

CANADA / JUDGMENT

Milne v. The King

2026 TCC 78

COURT

Tax Court of Canada

DECIDED

8 May 2026

Source: norma.lexum.com · Research copy typeset by Esheria. Not court-issued or certified.

Source record

Milne v. The King

Court (s) Database

Tax Court of Canada Judgments

Date

2026-05-08

Neutral citation

2026 TCC 78

File numbers

2025-1081(IT)I

Judges and Taxing Officers

Joanna Hill

Subjects

Income Tax Act

Decision Content

Docket: 2025-1081(IT)I

BETWEEN:

BRAD MILNE,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on April 23, 2026, at Oakville, Ontario

Before: The Honourable Justice Joanna Hill

Appearances:

For the Appellant:

The Appellant himself

Counsel for the

Respondent:

Katherine McCarthy

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeals from the notices of redetermination and reassessment dated September 22, 2023, with respect to the Appellant's eligibility for the Canada Emergency Rent Subsidy for qualifying periods 8 through 12 are dismissed, without costs.

Signed this 8th day of May 2026.

"Joanna Hill"

Hill J.

Citation: 2026 TCC 78

Date: 20260508

Docket: 2025-1081(IT)I

BETWEEN:

BRAD MILNE,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Hill J.

- [1] Brad Milne operated an acting studio in a dedicated space in the rental home where he resided. When the COVID-19 pandemic occurred, he applied for and received the Canada Emergency Rent Subsidy (CERS) to help offset the portion of his rent attributable to his business.
- [2] The Minister of National Revenue subsequently determined that Mr. Milne was not entitled to the rent subsidy because the property was his personal residence. Mr. Milne's appeal from that decision cannot succeed because the Minister applied a clear eligibility requirement for the CERS. Mr. Milne did not have a "qualifying property" because he operated his business in part of his personal residence. His apportionment for the business use is not allowed under the CERS statutory regime.

A. Targeted COVID-19 emergency measures [3] In response to the economic consequences of the pandemic, Parliament enacted various, targeted emergency measures to assist taxpayers and the Canadian economy as a whole.[1]

[4] Businesses had access to different types of assistance further to amendments to the Income Tax Act. The Canada Emergency Wage Subsidy helped businesses pay their employees.[2] It was designed to directly assist with payroll expenditures and avoid widespread layoffs in the workforce.[3]

[5] The CERS helped businesses, non-profits, and charities pay their rent.[4] It was designed to operate in conjunction with the wage subsidy.

[6] Parliament enacted these measures and encouraged Canadians to apply for them. Eligibility requirements were summarized in government publications. Unfortunately, summaries cannot address the various technical requirements that may impact a particular application.

B. Background [7] Mr. Milne has been operating acting schools for more than 25 years in different cities in Canada and the United States. He typically rents a property large enough for a studio and a personal, living space. This model lets him manage the cost of running a business in expensive cities like Toronto. He had professional spaces for his students and clients without having to pay rent for two properties.

[8] In May 2019, Mr. Milne rented a single-family home in Toronto.[5] Further to the schedule attached to the lease, the landlord agreed that Mr. Milne also could operate his business in the home. The key terms were that Mr. Milne was allowed to use a maximum of 25% of the home for his business and that he was not permitted to make any alterations to the interior or exterior.[6]

[9] Mr. Milne operated his business, Milne Studio, in the front area of the first floor of the home. The front door was used for clients and students. They entered a small room with seating and a coat closet, before stepping into a studio area he used for teaching, self-tape work, and online classes. Mr. Milne also used a section to store his equipment, such as stands, cameras, chairs, and backdrops. This front area also had a half-bathroom for client and student use.

[10] Mr. Milne used a room divider to separate the front area from the rest of the open concept main floor. Further to the terms of his lease, the room divider was not a permanent fixture. It was approximately six feet high and could be removed to add a 9-foot backdrop for filming purposes. Mr. Milne explained that this flexibility helped with various aspects of his business, such as filming with different configurations and multiple cameras.

- [11] Mr. Milne's main floor personal space was behind the room divider. It contained his kitchen, dining, and living areas. The second floor had his bedroom, office, and other living space. The basement had another living area, which was sometimes used by clients before the pandemic restrictions came into effect. Mr. Milne used the back entrance of the home to access his personal space. That entrance was conveniently located near the rear laneway of the home.
- [12] Mr. Milne explained that he took care to maintain the separation between his business and personal areas because of the public health protocols. He contained and controlled client activity with limited access to his personal space. The front area gave him a defined zone to comply with those protocols. He conducted all his business in that front area of the home.
- [13] In March 2021, Mr. Milne applied for the CERS. He claimed 25% of his monthly rent for the business use authorized by the lease for five qualifying periods from September 27, 2020, to February 13, 2021. He received the amounts claimed in his application.
- [14] The Minister subsequently determined that Mr. Milne did not qualify for the CERS because two statutory requirements had not been met. The Minister concluded that:
- (1) Mr. Milne did not have a "qualifying rent expense" because he did not enter into a written lease agreement before October 9, 2020.
- (2) The application was not for a "qualifying property" because it was a self-contained domestic establishment where Mr. Milne resided.
- [15] The Respondent abandoned the "qualifying rent expense" position at the hearing of the appeal after Mr. Milne produced a written lease agreement executed on May 26, 2019.
- [16] The sole remaining issue in the appeal is whether Mr. Milne had a "qualifying property" as defined in the CERS provisions of the Income Tax Act. The relevant facts were not in dispute; the parties disagreed on how the definition applied to those facts.
- C. Qualifying properties do not include residential homes [17] A "qualifying property" for the purpose of the CERS is defined in subsection 125.7(1) of the Income Tax Act. That provision outlines that self-contained domestic establishments are not eligible for the rent subsidy.
- [18] The definition of a self-contained domestic establishment is found in subsection 248(1). Mr. Milne does not deny that the property he rented is a self-contained domestic establishment because it was a place of residence where he slept and ate.
- [19] Mr. Milne argued that he is entitled to the CERS because he operated his business in a separate area within a self-contained domestic establishment. The Respondent argued that Mr. Milne does not qualify because there was insufficient separation between the business and personal use of the property. The studio was not a separate unit.
- [20] The answer to this dispute lies in a key component of the definition of a "qualifying property" emphasized as follows:

qualifying property, of an eligible entity for a qualifying period, means real or immovable property (other than property that is a self-contained domestic establishment used by the eligible entity or by a person not dealing at arm's length with the eligible entity, or part of such a self-contained domestic establishment, the land subjacent to the self-contained domestic establishment and such portion of any immediately contiguous land as can reasonably be regarded as contributing to the use and enjoyment of the self-contained domestic establishment as a residence) in Canada used by the eligible entity in the course of its ordinary activities.

- [21] Parts of a self-contained domestic establishment, as well as any attached land that forms part of its use and enjoyment, are clearly excluded.
- [22] Parliament therefore effectively outlined that businesses operating from almost any part of a personal residence would not qualify for the CERS.
- [23] This exclusion applies to Mr. Milne because his acting studio was part of a self-contained domestic establishment, namely the home he rented.
- [24] Mr. Milne made organized and detailed submissions to support his position that the front studio area of his home qualified for the CERS. However, he did not consider the entire definition of a “qualified property”. He also referred to authorities that do not apply.
- [25] Mr. Milne relied on the Sudbrack decision that applied the definition of a self-contained domestic establishment, as that term is used for the loss restriction in subsection 18(12) of the Income Tax Act.[7] Notably, subsection 18(12) has different wording than the definition of a CERS “qualifying property”.[8] It does not refer to a part of a self-contained domestic establishment or its subjacent or contiguous land.
- [26] The findings of fact in subsection 18(12) decisions also do not assist Mr. Milne. The majority were bed and breakfast operations caught by the self-contained domestic establishment restriction because homeowners shared their personal residences with guests.[9] Sudbrack was the exception because the Court determined that the operators of a large inn had a separate self-contained domestic establishment in the business property.[10] In that case, the renovations to the inn included the construction of a separate apartment unit for the owner's use.
- [27] Mr. Milne's reliance on one of the Canada Revenue Agency's responses to a CERS inquiry is similarly misplaced.[11] In a 2021 advanced ruling, the CRA addressed whether a business property that also contained a separate self-contained domestic establishment would still qualify for the CERS. In response, the CRA used the example of a single building with a grocery store and a separate apartment. Depending on the circumstances, the grocery store could still be a qualifying property, even though the building also has a self-contained domestic establishment.

[28] The opposite facts exist in the present case. Mr. Milne signed a residential lease agreement for a single-family home. It was not a mixed-use building with separate residential and commercial units. Mr. Milne resided in and operated his business from that home. He did not have a “qualifying property” because he operated his business in part of a self-contained domestic establishment.

[29] As a result, Mr. Milne did not qualify for the CERS.

D. Conclusion [30] Mr. Milne told the Court that before applying for the CERS, he called the CRA to verify that he could apply. However, whether he may have received incorrect advice is not determinative of his appeal. Like many taxpayers, he did not understand the specific eligibility requirements when he applied for a benefit under the Income Tax Act.

[31] The requirements in this case indicate that Parliament intended to limit the CERS to business owners who leased properties separate from where they lived. This Court does not have the power to extend or ignore that statutory requirement.

[32] The appeal is dismissed accordingly.

Signed this 8th day of May 2026.

“Joanna Hill”

Hill J.

Appendix A – Income Tax Act, R.S.C., 1985, c. 1 (5th Supp.)

s. 125.7(1) definition of “qualifying property” versus s. 18(12)

qualifying property, of an eligible entity for a qualifying period, means real or immovable property (other than property that is a self-contained domestic establishment used by the eligible entity or by a person not dealing at arm’s length with the eligible entity, or part of such a self-contained domestic establishment, the land subjacent to the self-contained domestic establishment and such portion of any immediately contiguous land as can reasonably be regarded as contributing to the use and enjoyment of the self-contained domestic establishment as a residence) in Canada used by the eligible entity in the course of its ordinary activities.

18(12) Work space in home — Notwithstanding any other provision of this Act, in computing an individual’s income from a business for a taxation year,

- (a) no amount shall be deducted in respect of an otherwise deductible amount for 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
 - (i) the individual’s principal place of business, or

(ii) used exclusively for the purpose of earning income from business and used on a regular and continuous basis for meeting clients, customers or patients of the individual in respect of the business;

...

CITATION:

2026 TCC 78

COURT FILE NO.:

2025-1081(IT)I

STYLE OF CAUSE:

BRAD MILNE AND HIS MAJESTY THE KING

PLACE OF HEARING:

Oakville, Ontario

DATE OF HEARING:

April 23, 2026

REASONS FOR JUDGMENT BY:

The Honourable Justice Joanna Hill

DATE OF JUDGMENT:

May 8, 2026

APPEARANCES:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Katherine McCarthy

COUNSEL OF RECORD:

For the Appellant:

Name:

N/A

Firm:

N/A

For the Respondent:

Marie-Josée Hogue

Deputy Attorney General of Canada

Ottawa, Canada

- [1] See for example the benefits provided to individuals under the Canada Emergency Response Benefit Act, S.C. 2020, c. 5, s. 8; the Canada Recovery Benefits Act, S.C. 2020, c. 12, s. 2; and the Canada Worker Lockdown Benefit Act, S.C. 2021, c. 26, s. 5.
- [2] Investment Accounting Solutions Inc. v. HMTK, 2024 TCC 146, at paras. 1 and 10.
- [3] C.W. Carry Ltd. v. Canada (Attorney General), 2024 FC 1983, at para. 28.
- [4] Minister of National Revenue v. 11421417 Canada Inc., 2022 FC 586, at para. 5. Hutchings v. HMTK, 2025 TCC 108, at para. 3.
- [5] Exhibit “A-1”: Agreement to Lease - Residential, executed May 26, 2019.
- [6] Ibid, Schedule A.
- [7] Sudbrack v. HMTQ, 2000 DTC 2521 [Sudbrack].
- [8] See Appendix A to these Reasons for a side-by-side comparison of the provisions.
- [9] See for example, Doleman v. HMTQ, 2011 TCC 349, at paras. 10-16.
- [10] Sudbrack, at paras. 19 and 21.
- [11] CRA Views, Interpretation—Internal, 2020-087004117, “CERS—Meaning of qualifying property”, dated May 17, 2021.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://norma.lexum.com/tcc-cci/decisions/en/item/521622/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/milne-v-the-king-2026>

Prepared on 29 October 2026 · Esheria