Docket: 2011-3994(IT)I

BETWEEN:

WILLIAM DAVID JAMIESON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on January 9, 2013, at Fredericton, New Brunswick

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Jan Jensen

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2009 taxation year is dismissed.

Signed at Ottawa, Canada, this 18th day of February 2013.

"V.A. Miller"

V.A. Miller J.

Citation: 2013TCC52
Date: 20130218
Docket: 2011-3994(IT)I

BETWEEN:

WILLIAM DAVID JAMIESON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

V.A. Miller J.

[1] The Appellant has appealed the reassessment of his 2009 taxation year in which the Minister of National Revenue (the "Minister") disallowed expenses of $8,242 as follows:

Expenses	**Amount**
Continuing Legal Education Courses	$1,741
Travel	5,697
Meals	238
Office	171
Supplies	83
Telephone	312
Total	$8,242

[2] In his 2009 income tax return, the Appellant reported that he earned no business income and he incurred business expenses of $10,520. He was allowed a deduction of $2,278 for professional membership fees. At the audit stage of this

appeal, the Appellant submitted an additional receipt and was allowed a further deduction of $228 for professional membership fees so that in total he was allowed a deduction of $2,506 for professional membership fees.

[3] The Appellant is a lawyer and has been a member of the bars of Ohio, New York and Massachusetts since 1969. He became an employee of J.D. Irving Limited ("J.D. Irving") in December 1979; and, in 2009, he was the Executive Vice President of J.D. Irving and Corporate Secretary of numerous companies affiliated with J.D. Irving.

[4] The Appellant explained that he was required to take at least 12 hours of continuing legal education ("CLE") courses to maintain his professional certification as a lawyer; and, in 2009, he was able to take these courses in conjunction with the American Bar Association meetings in Chicago and Vancouver.

[5] With respect to his travel and meal expenses, the Appellant testified that these expenses were incurred to take the CLE courses and to attend meetings of the National Council of the Moritz Law School of The Ohio State University at Columbus, Ohio (the "National Council of Moritz"). It was his evidence that he is required as a member of the legal bar to provide *pro bono* services to support the profession. His membership on the National Council of Moritz fulfils this obligation. He maintained that the expenses related to his attendance at the meetings of the National Council of Moritz were business expenses; but, if I disagreed, then the expenses should be allowed as charitable contributions to a listed university.

[6] It was the Appellant's position that he was in the business of being a lawyer and he earned fees as a lawyer from his services as a director on various boards of directors and as a trustee for various trusts. In 2009, he earned fees as a director on the board of directors for J.D. Irving and two affiliated companies. He stated that in 2010 and 2011 he received and reported business income from his services as trustee for the Susan E. Quagliata Testamentary Trust. In his oral submissions, the Appellant argued that paragraph 53 of the decision in *Stewart v. R.*, 2002 SCC 46 summarized his position. Based on this, he stated that he had a "law practice" and that it should not even be questioned whether his "law practice" was a source of income. Paragraph 53 of *Stewart* reads:

> 53 We emphasize that this "pursuit of profit" source test will only require analysis in situations where there is some personal or hobby element to the activity in question. With respect, in our view, courts have erred in the past in applying the REOP test to activities, such as law practices and restaurants, where there exists no such personal element: see, for example, *Landry*, *supra*, *Sirois*, *supra*, *Engler v. R.* (1994), 94 D.T.C. 6280 (Fed. T.D.). Where the nature of an activity is clearly commercial, there

> is no need to analyze the taxpayer's business decisions. Such endeavours necessarily involve the pursuit of profit. As such, a source of income, by definition, exists, and there is no need to take the inquiry any further.

[7] It was the Respondent's position that in 2009 the Appellant was an employee of J.D. Irving and as such he could only deduct those expenses which were allowed by section 8 of the *Income Tax Act* (the "*Act*"). Counsel for the respondent further submitted that the Appellant did not have a law practice and he did not earn income from business.

Analysis

[8] With all due respect to the Appellant, being a lawyer is not in and of itself a business. One must practice law as a business to be in the business of law. There was no evidence before me from which I could conclude that the Appellant had a law practice.

[9] The positions which the appellant held as director were offices. Subsection 248(1) of the *Income Tax Act* (the "*Act*") clearly defines an office to include "the position of a corporation director" and an officer is a person holding such an office. An employee includes an officer. The director fees received by the Appellant in 2009 were treated as income from an office and were properly included in the T4 which he received from J.D. Irving.

[10] The Appellant was not in the business of being a trustee. According to his evidence, he has refused opportunities to be trustee because he is very busy in his capacity as Vice President and Corporate Secretary of J.D. Irving.

[11] I note that the Appellant was trustee of the Susan E. Quagliata Testamentary Trust and that Susan E. Quagliata was his sister-in-law. It is my view that the trustee fees he received in 2010 and 2011 were remuneration from an office.

[12] As I have concluded that, in 2009, the Appellant did not have a law practice but occupied the offices of director and trustee, he is limited to the deductions permitted by section 8 of the *Act*.

[13] There is no provision in section 8 that would allow the Appellant to deduct the costs of his CLE courses and the related travel and meal expenses from his office and employment income.

[14] The Appellant volunteered his services and time to be a member on the National Council of Moritz. He stated that his membership was *pro bono*. The

expenses he incurred to perform his *pro bono* services are not deductible nor should they be deductible. The taxpayers of Canada should not have to bear the expenses associated with the Appellant's *pro bono* services. I agree with the comments made by Justice Campbell Miller at paragraph 16 in *Furman v. R.*, 2003 TCC 298 when he stated:

> One might altruistically hope that lawyers enter volunteer, charitable, sports or other activities because they are sincerely interested in contributing to the betterment of such organizations, be it as a volunteer, director, coach, teacher, whatever. To suggest such activities are "in the course of the individual's employment as a lawyer" is frankly not how I would like the public to perceive a lawyer's involvement.

[15] In 2011, the Appellant sent a "Declaration of Conditions of Employment" (Form T2200) for the 2009 taxation year to the Canada Revenue Agency ("CRA"). According to Form T2200, the appellant was not required under his contract of employment to have an office away from his employer's place of business. He was not required to pay for supplies or for the use of a cell phone. Consequently, the expenses incurred for office, supplies and telephone are also not deductible.

[16] For all of these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 18th day of February 2013.

"V.A. Miller"

V.A. Miller J.

CITATION:	2013TCC52
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REASONS FOR JUDGMENT BY:	The Honourable Justice Valerie Miller
DATE OF JUDGMENT:	February 18, 2013

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Jan Jensen

COUNSEL OF RECORD:

For the Appellant:	
Name:	
Firm:	
For the Respondent:	William F. Pentney Deputy Attorney General of Canada Ottawa, Canada