

Docket: 2007-1283(IT)G

BETWEEN:

PETER MCCREATH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on common evidence with the appeal of  
*Peter McCreath* (2007-4645(IT)G) on October 8, 2008  
at Halifax, Nova Scotia

Before: The Honourable Justice Diane Campbell

Appearances:

Counsel for the Appellant: P. Robert Arkin

Counsel for the Respondent: Martin Hickey

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**JUDGMENT**

Whereas at the commencement of the hearing, counsel for the Appellant informed the Court that his client wished to withdraw its appeal with respect to the 2005 taxation year as the Appellant had not been reassessed an amount as a taxable benefit for this taxation year;

The appeal from the assessment made under the *Income Tax Act* for the 2005 taxation year is dismissed.

The appeals from the assessments made under the *Income Tax Act* for the 2002

and 2003 taxation years are dismissed, with costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 30th day of October 2008.

"Diane Campbell"

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Campbell J.

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BETWEEN:

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Appeal heard on common evidence with the appeals of  
*Peter McCreath* (2007-1283(IT)G) on October 8, 2008  
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Before: The Honourable Justice Diane Campbell

Appearances:

Counsel for the Appellant: P. Robert Arkin

Counsel for the Respondent: Martin Hickey

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 2004 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 30th day of October 2008.

"Diane Campbell"

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Campbell J.

Citation: 2008 TCC 595  
Date: 20081030  
Dockets: 2007-1283(IT)G  
2007-4645(IT)G

BETWEEN:

PETER MCCREATH,

Appellant,

and

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Respondent.

### **REASONS FOR JUDGMENT**

#### **Campbell J.**

[1] These appeals are from assessments under the *Income Tax Act* (the “Act”) and the years that are before me are the Appellant’s 2002, 2003 and 2004 taxation years. The issue is whether the Appellant must include in income amounts paid to him by his employer, the Nova Scotia Liquor Corporation (the “NSLC”) in each of these taxation years for travel between his home office in Hubbards, Nova Scotia and the NSLC office located at Chain Lake Drive, Halifax, Nova Scotia. The Minister of National Revenue (the “Minister”) reassessed the Appellant to include these amounts as taxable benefits pursuant to subsection 6(1) of the *Act*. At the commencement of the hearing, counsel for the Appellant withdrew the 2005 taxation year as the Appellant had not been reassessed an amount as a taxable benefit for this taxation year.

[2] The Appellant was initially appointed Chairman of the NSLC in 2001. He is also a member of the Board of Directors of NSLC. The NSLC head office is located at Chain Lake Drive in Halifax. At this location the NSLC maintains an office for the Appellant. The NSLC does not require him to keep a home office; however, he performed most of his duties as Chairman from his home office in Hubbards. From the home office he also operated PMC Communications Inc., his main business and principal source of income. This home office was fully equipped by PMC Communications Inc. He testified that he worked approximately

two hours per day on his duties as Chairman from his home office. In addition, he travels once or twice weekly to the NSLC head office, spending about two hours weekly on duties which cannot be performed at his home office. During these trips to the NSLC office he meets with the President, board members, attends meetings and signs documents. Approximately 70% of his duties as Chairman are performed at his home office with a smaller percentage (10% at NSLC head office and 20% at other locations, meeting with industry officials and suppliers) of the total time spent at the NSLC head office or elsewhere at industry events at breweries and wineries. Because he seldom used his NSLC office, he advised the NSLC that they could use his office when they needed it.

[3] The Appellant agreed with all of the assumptions (b) to (o) in the Minister's Reply to the Notice of Appeal with the exception of (e), (f), (g) and (o).

(1) With respect to (e), which stated:

the Appellant performed his duties as the Chairman of the Board of Directors for the N.S.L.C. at the Office;

(meaning the NSLC head office) the Appellant disagreed with this assumption and testified that he seldom used the office which NSLC provided for him.

(2) With respect to (f) which stated:

at all material times, the Appellant attended the N.S.L.C.'s directors meetings at the N.S.L.C.'s head office;

and (g) which stated:

at all material times, the Appellant attended meetings in downtown Halifax, Nova Scotia as part of his duties as the Chairman of the Board of Directors for the N.S.L.C.;

he qualified these two assumptions by stating that he attended meetings not only at the NSLC head office but also elsewhere, for example, in respect to industry events.

(3) With respect to (o), which stated:

the Appellant did not report the amounts of \$1,201 and \$3,332, in his income for the 2002 and 2003 taxation years, respectively.

he qualified this assumption by stating that he did not report these amounts as he did not consider the amounts to be income.

[4] On cross-examination, the Appellant testified that the hours devoted at his home office to his personal corporate business activities and those of the NSLC were co-mingled and that he “did the work as it came in”. He also stated that he did not use the NSLC office due to the distance from his home – it was approximately 55 kilometres away. In addition, there was no requirement that he perform his duties from the NSLC head office. It was more convenient to work from the home office.

[5] The Appellant was paid a per kilometre allowance when he travelled between the NSLC head office and his home office. The issue in these appeals arises because the Appellant did not include these amounts in his income when he filed his personal tax returns in the relevant taxation years. The Minister’s position is that these amounts are personal or living expenses that were received in respect of his office with the NSLC and that he did not receive the amounts from NSLC for travelling in the performance of his duties at NSLC.

[6] The Appellant’s position is that the Appellant’s home office is his main base for conducting his activities as Chairman of NSLC. While NSLC makes an office available, most of his duties as Chairman are performed from his home office, making it a regular place of work in connection with these duties. Therefore, the expenses incurred by the Appellant were related to the use of his vehicle to travel from one regular workplace to another.

Analysis:

[7] It is well established that the cost of travel from a taxpayer’s home to his place of work will be considered personal expenses which will therefore not be deductible. The leading case, which supports the proposition that such travel expenses will not be considered to be incurred in the course of a taxpayer’s work duties, is *Ricketts v. Colquhoun*, [1926] A.C. 1 (U.K. H.L.). The Federal Court of Appeal reiterated the same principle in *Hogg v. Canada*, [2002] 4 F.C. 443.

[8] The caselaw has established that there may be some exceptions to this general proposition. The Appellant relied on two cases: *Campbell et al. v. The Queen*, 2003 DTC 420, and *Toutov v. The Queen*, 2006 DTC 2928, to support his position. However, upon reviewing these decisions, I see important differences which distinguish them from the appeals before me.

[9] In the *Campbell* case, J. Margeson found that travel allowances, paid to the taxpayers to travel to their Board meetings at the School Board, were not personal expenses and that they were therefore exempt from inclusion in income under subsection 6(1). Although Appellant counsel referred to one fact as being the only difference between the present appeals and the *Campbell* decision, I consider this one factor to be a key difference. The fact that no office was maintained at the School Board for the Appellants' use as a member of the School Board distinguishes this case from the present appeals. Although J. Margeson does not claim it was critical to his decision, it was important according to his statement at paragraph 9 when he referenced the maintenance of a home office as being of great assistance to him. In addition, the evidence in *Campbell* suggests that a portion of the Appellants' residences were kept separate and dedicated solely to conducting School Board activities.

[10] In the present appeals, the Appellant's home office was used the majority of the time in conducting his personal business and not the NSLC activities. The home office was equipped by his business and most importantly NSLC maintained an office for his use in Halifax.

[11] Similarly in *Toutov*, the employer in that case did not maintain an office for the taxpayer. The employer also required the taxpayer to travel to visit clients but because of the flexibility the employer was allowing the taxpayer in working from his home in Kingston, the taxpayer was expected to cover travel costs to Ottawa and Carleton Place to meet clients. The decision in *Toutov* found that the real base of operations was in the Appellant's home. In the present appeals, the real base of operations for NSLC was not the Appellant's home office. NSLC maintained an equipped office for the Appellant. The Board meetings were held at the NSLC headquarters as were the Appellant's meetings with the President and the staff. The evidence never suggests that NSLC requested that the Appellant maintain his home office. It was entirely the Appellant's decision to do so and it was a decision based on convenience. He spent approximately 6 to 7 hours daily on his personal business activities while the average of 1 to 2 hours daily spent on NSLC activities were co-mingled with these other personal activities.

[12] I do not believe that the decisions in *Campbell* and *Toutov* can be extended to cases, such as this, where a taxpayer makes a personal decision to work from home when the employer has provided and maintains a regular office for his use. The facts in the *Campbell* and *Toutov* decisions are substantially different from those facts in the present appeals. I consider it irrelevant that the Appellant

permitted NSLC staff to use his NSLC office when he was not there and to allow NSLC to relocate his office within the building on three occasions. This has no bearing on the fact that the Appellant made a choice to work from his home office instead of the office maintained by NSLC for him in his position as Chairman. His home office cannot be considered an extension of the employer's office and therefore the travel expenses cannot be said to be incurred in travelling from one place of work to another. The Appellant's travel was from his home base, where he chose to conduct the majority of his duties as Chairman of NSLC, as a matter of convenience, to his place of work at NSLC headquarters.

[13] In summary, I believe that the *Campbell* and *Toutov* decisions establish exceptions in certain circumstances to the basic proposition that a taxpayer will not be permitted to deduct travel expenses when travelling from home to the workplace or *vice versa* (*Ricketts supra* and *Hogg supra*). However, I do not believe they extend to a situation where a taxpayer makes a choice of his own volition to do a portion or all of the work duties in a location separate from where his work is actually located. The Appellant's choice to use the home office and not the NSLC office for conducting most of his activities as Chairman was strictly one of convenience for the Appellant and, fortunately for the Appellant, NSLC placed no limitations or restrictions on the Appellant's choice.

[14] The appeals in respect to the 2002, 2003 and 2004 taxation years are dismissed, with costs, because the Minister was correct in concluding that the amounts received in each of the taxation years from NSLC were taxable benefits pursuant to subsection 6(1) of the *Act*.

Signed at Ottawa, Canada, this 30th day of October 2008.

"Diane Campbell"

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Campbell J.



CITATION: 2008 TCC 595

COURT FILE NOS.: 2007-1283(IT)G  
2007-4645(IT)G

STYLE OF CAUSE: Peter McCreath and  
Her Majesty the Queen

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: October 8, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Diane Campbell

DATE OF JUDGMENT: October 30, 2008

APPEARANCES:

Counsel for the Appellant: P. Robert Arkin

Counsel for the Respondent: Martin Hickey

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