Docket: 2006-2893(IT)I

BETWEEN:

PHILLIP L. LANDRY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on June 25, 2007, at Yarmouth, Nova Scotia.

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant:	The Appellant Himself
Counsel for the Respondent:	Lindsay D. Holland

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2002 and 2003 taxation years are allowed, in part, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that in relation to the work space in the home, the Appellant is entitled to claim for 2002 the amount of $1,200.32 and for 2003 the amount of $748.84.

The appeals in relation to the claim for motor vehicle expenses of $7,739.90 for 2002 and $9,732.40 for 2003 are dismissed.

Signed at Halifax, Nova Scotia, this 18th day of July 2007.

"Wyman W. Webb"

Webb J.

Citation: 2007TCC383
Date: 20070718
Docket: 2006-2893(IT)I

BETWEEN:

PHILLIP L. LANDRY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb J.

[1] The Appellant was acting as the Superintendent of Schools for the Southwest Regional School Board in Nova Scotia (the "School Board") in 2002 and 2003. As part of his duties as the Superintendent, he was required to travel extensively throughout the territory governed by the School Board and to meetings outside the area. In filing his 2002 and 2003 tax returns the Appellant claimed the following amounts that are in dispute:

Expenses Claimed	2002	2003
Motor vehicle expenses	$7,739.90	$9,732.40
Work-space-in-the-home expenses	$1,200.32	$ 748.84

Motor Vehicle Expenses

[2] The Appellant used two different vehicles in carrying out his employment duties in 2002 and 2003. The Appellant would submit expense claim forms in relation to his travel related to his work to the School Board and would receive payment based on the number of kilometres that he had driven on employment-related activities. In 2002 he received a total amount of $12,901.87 as payment for the travel claims and in 2003 the amount that he received was $12,864.20.

[3] The Appellant did not include either of these two amounts that he had received in his income for 2002 or 2003. The Appellant did, however, deduct in 2002 the amount of $7,739.90 for insurance, capital cost allowance and interest in relation to the motor vehicles and in 2003 the amount of $9,732.40 for maintenance and repair, insurance, licence and registration, capital cost allowance and interest in relation to the motor vehicles.

[4] Since the Appellant was not employed in connection with the selling of property or negotiating contracts for his employer, the applicable provisions of the *Income Tax Act* ("*Act*") are paragraphs 6(1)(b)(vii.1), 8(1)(h.1), and 8(1)(j) and subsection 8(2), which provide as follows:

> 6(1) There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable:
>
> ...
>
> (b) all amounts received by the taxpayer in the year as an allowance for personal or living expenses or as an allowance for any other purpose, except
>
> ...
>
> (vii.1) reasonable allowances for the use of a motor vehicle received by an employee ... from the employer for travelling in the performance of the duties of the office or employment,
>
> 8(1) In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:
>
> (h.1) where the taxpayer, in the year,
>
> (i) was ordinarily required to carry on the duties of the office or employment away from the employer's place of business or in different places, and
>
> (ii) was required under the contract of employment to pay motor vehicle expenses incurred in the performance of the duties of the office or employment,

amounts expended by the taxpayer in the year in respect of the motor vehicle expenses incurred for travelling in the course of the office or employment, **except where the taxpayer**

(iii) **received an allowance for motor vehicle expenses that was, because of paragraph 6(1)(*b*), not including computing the taxpayer's income for the year**,

(j) where a deduction may be made under paragraph (f), (h) or (h.1) in computing the taxpayer's income from an office or employment for a taxation year,

(i) any interest paid by the taxpayer in the year on borrowed money used for the purpose of acquiring, or on an amount payable for the acquisition of, property that is

(A) a motor vehicle that is used, or

(B) an aircraft that is required for use

in the performance of the duties of the taxpayer's office or employment, and

(ii) such part, if any, of the capital cost to the taxpayer of

(A) a motor vehicle that is used, or

(B) an aircraft that is required for use

in the performance of the duties of the office or employment as is allowed by regulation;

(emphasis added)

8.(2) Except as permitted by this section, no deductions shall be made in computing a taxpayer's income for a taxation year from an office or employment.

[5] Because paragraph 8(1)(h.1) provides that the employee is entitled to claim motor vehicle expenses "**except where the taxpayer … received an allowance for motor vehicle expenses that was, because of paragraph 6(1)(b), not included in computing the taxpayer's income for the year",** there is no claim allowed at all for motor vehicle expenses if the employee has received a reasonable allowance that was not included in his income. Since, pursuant to paragraph 8(1)(j) interest expense and capital cost allowance can only be claimed if the taxpayer is entitled to a deduction under paragraph 8(1)(f), (h), or (h.1), the receipt of a

reasonable allowance that is not included in income not only precludes the claiming of any motor vehicle expenses under paragraph 8(1)(h.1) but also precludes any claim for interest expense and capital cost allowance.

[6] As a result of these provisions, there are two different alternatives that may be applicable to an employee who is required to travel in the course of carrying out his or her duties, namely, either:

> (a) the employee has received a reasonable allowance from his or her employer to compensate him or her for the motor vehicle expenses that such employee has incurred; or
>
> (b) the employee has not received a reasonable allowance from his or her employer to compensate him or her for the motor vehicle expenses that such employee has incurred.

[7] If the employee has received a reasonable allowance, then:

> (a) the amount of the reimbursement is not included in the income of the employee; and
>
> (b) the employee is not entitled to any deduction under the *Act* in relation to any motor vehicle expenses that the employee has incurred, including any interest expense and capital cost allowance.

[8] If the employee has not received a reasonable allowance, then:

> (a) the amount so received is included in the income of the employee; and
>
> (b) the employee is entitled to deduct the motor vehicle expenses that relate to the travel incurred for the purpose of carrying out his or her duties, including any applicable interest expense and capital cost allowance.

[9] In this case the Appellant and his accountant chose a method that is not sanctioned by the *Act*. The Appellant did not include in his income the amount that he received from the School Board as a reimbursement for the motor vehicle expenses he incurred and yet still chose to deduct in computing his income certain motor vehicle expenses that he had incurred.

[10] In this particular case by not including in his income the amounts received as a reimbursement for the motor vehicle expenses that he had incurred, the Appellant

must have been taking the position that this amount was a reasonable allowance for the use of his motor vehicle. As a result, no motor vehicle expenses would be deductible under paragraph 8(1)(h.1) and, as a result of the provisions of paragraph 8(1)(j), no amount would be deductible for interest or capital cost allowance. Therefore by not including the amount in his income the Appellant was precluded from claiming any motor vehicle expenses.

[11] The accountant for the Appellant testified that he acknowledged that the Appellant was receiving an allowance for his motor vehicle expenses but was taking the position that this amount compensated him for gas and wear and tear. However, the accountant also testified that he never did any calculations of the amount that the Appellant actually expended on gas and therefore had no knowledge of the amount by which the amount received by the Appellant exceeded his actual gas costs.

[12] The appeals officer for the Canada Revenue Agency ("CRA") did prepare, from information submitted by the Appellant, a chart showing the total expenses incurred for the two vehicles in question and did prepare an estimate of the employment portion of the use of each vehicle. The Appellant took exception to the amounts as shown by the Respondent, however, the Appellant did not have any specific documents or information to support the position of the Appellant concerning the number of kilometres that the vehicles had been driven in each year and the Respondent's information was based on odometer readings from the repair invoices. Therefore, I accept the Respondent's evidence in relation to this matter. As well, the Appellant did concede that it was possible that the vehicles were driven the total number of kilometres as suggested by the Respondent if the use of the vehicles by the other family members was taken into account. Since the expenditures relate to simply the vehicles, regardless of who was using them, the total number of kilometres driven should also be based on the number of kilometres the vehicles were driven, regardless of who was driving the vehicle. I find that the total number of kilometres driven by the two vehicles in each of 2002 and 2003 was approximately 72,000 kilometres.

[13] In preparing the list of expenditures, however, the Respondent did not include gas receipts for gas purchased by other family members. Since the total expenditures for the two vehicles should be based on all of the expenditures incurred in relation to the vehicles, it should not matter who was purchasing the gas. As a result, all of the gas expenditures should have been included in this calculation. There was, however, another issue. The appeals officer for the CRA noted that among the receipts that were submitted by the Appellant there were

several receipts for repairs and gasoline for several vehicles and, in particular, for three vehicles that were not identified as vehicles that were used by the Appellant in carrying out his duties as an employee. Therefore, it is not clear how much of the gasoline was actually purchased for the use of the two vehicles and since the Appellant did not produce any summary of the actual amounts spent on gasoline, the Appellant was unable to satisfy the onus on him to establish the facts related to the amounts spent on fuel.

[14] In any event, using the amounts as determined by the appeals officer for the CRA, and including all amounts as identified by the appeals officer as amounts spent on fuel, the following is a summary of the total amounts spent on the two vehicles that were used to carry out the Appellant's duties:

Item	2002	2003
Fuel	$ 8,757.08	$ 7,701.33
Maintenance and Repair	$ 1,638.68	$ 2,813.50
Insurance	$ 1,028.00	$ 1,805.00
Licence and Registration	$ 134.00	$ 134.00
Capital Cost Allowance	$ 6,756.30	$ 6,497.61
Interest	$ 808.82	$ 758.08
Total	$19,122.88	$19,709.52

[15] The number of kilometres driven in the course of employment was taken from the records related to the amounts received for reimbursement and therefore I accept the numbers as stated by the appeals officer for the CRA. The number of kilometres driven for employment purposes in 2002 was 50,786 and for 2003, 46,540. As a result the percentage of use of the vehicles for employment purposes for 2002 was 50,786 / 72,000 or 71% and for 2003, 46,540 / 72,000 or 65%.

[16] The total expenditures for 2002 that would have been for employment purposes would be 71% of $19,122.88 or $13,577.24 and for 2003, 65% of $19,709.52 or $12,811.19.

[17] The total amount that the Appellant had received as a reimbursement in relation to the use of his vehicle was $12,901.87 in 2002 and $12,864.20 in 2003. In 2003 the amount he received exceeded the total expenditures as determined above. In 2002 the amount that he received was slightly over 95% of the total amount that was expended as noted above. However, as noted above, there is some

doubt as to whether or not all of the gas expenditures that have been included above related to the two vehicles. Since the reimbursement amount was 95% of the total estimated expenditures (including all of the amounts for gas), the Appellant has failed to establish that the amount that he has received from the province was not a reasonable amount, even including all of the amounts for the gas receipts. As a result, the Appellant is not entitled to claim any amount in relation to his motor vehicle expenses incurred in 2002 and 2003.

Home Office Expenses

[24] Counsel for the Respondent indicated that there was no dispute with respect to the amounts claimed for home office expenses. The dispute related to whether the Appellant was entitled to claim these amounts.

[25] Paragraph 8(1)(*i*) of the *Act* provides as follows:

> 8(1) In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:
>
> ...
>
> (i) amounts paid by the taxpayer in the year as
>
> ...
>
> (iii) the cost of supplies that were consumed directly in the performance of the duties of the office or employment and that the officer or employee was required by the contract of employment to supply and pay for,

[26] Subsection 8(13) of the *Act* provides a further restriction in relation to any claim related to home office expenses. This subsection provides as follows:

> Notwithstanding paragraphs (1)(*f*) and (*i*),
>
> (*a*) no amount is deductible in computing an individual's income for a taxation year from an office or employment in respect of 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 place where the individual principally performs the duties of the office or employment, or
>
> (ii) used exclusively during the period in respect of which the amount relates for the purpose of earning income from the office or employment and used on a regular and continuous basis for meeting customers or other persons in the ordinary course of performing the duties of the office or employment;

[27] The Appellant stated that there was no written contract for 2002 or 2003. The Appellant did introduce into evidence a copy of the contract entered into in 2004 and stated that this was basically the same understanding as was in place for 2002 and 2003. The contract in 2004 provided that the School Board would provide certain electronic productivity/office supports, namely, cellular phone, home computer and printer, home internet connection and home fax/dedicated phone line.

[28] The duties of the Appellant, as the Superintendent of the Schools, would start very early in the mornings. During the school year around 4:30 - 5:00 a.m. each morning he would have to determine whether or not any schools would have to be closed for the day. This would usually be due to weather conditions.

[29] It seems to me that it would be unreasonable to expect that any employee who was to start their day at 4:30 - 5:00 a.m. should be required to travel from their home to their office to make phone calls to close a school or schools especially in situations where the roads may not be safe to travel on. Therefore it must have been implied in the contract in 2002 and 2003 that he would have a place in his home from which to perform these duties. In each year the Appellant had a T2200 form completed and signed by Mr. Legere as the Chief Executive Officer of the Tri-County District School Board indicating that the Appellant was required to pay home office expenses. Mr. Legere testified that it was the Appellant's responsibility to check the weather forecast for each day and decide whether to close any schools. This again confirmed that the Appellant was required to work from home as this determination had to be made very early in the morning.

[29] As there was no evidence to the contrary, I find that the Appellant was required to maintain an office in his home.

[30] The Appellant also testified, and I accept his testimony, that at least once a week he met persons at the office in his home and he testified that the area in

which the office was located in his house was used exclusively for employment purposes. This office was not used for any other purpose. Both the Appellant and Mr. Legere testified that the Appellant made several calls from his home in the evenings and on weekends. In the cases of *Vanka* v. *Her Majesty the Queen* [2001] 4 C.T.C. 2832 and *Ryan* v. *Her Majesty the Queen* [2006] 3 C.T.C. 2153, this Court has found that meetings by telephone are sufficient for the purposes of subparagraph 18(12)(a)(ii) which is indistinguishable from subparagraph 8(13)(a)(ii) in relation to the requirement that the work space be used on a regular and continuous basis for meetings and therefore I find that the requirements of subparagraph 8(13)(a)(ii) have been met by the Appellant.

[31] As a result, I find that the Appellant has satisfied the onus on him to establish his right to claim the amounts for home office expenses and therefore the claim for supplies for 2002 in the amount of $1,200.32 and for 2003 in the amount of $748.84 in relation to the work space in the home are allowed.

[32] Therefore the appeals of the Appellant in relation to the claim for home office expenses are allowed.

[33] The appeals of the Appellant in relation to the motor vehicle expenses are dismissed.

Signed at Halifax, Nova Scotia, this 18th day of July 2007.

"Wyman W. Webb"

Webb J.

CITATION:	2007TCC383
COURT FILE NO.:	2006-2893(IT)I
STYLE OF CAUSE:	PHILLIP L. LANDRY AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Yarmouth, Nova Scotia
DATE OF HEARING:	June 25, 2007
REASONS FOR JUDGMENT BY:	The Honourable Justice Wyman W. Webb
DATE OF JUDGMENT:	July 18, 2007

APPEARANCES:

For the Appellant:	The Appellant Himself
Counsel for the Respondent:	Lindsay D. Holland

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada