

Docket: 2008-129(IT)I

BETWEEN:

LESLIE BERNIER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on May 27, 2009, at Regina, Saskatchewan

Before: The Honourable Justice D.W. Beaubier

Appearances:

|                             |                       |
|-----------------------------|-----------------------|
| For the Appellant:          | The Appellant himself |
| Counsel for the Respondent: | Lyle Bouvier          |
| Student at Law:             | Roxanne Gagné         |

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**JUDGMENT**

The appeals from the assessments made under the *Income Tax Act* for the 2002 and 2003 taxation years are dismissed.

Signed at Edmonton, Alberta, this 3<sup>rd</sup> day of June 2009.

“D.W. Beaubier”

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Beaubier D.J.

Citation: 2009TCC312  
Date: 20090603  
Docket: 2008-129(IT)I

BETWEEN:

LESLIE BERNIER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Beaubier, D.J.

[1] This appeal, pursuant to the informal procedure, was heard at Regina, Saskatchewan on May 27, 2009. The Appellant was the only witness.

[2] The particulars in dispute for the Appellant's 2002 and 2003 taxation years are set out in the following paragraphs of the Reply to the Notice of Appeal:

7. The original Notices of Assessment for the 2002 and 2003 taxation years were dated and mailed to the Appellant on April 10, 2003 and May 25, 2004, respectively.

8. In reassessing the Appellant for the 2002 and 2003 taxation years on March 2, 2006, the Minister included into income for each year a taxable benefit for the employer provided parking from Saskatchewan Industry and Resources (the "Employer").

9. The amount of the taxable benefit for employer provided parking included into income was \$840.12 and \$703.28 for the 2002 and 2003 taxation years respectively.

10. The amount of the benefit assessed to the Appellant was based on 100% of the market value of the employer provided parking less any amount paid by the Appellant. The benefit was calculated as follows:

|              | <u>2002</u> | <u>2003</u> |
|--------------|-------------|-------------|
| Market Value | \$840.12    | \$848.28    |
| Amount Paid  | (0)         | (145.00)    |
| Benefit      | \$840.12    | \$703.28    |

11. By Notification of Confirmation dated September 26, 2007, the Minister confirmed the reassessments for the 2002 and 2003 taxation years as the parking spot received and enjoyed by the Appellant by virtue of an office or employment was a benefit conferred by the Employer.

12. The Appellant filed with the courts an application for an extension of time to file a Notice of Appeal for the 2002, 2003, and 2004 taxation years on January 9, 2008.

13. The Application was heard in the Tax Courts of Canada on November 28, 2008 and from which an Order dated December 12, 2008 was issued which deemed the Notice of Appeal in respect of the 2002 and 2003 taxation years to be filed as of the date of the order and the application for an extension of time within which to file a Notice of Appeal in respect of the 2004 taxation year to be dismissed.

14. The Appellant's Notice of Appeal for the 2002 and 2003 taxation years was filed with the Tax Court on December 12, 2008.

15. In so reassessing the Appellant for the 2002 and 2003 taxation years, and in confirming the reassessments, the Minister assumed the following facts:

- (a) at all material times, the Appellant was employed by the Government of Saskatchewan in the Department of Industry and Resources;
- (b) at all material times, the Appellant was assigned stall 39 (the "Parking Stall") at the Financial Building located at 2101 Scarth Street in Regina (the "Parking Lot");
- (c) at all material times, the Parking Lot was owned by FB Properties Ltd;
- (d) the Parking Lot was leased by Saskatchewan Property Management Corporation ("SPMC");
- (e) SPMC is a provincial crown corporation responsible for providing office space and related services to all provincial government departments;

- (f) all costs SPMC paid for parking spaces were then billed to, and paid for by the Employer, on a monthly basis;
- (g) the value of the parking provided to the Appellant was based on actual rates supplied by SPMC that were billed to the Employer;
- (h) the fair market value of the Parking Stall provided to the Appellant by the employer in the 2002 taxation year was \$840.12, being \$70.01 per month;
- (i) the fair market value of the Parking Stall provided to the Appellant by the employer in the 2003 taxation year was \$848.28, being 70.69 per month;
- (j) in the 2002 taxation year, the Parking Stall was provided to the Appellant by the Employer at no cost;
- (k) in the 2002 taxation year, the value of the benefit in respect of parking provided to the Appellant was not less than \$840.12;
- (l) in September 2003 the parking policy of the Employer changed and the Appellant was required to pay \$29.00 a month for parking through payroll deduction;
- (m) in the 2003 taxation year, the Appellant paid a total amount of \$145.00 to the Employer for the use of the Parking Stall;
- (n) in the 2003 taxation year, the value of the benefit in respect of parking provided to the Appellant was not less than \$703.28 (\$848.28 - \$145.00);
- (o) the employer provided parking was not scramble parking as the number of parking stalls provided to employees was the same as the number of parking stalls available;
- (p) parking stalls were obtained by employees on a first come first served basis by filling out a parking application;
- (q) if parking was not available at the time of the application, the employee's name was added to the parking pool waiting list until a stall became available;
- (r) the Parking Stall was provided to the Appellant as a result of his employment with the Employer;

(s) the Appellant did not use a vehicle on a regular basis for employment purposes; and

(t) the parking provided to the Appellant by the Employer primarily benefited the Appellant and not the Employer;

[3] None of the assumptions in paragraph 15 were rebutted except (p). The Appellant testified that parking stalls were awarded by seniority of time of employment.

[4] The Appellant also disputed two other matters:

1. The length of time it took following his Notice of Objection to get the matter heard in Court. This dispute is resolved by paragraph 169(1)(d) of the *Income Tax Act* which gives the taxpayer the right to appeal to the Court after 90 days from the service of his Notice of Objection has passed. It may be that the taxpayer didn't know this, but that right is spelled out clearly in the *Income Tax Act* and it was his responsibility to bring the appeal forward after the 90 days had he chosen to do so.
2. The fact that he was assessed retroactively when, he testified, he would have refused the parking space had he known that he would have been taxed on its benefit. This complaint is understandable, but retroactive assessments are universal, since Canada Revenue Agency cannot be aware of each taxpayer's activities concurrently with their occurrences.

[5] Mr. Bernier also complained about interest levied on the unpaid tax. Some of that was forgiven by the Respondent before the Hearing. However, interest is levied on tax found to be owing and therefore that interest is not subject to the Court's jurisdiction.

[6] For these reasons the appeal is dismissed.

Signed at Edmonton, Alberta, this 3<sup>rd</sup> day of June 2009.

“D.W. Beaubier”

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Beaubier D.J.

CITATION: 2009TCC312  
COURT FILE NO.: 2008-129(IT)I  
STYLE OF CAUSE: LESLIE BERNIER AND HER MAJESTY  
THE QUEEN  
PLACE OF HEARING: Regina, Saskatchewan  
DATE OF HEARING: May 27, 2009  
REASONS FOR JUDGMENT BY: The Honourable Justice D.W. Beaubier  
DATE OF JUDGMENT: June 3, 2009

APPEARANCES:

|                             |                       |
|-----------------------------|-----------------------|
| For the Appellant:          | The Appellant himself |
| Counsel for the Respondent: | Lyle Bouvier          |
| Student-at-Law:             | Roxanne Gagné         |

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada