Docket: 2014-2951(IT)I

BETWEEN:

JOHN MOERMAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 16, 2015, at Lethbridge, Alberta.

Before: The Honourable Justice Dominique Lafleur

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Jeff Watson

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2012 taxation year is allowed, without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 26th day of November 2015.

"Dominique Lafleur"

Lafleur J.

Citation: 2015 TCC 295
Date: 20151126
Docket: 2014-2951(IT)I

BETWEEN:

JOHN MOERMAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Lafleur J.

Mr. John Moerman (the "Appellant") has appealed to this Court in respect of his 2012 taxation year. In filing his income tax return for that year, he claimed a deduction under paragraph 8(1)(*c*) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th supp.), as amended (the "*Act*") for a total amount of $12,612.05. By Notice of Confirmation dated June 25, 2014, the Minister of National Revenue (the "Minister") confirmed the Reassessment dated October 18, 2013 whereby the Minister had allowed only part of the deduction claimed ($10,000) in respect of remuneration received from Alberta Health Services ("AHS") in the amount of $13,836.14. The Minister thereby had disallowed the deduction in respect of the income received by the Appellant from John Moerman Enterprises Ltd. (the "Corporation") in the amount of $24,000.

THE FACTS

At the hearing, the Appellant represented himself. He testified, and also called 2 witnesses.

The Respondent did not call any witnesses.

The Appellant is a full-time chaplain responsible for the Chinook health region since January 1, 2007 (see Exhibit A-1, entitled "Announcement from the Alberta MB Pastors E-Connection").

I understand from the Appellant's testimony that, throughout the 2012 taxation year, the Appellant served Chinook Regional Hospital and various other hospitals around Lethbridge (collectively, the "Hospitals").

The Appellant was the sole chaplain and the sole senior volunteer chaplain at the Hospitals.

In 2012, the Appellant had two sources of income. One source was the remuneration paid by AHS; he received $13,836.14 as an honorarium for his work as chaplain at the Hospitals for the 12-month period beginning on January 1, 2012 and ending on December 31, 2012. The second source was the remuneration paid by the Corporation as employment income; he received $24,000 (see Exhibit A-2, "Copy of T4 slip issued by the Corporation to the Appellant for the 2012 taxation year").

The Corporation is owned by the Appellant and his spouse. However, no documents were filed with the Court with respect to their ownership, but that is not relevant for the purposes of this appeal.

During the 2012 taxation year, the Appellant was the sole employee of the Corporation. The evidence shows that the Corporation employed the Appellant to render chaplaincy services at the Hospitals. The Appellant did not render any other services to the Corporation or to anyone else. It is clear from the Appellant's testimony that he served, on a full-time basis, as the sole chaplain of the Hospitals, serving the community at such Hospitals. The Appellant did not render services to anyone else other than the community at the Hospitals or in any other location than at the Hospitals.

The Appellant filed as Exhibit A-4 copies of record of hours of employment, indicating he had worked 31,157.37 hours over a period of 15 years (including 2012); on average, that would amount to 2,077 hours per year.

The funding of the Chaplaincy program at the Hospitals was shared by AHS and by Lethbridge churches and individual donors through College Drive Community Church ("College Drive").

The Appellant explained to the Court how the funding of the Corporation was organized: College Drive would receive donations from various churches and individual donors earmarked for the Chaplaincy program at the Hospitals; College Drive, which had contracted the Corporation to render the required chaplaincy services at the Hospitals, would then transfer said amounts to the Corporation. With said funds, the Corporation would then pay remuneration to the Appellant in

respect of the services rendered as a chaplain at the Hospitals. The sole objective of the donations made to College Drive by the individual donors and churches was to fund the Chaplaincy program at the Hospitals.

[redacted]Each month, a payment was made by College Drive to the Corporation, and at the end of the 2012 taxation year, the balance of the funds in the account of College Drive was nil (see Exhibit A-3 "Ledger Report from College Drive for the period of January 1, 2012 to December 31, 2012"). The Corporation did not have any other sources of income during the 2012 taxation year.

[redacted]John Derksen, a professional agrologist residing in Lethbridge, testified for the Appellant. He had donated some money to College Drive over the years. He said that on the cheque issued to College Drive for funds earmarked for the program, it is always specified: "Chaplaincy Program at the hospital", or words to that effect. John Derksen confirmed that he had personally never been ministered to by the Appellant.

[redacted]In addition, the Appellant's accountant, Iain Mercer, testified for the Appellant. He declared to the Court that he had prepared the income tax return in issue (see Exhibit A-5, "Form T1223 Clergy residence deduction"). He confirmed to the Court that an amount of $4,560, representing amounts claimed by the Corporation for the accommodation was indicated on the form and may reduce the clergy residence deduction under certain circumstances. However, in this case, there was no such reduction.

THE ISSUE

[redacted]Is the Appellant entitled to a deduction under paragraph 8(1)(*c*) of the *Act* in respect of the remuneration received from the Corporation for a total amount of $24,000 during the 2012 taxation year?

THE SUBMISSIONS OF THE PARTIES

[redacted]The Appellant submits that he is entitled to a clergy residence deduction under paragraph 8(1)(*c*) of the *Act* in respect of the remuneration received from the Corporation since his sole duty is to perform the duties of chaplain at the Hospitals.

[redacted]On the other hand, the Respondent submits that the Appellant is not entitled to that deduction since the Appellant was not performing the duties of a member of the clergy for the Corporation but was performing this function for the churches

and individuals to whom the Corporation contracted its services. Therefore, the income received from the Corporation was not income from qualifying employment for the purpose of calculating the Appellant's entitlement to the clergy residence deduction.

ANALYSIS

[redacted]The relevant part of paragraph 8(1)(*c*) of the *Act* reads as follows:

> **8(1) Deductions allowed** — 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:
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> . . .
>
> (*c*) **clergy residence** — where, in the year, the taxpayer
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> (i) is a member of the clergy or of a religious order or a regular minister of a religious denomination, and
>
> (ii) is
>
> (A) in charge of a diocese, parish or congregation,
>
> (B) ministering to a diocese, parish or congregation, or
>
> (C) engaged exclusively in full-time administrative service by appointment of a religious order or religious denomination,
>
> the amount, not exceeding the taxpayer's remuneration for the year from the office or employment, equal to
>
> . . .

[redacted]In order to be entitled to such a deduction, a taxpayer must meet what are known as the "status test" (subparagraph 8(1)(*c*)(i)) and the "function test" (subparagraph 8(1)(*c*)(ii)). In the case under review, both tests are met, since, during the 2012 taxation year, the Appellant was a member of the clergy and was ministering to the congregation of the Hospitals. The Respondent agreed that both tests are met.

[redacted]However, the Respondent takes the position that no deduction can be claimed by the Appellant in respect of his remuneration received from the Corporation since the employment from the Corporation is not a qualifying employment for that purposes. As I understand the Respondent's argument, it is assumed that the remuneration received from the Corporation is not remuneration

from a qualifying office or employment and therefore cannot be included in the calculation under paragraph 8(1)(*c*) of the *Act*.

[redacted]Therefore, I shall determine whether the total remuneration of $24,000 received by the Appellant from the Corporation is from a qualifying employment. Therefore, I need to determine whether the remuneration received by the Appellant from the Corporation was remuneration from the Appellant's employment of rendering chaplaincy services to the community at the Hospitals. In other words, whether the remuneration received by the Appellant from the Corporation constituted remuneration for the Appellant's services as chaplain at the Hospitals.

[redacted]I am of the view that the evidence shows that the remuneration received by the Appellant from the Corporation was indeed remuneration for his services as chaplain at the Hospitals and, consequently, that the Appellant is entitled to the clergy residence deduction provided for in paragraph 8(1)(*c*) of the *Act* for the 2012 taxation year in respect of his employment with the Corporation for the reasons mentioned below. The Appellant has succeeded in demolishing many assumptions relied upon by the Minister in issuing the reassessment under appeal, and no evidence was given by the Respondent to support the reassessment.

[redacted]I set out the relevant assumptions pertaining to the case argued before me by counsel for the Respondent. The Minister assumed in assessing the Appellant that the Corporation contracted with churches and individuals in Lethbridge to render ministering services. Furthermore, the Minister assumed that the Appellant performed chaplain duties to the churches and individual donors on behalf of the Corporation. In addition, I note from the Reply that the Minister assumed that the Corporation was paid by the churches and individuals for the ministering services rendered by the Appellant. Furthermore, the Minister assumed that the churches and individuals paid the Corporation from funding administered through College Drive. Finally with regards to the assumptions, I note that the Minister assumed that the Appellant did not receive any remuneration from the churches and individual donors to whom he rendered ministering services.

[redacted]The Appellant's testimony shows that the Appellant rendered chaplaincy services to the community found at the Hospitals and not to the churches and various individuals who donated money to College Drive. John Derksen very clearly said that he had never received any ministering services from the Appellant. In addition, the Appellant established that he rendered on a full-time basis chaplaincy services at the Hospitals. No other minister participated in the Chaplaincy program at the Hospitals. Furthermore, he showed the Court

(Exhibit A-4) that, on the average, he was rendering services at the Hospitals 2,077 hours per year.

[redacted]The Appellant explained clearly to the Court that College Drive contracted with the Corporation to render chaplaincy services at the Hospitals; the Corporation did not contract with the individual donors or with the churches to render ministering services to them. As mentioned above, the testimony of the Appellant was credible and I have no ground not to believe him. The Appellant established to my satisfaction how the funding of the Corporation was organized.

[redacted]As mentioned above, it is clear to me that the purpose of the donation made by the individual donors to College Drive was to fund the Chaplaincy program at the Hospitals. John Derksen's testimony confirmed that it was clear to him that, when he donated money to College Drive, it would be earmarked for the Chaplaincy program at the Hospitals. Again, as mentioned above, no contradictory evidence was put forward by the Respondent in that respect. I infer that such was the reason motivating the various churches who donated money to College Drive. It is clear from the Appellant's testimony that all his time was devoted to the provision of chaplaincy services at the Hospitals and he was not involved in ministering to various churches.

[redacted]From the evidence before me and as mentioned above, the Appellant did not render any ministering services to the churches and individual donors; he spent all his time ministering to the community found at the Hospitals. I cannot find that, in so doing, the Appellant was also rendering ministering services to the various churches and individual donors who provided funding for the Hospitals' Chaplaincy program. The Appellant was employed by the Corporation to render chaplaincy services to the Hospitals. That this might have reflected the wishes of donors to College Drive does not lead me to find that the Appellant was rendering ministering services to those donors. The Appellant has demolished the assumption that such a relationship between him and the donors existed.

[redacted]Furthermore, I note that notwithstanding who actually pays remuneration, that remuneration can still derive from a qualifying employment. In *Canada (National Revenue) v. Conseil central des syndicats nationaux du Saguenay/Lac St-Jean*, 2009 FCA 375, 2010 DTC 5038, Noël J.A. (as he then was) concluded that the fact that an employer was paying remuneration to its employees for their activities as union officials during their union leaves did not change the nature of the amount received from remuneration in respect of their duties as union officials:

> [40] With respect, that the union officials are not entitled to this remuneration under any contractual relationship or any central council constitution or by−laws is immaterial. The only issue is whether the union officials were paid for their activities as union officers during their union leave (on this point, see Justice Lamarre Proulx's decision in *Duguay v. Canada*, [2000] T.C.J. No. 381 (QL) at paragraph 37, where she identifies this issue in the same way in a comparable context).
>
> [41] In my humble opinion, the answer is evident. The union officials received their full salaries and all of the fringe benefits set out in their collective agreement, despite the fact that they performed no services for their regular employers. The regular employers were reimbursed by the respective unions, and the cost of this remuneration was ultimately borne by the central councils. Only the services that the union officials rendered as in that capacity can explain why they received their usual remuneration during their union leave, and only the fact that the regular employers were reimbursed explains why they agreed to pay the remuneration even though they received no services.
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> [42] That the remuneration was paid through the regular employer does not change the analysis. Contrary to the submissions of counsel for the respondents, this is not a case of recharacterization of the legal relationships between the parties (*Shell*, above, para. 39) but, rather, of recognizing these relationships for what they are. It is clear that the regular employers were acting on behalf of the respective unions and, ultimately, the central councils when they agreed to remunerate the union officials during their union leave.
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> [43] Based on this analysis, the TCC judge's finding that the union officials were acting as volunteers is unfounded and even contrary to the evidence. A volunteer acts [TRANSLATION] "voluntarily and without pay" (*Le Petit Robert*, French language dictionary). However, the evidence shows that, once elected, the union officials undertook to assume the powers and duties associated with their union positions (union constitution and by−laws, appeal book, Vol. I, pp. 254 and 268), for which they were entitled to their usual remuneration. This is not volunteering.

[redacted]In this case, I do not have to address the question whether the Corporation was providing benefits to the Appellant in respect of his employment at the Hospitals such that it might not be remuneration according to the doctrine propounded by the Court of Appeal in *The Queen v. Blanchard*, 95 DTC 5479, [1995] 2 CTC 262, at paragraph 2. I am satisfied that the amounts in question were remuneration in respect of the Appellant's employment with the Corporation. Furthermore, the Appellant was employed by the Corporation to render the aforementioned chaplaincy services to the Hospitals.

[redacted]The evidence shows clearly that the Appellant received remuneration from the Corporation for his services as chaplain at the Hospitals. The Appellant did not render any other services to the Corporation itself. There are no other reasons for the payment of the remuneration by the Corporation to the Appellant. The evidence shows that College Drive contracted with the Corporation for the delivery of chaplaincy services to the Hospitals. The Corporation then employed the Appellant in order to render such services to the Hospitals. It is clear that the Appellant was paid by the Corporation in consideration of the chaplaincy services rendered at the Hospitals. It is also clear from the evidence that the Appellant did not render any ministering services to the individual donors or churches who gave money to College Drive.

[redacted]For all these reasons, I rule that the employment of the Appellant by the Corporation constitutes qualifying employment for the purposes of paragraph 8(1)(*c*) of the *Act* and the appeal is allowed, without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment.

Signed at Ottawa, Canada, this 26th day of November 2015.

"Dominique Lafleur"

Lafleur J.

CITATION:	2015 TCC 295
COURT FILE No.:	2014-2951(IT)I
STYLE OF CAUSE:	JOHN MOERMAN AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Lethbridge, Alberta
DATE OF HEARING:	October 16, 2015
REASONS FOR JUDGMENT BY:	The Honourable Dominique Lafleur
DATE OF JUDGMENT:	November 26, 2015

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Jeff Watson

COUNSEL OF RECORD:

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