travel based on the distance between Burnaby City Hall and the special work site regardless of the particular employee's actual travel distance.

I understand that in some instances the actual distance travelled exceeds the distance from Burnaby City Hall to the special work site and in some instances the actual distance travelled is less.

I understand that the language in the contracts basing the allowance on the distance from Burnaby City Hall was an administrative convenience intended to simplify the record keeping of the various employers so that they did not have to track the distance from the home of each employee when there were often hundreds of employees working on a particular job site and frequently the employees changed form job site to job site.

I understand that the CRA included the value of all travel allowances received as taxable employment income on the basis that the allowance was based on the distance from Burnaby City Hall and not the employees residence.

Plan of Action

Based on what has transpired, I would recommend the following course of action.

1. All employees must be aware that in order to protect their legal right to appeal the increased tax set out in the recently received Notice of Reassessment, that they must file with the CRA a Notice of Objection on Form T400 within 90 days of the date set out in their particular Notice of Reassessment. Appendix A to this memo sets outs some issues that the employees may wish to consider but it is imperative that each employee seek independent tax advice from their accountant or lawyer because the union is not in a position to provide this tax advice and because each member's situation is unique.

2. The union may wish to consider approaching the CRA with one or two test cases to see if the CRA would be willing to discuss:

    a. The make up of the amounts set out in the amended T4 slips which [redacted] believes may be incorrect (at least for some of its employees).

    b. The technical merits of the reassessments including the fact that the allowances received by the employees should have been non-taxable.

I would truly hope that the CRA would be open to such a meeting to ensure that their reassessment did not contain mathematical errors.

Even if the CRA is willing to have such a meeting, I would be very surprised if they were willing to expand the meeting beyond the mathematical accuracy of the reassessments. My pessimism is based on the fact that CRA's payroll auditors are very rigid and they are usually unwilling to stray from the Agency's written policies and procedures (especially after the audit has been completed).

The technical arguments in respect of the overtime meals could include the fact that the physically demanding nature of this sort of construction work is an "other significant extenuating circumstances" and justifies a larger allowance for the additional hunger.

The technical argument for the travel allowances could include the fact that the allowances "approximated" the transportation expenses to be incurred by the employee even though the amounts were not based on the distance from the employees residence.

Hopefully, it would be possible to have this meeting as soon as possible so that the members can see if the CRA is willing to adjust their returns. However, employees should not delay the filing of their own particular Notices of Objection.

3. Besides filing a Notice of Objection, employees may wish to consider whether they should amend their income tax returns to claim their actual automobile costs as an employment expense.

   Employees who are in receipt of a non-taxable allowance are not permitted to claim their actual employment related travel expenses. However, if the CRA believes that the amounts that the employees received are, in fact, a taxable allowance, then it may be possible for the employee to claim various car expenses provided that a number of conditions are met, including:

   1. Their employer signs CRA Form T2200 "Declaration of Conditions of Employment" stating that it was a condition of employment that the employee have a motor vehicle for work purposes. If the employer is unable to attest to this fact then this option may not be possible. This may be an issue if the union contract does not contain such a requirement.

   2. The employee kept track of their actual car expenses including lease payments or capital cost of purchasing the car, insurance premiums, repairs and maintenance costs and fuel costs.

   3. The employee kept track of the their milage they drove the vehicle to work sites compared to the total millage driven during the year.

   Appendix B to this memo sets out the required information.

   Generally, the CRA will permit an individual to amend their tax returns for up to 10 years to claim deductions that they have previously failed to claim. This 10 year window exists to claim deductions even though the CRA is not legally permitted to reassess taxpayers to increase their tax payable more than 3 years after they originally assessed the individual's tax return (expect in limited circumstances such as fraud).

   Even if employees wish to file a Notice of Objection, they may wish to pursue this matter on both fronts by also amending their tax returns in the event that their Notices of Objection are not successful.

   Also, if an employee would simply prefer to amend their tax returns to claim their actual car expenses. they may still wish to file a Notice of Objection to prevent the CRA's collections department from taking collection action while they are waiting for the CRA to process their adjustment. Generally, the CRA is not permitted to take collection action while a Notice of Objection is in effect.

4. Even if the CRA's position is upheld and the tax is ultimately owing by the employee (or if, for any reason, the employee has no interest in disputing the reassessment) it may be possible for the employees to request that the CRA waive any associated interest or penalty charges on the basis that the additional tax resulted from an incorrect T4 slip prepared by their employer and not from any action on their part. Appendix C is the from required to be filed in this regard. Generally, the CRA will not consider a waiver request while the taxpayer has a Notice of Objection outstanding on the same issue so this process may have to follow the ultimate resolution of the Notice of Objection process.

Likelihood of Success

Fighting the CRA can be a very frustrating process. I am not optimistic of the employees' chances of success and caution against spending too much money in this pursuit. Having said that, I truly believe that the CRA has shown no reasonableness in their approach to this audit.

It is very unfortunate that [redacted] neither made comprehensive representations nor afforded the union with the opportunity to make arguments on behalf of their members.

I sincerely believe that it may have been possible to come to an acceptable settlement with the CRA had the union been provided with the opportunity to meet with the CRA before the amended T4 slips were prepared.

Going Forward

1. I suspect that the CRA will only be willing to consider the overtime meals to be non-taxable if they do not exceed $17. It may be possible to see if the CRA is willing to increase his amount for manual labour but I suspect that this sort of negotiation would have to occur with the CRA at the national level.

2. With respect to the travel allowances, the CRA's letter seems to indicate that the main problem was that the allowance was not based on the distance from the employee's place of residence. Although it is arguable that a reasonable allowance could still exits without the calculation being based on the distance from the employee's residence to the special work site, I doubt that the CRA is willing to assess on any other basis.

If you have any questions on any of these issues, please call me.

Hugh Woolley

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Clear Data | Help

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OBJECTION – *INCOME TAX ACT*

- You can use this form to file an objection to a notice of assessment or a notice of determination issued under the *Income Tax Act*.
- Deliver or mail your completed form to the Chief of Appeals at your tax services office or tax centre.
- **Filing deadlines** – If you are an individual (other than a trust) or filing for a testamentary trust, the time limit for filing an objection is whichever of the following two dates is later: one year after the date of the return's filing deadline; or 90 days after the day we sent the notice of assessment or notice of determination. In every other case, you have to file an objection within 90 days of the day we sent the notice of assessment or notice of determination.
- **Large corporations** – In addition to providing facts and reasons for objecting, large corporations have to describe each issue and specify the relief they want for each one.
- **Collection action** – We usually postpone collection action on amounts in dispute until 90 days after we mail the Minister's decision. In some situations we will not postpone collection action on disputed amounts, such as for taxes you had to withhold and remit. In all cases, interest will continue to accrue on any amount payable.
- For more information, contact the Appeals Division at your tax services office or tax centre.

To: Chief of Appeals

Address (as shown on your notice)
to be completed

Name
From: to be completed

Address
to be completed

Telephone (including area code)
Home
to be completed

Business

Name and address of any authorized representative (if applicable)

to be completed if necessary

Telephone (including area code)

Please provide the following information or enclose a copy of your notice of assessment or notice of determination.

Date of notice (Year / Month / Day)	Number of notice (if printed on notice)	Tax year (for T2s show fiscal period end)	Social insurance number or Business number
x x x x x x x x		to be completed	to be completed

Please state the relevant facts and reasons for your objection (if you need more room, attach a separate sheet).

SAMPLE WORDING

FACTS:

....employee to enter the amount that they were reassessed for each issue (overtime meals & travel allowance).

REASONS:

1. With respect to the overtime meals it is the CRA's positon that no employee benefit arises in respect of an overtime meal provided that the amount does not exceed either $17 or such higher amount as is reasoanble in the circumstnaces considering factors such as food costs in the particular area or other extenuating circumstanes. Due to the remoteness of the special job sites, food costs are much higher than in major metropolitan cities. Also, due to the physically demanding naure of construciton work, it is "reasonable" for the employer to pay a higher allowance. The construction industry at special work sites is clearly an "other extenuating circumtance" that justifies an allowance in excess of $17.

2. With repect to the travel allownace, all amounts received were "reasonable" as is required by subsection 6(6) of the Income Tax Act. In a private letter technical interpretation dated December 30, 2013 the CRA stated that for the purpsoes of subsection 6(6) of the Income Tax Act that it was a "question of fact" what is a reasoanble allowance and that any "allowance that approximates the transportation expenses to be incurred by the employee would generally be considered reasonable". Although paragraph 18(1)(r) of the Income Tax Act statutorily limits what an employer can deduct to specific amounts per kilometer, the Income Tax Act does not similarly limit the amount that an employee may receive as a non-taxable allowance. All allownaces received were intented to reasonably approximate the costs of the employee travelling to the special work site. The union contracts uses a base other than the employee's residence as an administrative convenience to avoid the employer having to keep track of distance to the specail work site from the homes of thousands of potential employees that may constantly change from contract to contract. However, in no way does this mean that the amount received by the employee was not reasonable in the circumstances.

Your signature (or of an authorized person, if a corporation or trust is filing the objection)

Date
Year / Month / Day

Privacy Act – Personal Information Bank Number CRA PPU 005

T4100A E (12)

Ce formulaire est disponible en français

Canada

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STATEMENT OF EMPLOYMENT EXPENSES

Guide T4044, *Employment Expenses*, has information to help you complete this statement and the schedule on the back. The chapters we refer to below are chapters in the guide. Include a copy of this form with your return.

Expenses

Accounting and legal fees	8862		
Advertising and promotion	8520		
Allowable motor vehicle expenses (from line 16 below)	9281		1
Food, beverages, and entertainment expenses (see Chapter 2 or 3, as applicable) _____ × 50% =	8523		
Lodging	9200		
Parking	8910		
Supplies (for example, postage, stationery, other office supplies)	8810		
Other expenses (please specify)	9270		
Tradesperson's tools expenses, up to a maximum of $500 (see Chapter 7)	1770		
Apprentice mechanic tools expenses (see Chapter 7)	9131		
Musical instrument expenses (see "Part 2" in Chapter 6)	1776		
Capital cost allowance for musical instruments (see "Part A" on the back of this form)	1777		
Artists' employment expenses (see "Part 1" in Chapter 6)	9973		
Subtotal			2
Add work-space-in-the-home expenses (enter the lower amount of line 24 or 25 below)	9945		
Total expenses (enter this amount on line 229 of your return)	9368		

Calculation of allowable motor vehicle expenses

Enter the make, model and year of motor vehicle used to earn employment income			
Enter the kilometres you drove in the tax year to earn employment income			3
Enter the total kilometres you drove in the tax year			4
Enter the motor vehicle expenses you paid for:			
Fuel (gasoline, propane, oil)	XX		5
Maintenance and repairs	XX		6
Insurance	XX		7
Licence and registration	XX		8
Capital cost allowance (see schedule on the back)			9
Interest (see "Interest expense" in Chapter 8)			10
Leasing (see "Leasing costs" in Chapter 8)			11
Other expenses (please specify)			12
Add lines 5 to 12			13
Employment-use portion (line 3 ÷ line 4) × line 13 =		▶	14
Enter the total of all rebates, motor vehicle allowances, and reimbursements for motor vehicle expenses you received that are not included in income. Do not include any repayments you used to calculate your leasing costs on line 11. (see "Allowable Motor Vehicle Expenses" in Chapters 2 and 3)			15
Allowable motor vehicle expenses (line 14 minus line 15)			16

Enter the amount from line 16 on line 1 in the "Expenses" area above.

Calculation of work-space-in-the-home expenses

Electricity, heat, and water			17
Maintenance			18
Insurance (commission employees only)			19
Property taxes (commission employees only)			20
Other expenses (please specify)			21
Add lines 17 to 21 — Subtotal			22
Subtract personal-use portion			23
Subtotal			
Add amount carried forward from previous year			
Subtotal		▶	24
Enter your employment income			
Subtract the amount from line 2 above as well as any amount from line 207 and line 212 of your return that relates to this income			
Subtotal (if negative, enter "0") =		▶	25
Work-space-in-the-home expenses available to use in future years (line 24 minus line 25; if negative, enter "0")			

(Vous pouvez obtenir ce formulaire en français à www.arc.gc.ca/formulaires ou en composant le 1-800-959-7383.)

Canada

CAPITAL COST ALLOWANCE (DEPRECIATION) SCHEDULE FOR EMPLOYEES

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For information to help you complete this schedule, see the section called "How to calculate capital cost allowance" in Chapter 9 of Guide T4044, *Employment Expenses*.

Part A – Classes 8 and 10

1 Class no. *	2 Undepreciated capital cost at the beginning of the year **	3 Cost of acquisitions during the year	4 Proceeds of disposition during the year	5 Undepreciated capital cost after acquisitions and dispositions (col. 2 + 3 – 4)	6 Adjustments for current-year acquisitions (1/2 × (col. 3 – 4)) (if negative, enter "0")	7 Base amount for capital cost allowance claim (col. 5 – 6)	8 Rate %	9 Capital cost allowance (CCA) for the year (col. 7 × 8, or a lesser amount)	10 Undepreciated capital cost at the end of the year (col. 5 – 9)
8							20%		
10							30%		

* Class 8 includes musical instruments. Class 10 includes all vehicles that meet the definition of a motor vehicle, except for a passenger vehicle included in Class 10.1 (see "Part B" below).

** This amount must be reduced by the portion of any goods and services tax/harmonized sales tax (GST/HST) rebate received in the year that relates to CCA on the vehicle or musical instrument.

Part B – Class 10.1

- For details about the Class 10.1 limits, see Chapter 9 of Guide T4044, *Employment Expenses*.
- List each passenger vehicle on a separate line.

Date acquired	Cost of vehicle	1 Class no.	2 Undepreciated capital cost at the beginning of the year *	3 Cost of acquisitions during the year	4 Proceeds of disposition during this year	5 Base amount for capital cost allowance claim **	6 Rate %	7 Capital cost allowance (CCA) for the year (col. 5 × 6, or a lesser amount)	8 Undepreciated capital cost at the end of the year (col. 2 – 7, or col. 3 – 7) ***
		10.1					30%		
		10.1					30%		
		10.1					30%		
							TOTAL		

* This amount must be reduced by the portion of any GST/HST rebate received in the year that relates to CCA on the vehicle.

** a. Enter the amount from column 2 in column 5 if you owned the vehicle in the previous year and still owned it at the end of the current year.

b. Enter 1/2 of the amount from column 3 in column 5 if you bought the vehicle in the current year and still owned it at the end of the current year.

c. Enter 1/2 of the amount from column 2 in column 5 if you sold the vehicle in the current year and you owned the vehicle at the end of the previous year.

d. If you bought and sold a Class 10.1 vehicle in the current year, enter "0" in column 5 for that vehicle.

*** Enter "0" in column 8 for the year you sold or traded a Class 10.1 vehicle, since the recapture and terminal loss rules do not apply.

Request for Taxpayer Relief – Cancel or Waive Penalties or Interest

Please read the "Information to help you complete this form" on page 4.

Section 1 – Identification

Taxpayer name		Account number(s) for this request
		Individual: social insurance number
Mailing address		Employer: RP
		GST/HST registrant: RT
		Corporation: RC
City	Prov./Terr./State	Other: account number, type of return, etc.
Postal or zip code	Country (if other than Canada)	
Telephone: Home		Work

Section 2 – Details of request

1. Type of request:

a) ☐ Penalty relief: *Specify type of penalty and amount, if known.* _____

b) ☐ Interest relief: *Specify type of interest and amount, if known.* _____

2. Reason(s):

Indicate the reason(s) for your request.

☐ Canada Revenue Agency error

☐ Canada Revenue Agency delay

☐ Financial hardship/inability to pay

☐ Natural or human-made disaster

☐ Death/accident/serious illness/emotional or mental distress

☐ Civil disturbance

☐ Other circumstances: *Specify.* _____

_____

3. Year(s)/period(s) involved:

For individuals/corporations: indicate the taxation year(s)/taxation year-end(s) _____

For employers: indicate the pay period(s) or type of information return involved _____

For GST/HST registrants: indicate the reporting period(s) involved _____

For other: indicate period(s)/years(s) involved _____

4. Second review:

Is this a request for a second review? No ☐ Answer question 5 below Yes ☐ Answer question 6 on page 3.

5. Information to support your request (attach an extra sheet if you need more space):

Note: It is important to provide the Canada Revenue Agency (CRA) with a complete and accurate description of your circumstances to explain why your situation merits relief.

Describe all the circumstances and facts supporting your request for relief from penalties or interest. Provide a history of events including any steps that you have taken to correct or avoid this tax situation.

6. Reasons to support a second review (attach an extra sheet if you need more space):

State the reasons why you disagree with the decision made in regards to the first review. Include any new documentation to support this request for a second review.

Section 3 – Supporting documentation

Submit all relevant documentation to support your request. For examples of supporting documentation, see "Information to help you complete this form" on page 4.

Section 4 – Certification

If you are a representative, please provide your name and phone number and, if not already submitted to the CRA, an authorization form (T1013, *Authorizing or Cancelling a Representative*, for individual/trust accounts or RC59, *Business Consent*, for business accounts).

Name of representative

Title

Signature of taxpayer or representative

Phone number

Year Month Day

Date