

Citation: 2008TCC42
Docket: 2006-3572(IT)I

BETWEEN:

GASTON LEDUC,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

**REVISED VERSION OF THE TRANSCRIPT
OF THE REASONS FOR JUDGMENT**

Please file the revised version of the Reasons for Judgment, delivered from the bench on December 13, 2007, in Montréal, Quebec. It was revised in order to make a few minor corrections. Paragraph numbers were also added.

Signed at Ottawa, Canada, this 17th day of January 2008.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 27th day of February 2008.

Brian McCordick, Translator

Citation: 2008TCC42
Docket: 2006-3572(IT)I

TAX COURT OF CANADA
Re: *Income Tax Act*

BETWEEN:

GASTON LEDUC,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT
DELIVERED BY THE HONOURABLE JUSTICE GASTON JORRÉ

Tax Court of Canada,
Courts Administration Service,
30 McGill Street, Montréal, Quebec
Thursday, December 13, 2007, at 1:30 p.m.

APPEARANCES:

Sylvain Huet

Agent for the Appellant

Mounes Ayadi

Counsel for the Respondent

ALSO PRESENT:

Claude Lefebvre

Clerk/Technician

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JEAN LAROSE, O.S.

1 REASONS FOR JUDGMENT

2 (Revised version of the transcript of the Reasons for Judgment delivered from the
3 bench at Montréal, Quebec, on December 13, 2007.)

4
5 JUSTICE JORRÉ:

6 [1] This appeal pertains to the 2002 taxation year. The Appellant has asked
7 for the informal procedure to apply.

8 [2] There are two issues:

9 Can the Appellant deduct the amount of \$12,253 as a seminar expense?

10 This amount was deducted as a travel and conference expense.

11 Secondly, can the Appellant deduct an additional amount of \$1,601 on account
12 of telephone expenses?

13 [3] The Appellant, his wife and the Respondent's appeals officer testified.

14 The seminar

15 Facts

16 [4] The Appellant Gaston Leduc is a certified financial consultant. The great
17 majority of his income consists of commissions from insurance companies.
18 He also receives commissions from mortgage companies. In addition, he
19 advises his clients.

1 [5] Johanne Bray, the Appellant's wife, is a massage therapist, and reported
2 business income. She also worked for Mr. Leduc's business part-time from ten
3 (10) to twenty (20) hours a week. She answered the telephone and looked after
4 the accounting. She developed an interest in the field.

5 [6] The business belonged to Mr. Leduc, and Ms. Bray was not remunerated
6 for her work.

7 [7] In 2002, the gross income of the business was \$57,000.

8 [8] At one point, Mr. Leduc determined that it might be desirable to be able
9 to advise his customers regarding off-shore investments. He decided that he
10 needed to learn more, and that a certain seminar would be a good way to
11 enhance his knowledge. He was convinced that the seminar would be of very
12 good quality and was worth its very high price. The seminar was held in
13 Cancun, Mexico in November. The total cost, including travel, was \$12,253.

14 [9] The seminar was in English. Mr. Leduc testified that, unlike his wife, he
15 did not possess a very good knowledge of English; consequently, it was
16 Ms. Bray who attended the seminar. Ms. Bray hoped not only to learn about
17 off-shore investments, but also to make contacts that would be helpful in the
18 event that she and her husband decided to advise clients about this type of

1 investment. She tendered her notes from the seminar as Exhibit A-1.

2 [10] The seminar lasted three or three and a half days. Madame Bray arrived
3 in Cancun on the day before the first day of the seminar, and left Cancun on the
4 day after the last day of the seminar. Mr. Leduc did not go to Cancun.
5 After Ms. Bray returned, she spoke with her husband about what she learned,
6 and they concluded that it would be preferable not to add off-shore investments
7 to their business's areas of activity.

8 [11] They reached this conclusion for the following reasons, among others:
9 they were concerned about the risks and that there would sometimes be
10 laundered money involved in certain transactions; and they did not believe that
11 they had enough knowledge. Generally, they got the impression that the
12 off-shore field was not on sufficiently solid ground.

13 Analysis

14 [12] Since the trip lasted only for the duration of the seminar and the time
15 necessary to get to Cancun and return to Canada, it was obviously not in the
16 nature of a vacation.

17 [13] Furthermore, I should note that Ms. Bray only stayed in Cancun for four
18 or five nights and that someone wanting a vacation in Cancun can have a very

1 nice trip for well under \$6,000, which is much less than what would be left over
2 after the tax on \$12,253 in income. To avoid any misunderstanding, I want to
3 emphasize that the Respondent was not suggesting that the trip was a vacation.

4 [14] The Respondent's position is that the Appellant does not meet the
5 conditions of subsection 20(10) of the *Income Tax Act*. *Inter alia*, the
6 Respondent argued as follows:

7 (a) Ms. Bray was not an employee; she did not have the necessary training in
8 the field.

9 (b) The conference was not related to the business. Mr. Leduc could not have
10 sold off-shore products; at most, he could have advised his clients about such
11 investments.

12 (c) The seminar's organizer was not a business or professional organization
13 within the meaning of subsection 20(10) of the *Income Tax Act*.

14 (d) It was an unreasonable expense, and the Appellant should have deducted
15 any personal part.

16 [15] Although these arguments were raised in the context of
17 subsection 20(10), they deserve to be considered in a broader context because
18 one must assess whether or not the expenses are allowed under

1 paragraphs 18(1)(a) and 18(1)(b) of the *Income Tax Act*. I will come back to the
2 arguments raised by the Respondent later.

3 [16] The purpose of this expense was to consider the possibility of broadening
4 the scope of the business's activities. Thus, the expense was for the purpose of
5 gaining or producing income from a business, and is therefore permitted under
6 paragraph 18(1)(a).

7 [17] Since the potential field of activities was not that different from what the
8 business was already doing, it cannot be characterized as an expense incurred
9 for the purpose of starting a new business.

10 [18] Having read Ms. Bray's notes (Exhibit A-1) and Exhibit A-2, I do not see
11 how it could be concluded that attendance at this seminar would provide a
12 lasting advantage that would cause the expense to be of a capital nature within
13 the meaning of paragraph 18(1)(b).

14 [19] Since the expense does not contravene paragraphs 18(1)(a) or (b), it is
15 unnecessary to assess whether it is permitted under subsection 20(10).

16 [20] I will now consider the arguments raised by the Respondent and referred
17 to above. The fact that Ms. Bray is not paid as an employee and has no specific
18 training does not, in and of itself, have any bearing on deductibility. In a family

1 context, a member of a family might not be paid for his or her work, but might
2 nonetheless benefit indirectly from the business income. The important thing is
3 that Ms. Bray worked for the business.

4 [21] As for her lack of specific training, I am satisfied, on the specific facts of
5 the case at bar, that Ms. Bray had the ability to replace her husband and provide
6 him with the details necessary to enable the business to use the information
7 obtained at the seminar.

8 [22] Was the seminar related to the business? I have already concluded that
9 the potential field of activity was not different enough to constitute a new
10 business.

11 [23] I would add that, even though the Appellant decided not to pursue this
12 field of activities, he can provide his clients with an overview of
13 off-shore investing. In light of the conclusions that the Appellant and Ms. Bray
14 jointly reached, the Appellant can also warn his clients that one must be very
15 careful before making off-shore investments, and he can explain why.
16 Such information can constitute a valuable service to his clients.

17 [24] Since it is unnecessary to consider subsection 20(10), I do not need to
18 consider whether the organizer of the seminar was a business or professional

1 organization within the meaning of that subsection.

2 [25] It remains to be seen whether the expense was "reasonable in the
3 circumstances" within the meaning of section 67 of the *Income Tax Act*. It is
4 true that the expense was large and that Mr. Leduc ultimately decided not to
5 broaden the scope of the business's activities. With hindsight, the expense
6 might be characterized as avoidable, but this does not show that Mr. Leduc
7 could have known in advance that the expense would not yield all the benefits
8 that he hoped to derive from it. In fact, one should not underestimate the
9 benefits of learning that one should not pursue a field of activity.

10 [26] Under the specific circumstances of this case, the expense was not
11 unreasonable.

12 [27] The \$12,253 seminar expense is deductible.

13 The telephone expenses

14 [28] In 2002, Mr. Leduc's office was in his home. He provided little evidence
15 in support of his telephone expenses. He testified that he no longer had the bills.

16 [29] Mr. Leduc had two mobile phones: one with Bell Mobility and one with
17 Rogers. He also had a home phone line. The Bell Mobility package also
18 included Ms. Bray's mobile phone. He kept the Rogers phone so that he could

1 keep the number, which could not be transferred to another mobile phone at the
2 time.

3 [30] Ms. Thériault, the appeals officer in this case, testified that Mr. Leduc
4 sent her all the mobile and home telephone expenses. She allocated these
5 expenses either to business or personal use.

6 [31] The Appellant has not shown that the various telephones in his or
7 Ms. Bray's possession were never used for personal purposes. He has not shown
8 that a different allocation of the telephone expenses between personal and
9 business uses would be appropriate.

10 [32] Consequently, this aspect of the assessment should not be changed.

11 Conclusion

12 [33] The appeal is allowed without costs, and the assessment is referred back
13 to the Minister of National Revenue for reconsideration and reassessment on
14 the basis that the Appellant is entitled to deduct the amount of \$12,253 in
15 connection with the seminar.

16 Thank you.

CITATION: 2008TCC42

COURT FILE NO.: 2006-3572(IT)I

STYLE OF CAUSE: GASTON LEDUC
AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATES OF HEARING: May 28 and December 13, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice Gaston Jorré

DATE OF ORAL JUDGMENT: December 13, 2007

DATE OF REVISED
REASONS FOR JUDGMENT: January 17, 2008

APPEARANCES:

Agent for the Appellant: Sylvain Huet

Counsel for the Respondent: Mounes Ayadi

COUNSEL OF RECORD:

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