

Docket: 2009-895(IT)I

BETWEEN:

LISA MORELAND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 3, 2010, at Hamilton, Ontario.

Before: The Honourable Justice Paul Bédard

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Darren Prevost

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2007 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Montreal, Quebec, this 4th day of October 2010.

"Paul Bédard"

Bédard J.

Citation: 2010 TCC 483
Date: 20101004
Docket: 2009-895(IT)I

BETWEEN:

LISA MORELAND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Bédard J.

[1] This appeal under the informal procedure was heard at Hamilton, Ontario, on June 3, 2010. The Appellant was the only witness.

Context

[2] The Appellant has been an employee of the Royal Canadian Mounted Police (the "Employer") since 2005. Before February 2007, the Appellant carried out her employment duties at 255 Attwell Drive in Etobicoke, Ontario (the "Workplace"). In February 2007, the Appellant was assigned new employment duties, which she still performed at the Workplace, but in a different area within it. So, at all material times during the 2007 taxation year, the Appellant carried out her employment duties at the Workplace. On June 27, 2007, the Appellant moved from 68 Baintree Way in Cambridge, Ontario (the "old residence") to 209 Fleming Drive in Milton, Ontario (the "new residence"). I would point out immediately that it was admitted by the Respondent at the beginning of the hearing that the move from the old residence to the new residence resulted in the Appellant living at least 40 kilometres closer to the Workplace. The evidence also established clearly that the Appellant made the change

of residence for the sole purpose of being closer to the Workplace and, consequently, of shortening her commuting time.

[3] The Appellant received gross earnings of \$56,763.78 in the 2007 taxation year from the Employer. In computing her income for that taxation year, the Appellant sought to deduct moving expenses of \$26,087.90. By Notice of Reassessment dated August 25, 2008, the Minister of National Revenue (the "Minister") disallowed the deduction for moving expenses. The Appellant objected to the reassessment for the 2007 taxation year by Notice of Objection dated September 10, 2008 and postmarked September 15, 2008. The Minister confirmed the reassessment by Notice of Confirmation dated February 10, 2009. In March 2009, the Appellant appealed from the reassessment.

Issue

[4] The only issue to be decided is whether the Appellant moved from the old residence to the new residence to enable herself to be employed at a location in Canada.

Respondent's position

[5] The Respondent submits the Appellant did not have a "new work location", within the meaning of subsection 248(1) of the *Income Tax Act* (the "Act") during the 2007 taxation year and thus did not move from the old residence to the new residence to enable herself to be employed at a "new work location". Therefore, the Appellant's move to the new residence is not an "eligible relocation" within the meaning of subsection 248(1) of the Act, and no part of the amount of \$26,087.90 claimed in respect of moving expenses is deductible pursuant to subsection 62(1) of the Act in computing the Appellant's income for the 2007 taxation year.

Appellant's position

[6] The Appellant submits that she moved from the old residence to the new residence to enable herself to be employed at a "new work location" since she "changed physical locations (offices) of work to start a new job within the same office complex at 255 Attwell Drive, Etobicoke".

Statutory provisions

[7] Subsections 62(1) and (3) of the Act read as follows:

(1) Moving expenses -- There may be deducted in computing a taxpayer's income for a taxation year amounts paid by the taxpayer as or on account of moving expenses incurred in respect of an eligible relocation, to the extent that

(a) they were not paid on the taxpayer's behalf in respect of, in the course of or because of, the taxpayer's office or employment;

(b) they were not deductible because of this section in computing the taxpayer's income for the preceding taxation year;

(c) the total of those amounts does not exceed

(i) in any case described in subparagraph (a)(i) of the definition "eligible relocation" in subsection 248(1), the total of all amounts, each of which is an amount included in computing the taxpayer's income for the taxation year from the taxpayer's employment at a new work location or from carrying on the business at the new work location, or because of subparagraph 56(1)(r)(v) in respect of the taxpayer's employment at the new work location, and

(ii) in any case described in subparagraph (a)(ii) of the definition "eligible relocation" in subsection 248(1), the total of amounts included in computing the taxpayer's income for the year because of paragraphs 56(1)(n) and (o); and

(d) all reimbursements and allowances received by the taxpayer in respect of those expenses are included in computing the taxpayer's income.

(3) Definition of "moving expenses" -- In subsection (1), "moving expenses" includes any expense incurred as or on account of

(a) travel costs (including a reasonable amount expended for meals and lodging), in the course of moving the taxpayer and members of the taxpayer's household from the old residence to the new residence,

(b) the cost to the taxpayer of transporting or storing household effects in the course of moving from the old residence to the new residence,

(c) the cost to the taxpayer of meals and lodging near the old residence or the new residence for the taxpayer and members of the taxpayer's household for a period not exceeding 15 days,

(d) the cost to the taxpayer of cancelling the lease by virtue of which the taxpayer was the lessee of the old residence,

(e) the taxpayer's selling costs in respect of the sale of the old residence,

(f) where the old residence is sold by the taxpayer or the taxpayer's spouse or common-law partner as a result of the move, the cost to the taxpayer of legal services in respect of the purchase of the new residence and of any tax, fee or duty (other than any goods and services tax or value-added tax) imposed on the transfer or registration of title to the new residence,

(g) interest, property taxes, insurance premiums and the cost of heating and utilities in respect of the old residence, to the extent of the lesser of \$5,000 and the total of such expenses of the taxpayer for the period

(i) throughout which the old residence is neither ordinarily occupied by the taxpayer or by any other person who ordinarily resided with the taxpayer at the old residence immediately before the move nor rented by the taxpayer to any other person, and

(ii) in which reasonable efforts are made to sell the old residence, and

(h) the cost of revising legal documents to reflect the address of the taxpayer's new residence, of replacing drivers' licenses and non-commercial vehicle permits (excluding any cost for vehicle insurance) and of connecting or disconnecting utilities,

but, for greater certainty, does not include costs (other than costs referred to in paragraph (f)) incurred by the taxpayer in respect of the acquisition of the new residence.

[8] The phrase "eligible relocation" is defined in subsection 248(1) of the Act as follows:

"eligible relocation" means a relocation of a taxpayer where

(a) the relocation occurs to enable the taxpayer

(i) to carry on a business or to be employed at a location in Canada (in section 62 and this subsection referred to as "the new work location"), or

(ii) to be a student in full-time attendance enrolled in a program at a post-secondary level at a location of a university, college or other educational institution (in section 62 and in this subsection referred to as "the new work location"),

(b) both the residence at which the taxpayer ordinarily resided before the relocation (in section 62 and this subsection referred to as "the old residence")

and the residence at which the taxpayer ordinarily resided after the relocation (in section 62 and this subsection referred to as "the new residence") are in Canada, and

(c) the distance between the old residence and the new work location is not less than 40 kilometres greater than the distance between the new residence and the new work location

except that, in applying subsections 6(19) to (23) and section 62 in respect of a relocation of a taxpayer who is absent from but resident in Canada, this definition shall be read without reference to the words "in Canada" in subparagraph (a)(i), and without reference to paragraph (b).

Analysis and conclusion

[9] In *Bracken v. Minister of National Revenue*, 84 DTC 1813 (T.C.C.), Chief Judge Christie (as he then was) established four conditions that a taxpayer must meet in order to qualify for a deduction for moving expenses under subsection 62(1). On page 1819, Chief Judge Christie stated the following:

My reading of subsection 62(1) is that it contemplates the existence of four separate elements: old work location, new work location, old residence and new residence, and the comparison of two distances, i.e. the distance from the old residence to the new work location with the distance from the new residence to the new work location the former of which must exceed the latter by 40 or more kilometres in order for the moving expenses to be deductible. . . .

[10] In the case law subsequent to *Bracken* there is a disagreement on the correctness of this interpretation (see, for example, *Templeton v. Canada*, [1997] F.C.J. No. 396 (F.C.T.D.) (QL) and *Gelinas v. The Queen*, 2009 DTC 479, but agreement with the approach set forth in *Bracken* (see, for example, *Grill v. Canada*, 2009 TCC 5 (informal procedure) and *Jaggers v. Canada*, [1997] T.C.J. No. 477 (QL).

[11] *Giannakopoulos v. M.N.R.*, [1995] 3 F.C. 294 (F.C.A.), is the only case in which the Federal Court of Appeal has considered the deduction of moving expenses under subsection 62(1). At page 297, Justice Marceau stated:

Subsection 62(1) permits a taxpayer to deduct moving expenses when he moves closer to a new workplace. An employee must live within a reasonable distance of his work. When he accepts a new position, the employee may have to move in order to remain within a practical commuting distance of his job. Subsection 62(1) recognizes that relocation is a legitimate work-related expense. In order to prevent

the provision from being invoked when a taxpayer simply desires a change in residence, the provision requires that the move bring the taxpayer at least forty kilometres closer to work. . . .

In that case, the "straight line" or "as the crow flies" approach was repudiated by the Federal Court of Appeal. I would add that in so doing the Federal Court of Appeal did not cast any doubt upon the correctness of the approach set forth in *Bracken*.

[12] I agree with Chief Judge Christie's interpretation of subsection 62(1). It is clear from the wording of subparagraph 62(1)(c)(i) that a taxpayer is only entitled to deduct moving expenses from his or her employment and/or business income if he or she has relocated to a "*new work location*". The definition of the phrase "eligible relocation" in subsection 248(1) of the Act requires that the relocation have occurred "to enable the taxpayer . . . to carry on a business or to be employed at a location in Canada (in section 62 and . . . subsection [248(1)] referred to as "*the new work location*")". Therefore, the wording of the Act clearly contemplates, or requires, that there be a "*new work location*" in order for the taxpayer to qualify for the moving expense deduction.

[13] In the present case, the Appellant changed physical work locations (offices) to perform new duties (assigned by the same employer) within the same office complex at 255 Attwell Drive in Etobicoke, Ontario. So the question to be answered is the following: Does this constitute a move to a "new work location"? I am of the opinion that the term "new work location" means the actual business location, that is, the actual place, building or site at which the taxpayer is employed. Even if the phrase "new work location" is not to be interpreted rigidly, I cannot imagine that Parliament's intent was to permit a taxpayer who goes from a job on the seventh floor of a building to a new job (with the same employer) on the sixth floor of the same building to deduct moving expenses. In the present case, the Appellant did not meet the "new work location" requirement, consequently none of the moving expenses totalling \$26,087.90 claimed by the Appellant were deductible pursuant to subsection 62(1) of the Act in computing her income for the 2007 taxation year.

[14] For these reasons, the appeal is dismissed.

Signed at Montreal, Quebec, this 4th day of October 2010.

"Paul Bédard"

Bédard J.

CITATION: 2010 TCC 483

COURT FILE NO.: 2009-895(IT)I

STYLE OF CAUSE: LISA MORELAND v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Hamilton, Ontario

DATE OF HEARING: June 3, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice Paul Bédard

DATE OF JUDGMENT: October 4, 2010

APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Darren Prevost

COUNSEL OF RECORD:

For the Appellant:

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Firm:

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