Docket: 2008-4199(IT)I

BETWEEN:

MADELINE VINCENT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 12, 2011, at Timmins, Ontario

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Gordon Bourgard April Tate

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeal from the reassessment under the *Income Tax Act* of the Appellant's 2006 taxation year is dismissed.

Signed at Ottawa, Canada, this 20th day of September 2011.

"G.A. Sheridan"

Sheridan J.

Citation: 2011TCC430
Date: 20110920
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MADELINE VINCENT,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Sheridan J.

[1] The Appellant, Madeline Vincent, is appealing the reassessment by the Minister of National Revenue of her 2006 taxation year. Ms. Vincent is one of many employees of Native Leasing Services, a sole proprietorship operated by Roger Obonsawin. Mr. Obonsawin is a status Indian.

[2] In 2006, Native Leasing Services had its head office on the Six Nations of the Grand River Reserve in Ontario. Native Leasing Services employed status Indians who were placed in employment with businesses and organizations across Canada ("placement agencies"). Native Leasing Services deducted a fee for its placement services from the employees' wages. As the numerous cases dealing with the appeals of employees of Native Leasing Services show, the purpose of this arrangement was to permit the employees to claim an exemption from taxation in respect of their employment income under paragraph 87(1)(*b*) of the *Indian Act* and paragraph 81(1)(*a*) of the *Income Tax Act.* Unfortunately, many of the employees who agreed to be employed by Native Leasing Services had no understanding of this scheme or the law governing the taxability of their off-reserve income. As a result, many have since found themselves faced with an unexpected tax bill and without assistance from their one-time employer, Native Leasing Services.

[3] Ms. Vincent represented herself at the hearing of her appeal and was the only witness to testify on her behalf. Called for the Respondent were Cindy Bernard and Jack Solomon. In 2006, Ms. Bernard was the Financial Officer for Ininew Friendship Centre; Mr. Solomon was working as its Native Inmate Liaison Officer. He is now the Executive Director of the Ininew Friendship Centre. All of the witnesses were credible and there was no real conflict in their testimony.

[4] In 2006, Ms. Vincent was employed by Native Leasing Services and placed at the Ininew Friendship Centre which is located on non-reserve land in Cochrane, Ontario. There is no dispute that her employment income was the "personal property of an Indian" within the meaning of paragraph 87(1)(*b*) of the *Indian Act*. The only issue is whether there is a sufficient connection between Ms. Vincent's employment and a reserve for it to be considered "situated on a reserve" under that provision and thereby, tax exempt under paragraph 81(1)(*a*) of the *Income Tax Act*.

[5] That determination will depend on the particular facts of each case. The approach to be taken was set out by the Supreme Court of Canada decision in *Williams v. Canada*, [1992] 1 S.C.R. 877 at pages 899-900:

> In the context of the exemption from taxation in the *Indian Act*, there are three important considerations: the purpose of the exemption; the character of the property in question; and the incidence of taxation upon that property. Given the purpose of the exemption, the ultimate question is to what extent each factor is relevant in determining whether to tax a particular kind of property in a particular manner would erode the entitlement of an Indian *qua* Indian to personal property on the reserve.

[6] Briefly summarized, the connecting factors include the location of the employer; the location and nature of the employee's work, including any benefit accruing to a reserve because of it; and the place of residence of the employee[1].

[7] In the present case, Ms. Vincent lived on the New Post First Nation, a reserve about 30 minutes from Cochrane. Each day she drove to the Ininew Friendship Centre where she was employed as a pre- and post-natal care worker teaching healthy lifestyle skills to young Native mothers. Although from time to time an unspecified number of her clients may have been living on a reserve, for the most part, they were young Native women living off-reserve. Indeed, the evidence was that the mandate of the Ininew Friendship Centre was to provide "services that meet the identified needs of pre and postnatal moms and provides support to improve the health of

[1] *Shilling v. Minister of National Revenue* [2001] 4 F.C. 364.

Aboriginal mothers and their babies up to six months of age that live off-reserve"[2] [emphasis added].

[8] Ms. Vincent normally performed her work out of the Ininew Friendship Centre in Cochrane. Her duties included providing advice on fetal alcohol syndrome prevention, safe sex practices, nutrition and exercise. These programs were funded by Health Canada. She also made "at-home" visits and helped her clients learn grocery-shopping skills by taking them to stores in Cochrane. When her duties required her to make excursions around Cochrane and area, she was reimbursed by the Ininew Friendship Centre for her travel expenses.

[9] However, in addition to the programs she ran at the Ininew Friendship Centre, Ms. Vincent also occasionally conducted courses in the evenings at the health center located on the New Post First Nation. There was no formal agreement for the provision of Ms. Vincent's services between Native Leasing Services, the Ininew Friendship Centre and/or the New Post First Nation health center. Rather, it seems to have occurred on a casual basis, partly to accommodate the young Native women who were not able to attend the Ininew Friendship Centre during its normal working hours and partly, because Ms. Vincent lived on the reserve, for her own convenience. She did not receive any pay for her evening work but had an informal arrangement with the Ininew Friendship Centre whereby she could come in late the next day if she had had an evening course the night before. She was not reimbursed for her travel for any work she did on the New Post First Nation reserve.

[10] There are no stores or other commercial enterprises located on the New Post First Nation; Ms. Vincent freely acknowledged that none of her employment income would have been spent there.

[11] In all of these circumstances, the evidence does not support the conclusion that there was a sufficient connection between Ms. Vincent's work at the Ininew Friendship Centre and a reserve so as to render her income tax exempt. Although she and her employer were located on reserves, this does not outweigh the fact that the essence of her work was to provide services at an off-reserve location to Native women living off-reserve. Furthermore, I am not convinced that Ms. Vincent performed many of her Ininew Friendship Centre duties at the New Post First Nation reserve; to the extent she helped the young women there, it seems more likely it was done out of the goodness of her heart than as an employment obligation. None of her income made its way back to the New Post First Nation reserve.

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[2] Exhibit R-1.

[12] Ms. Vincent's only argument in response to the position taken by the Canada Revenue Agency was that she, as a status Indian as defined by the *Indian Act*, was simply not required to pay tax to the Government of Canada. This is not, however, a correct statement of the law. Having failed to meet her onus of showing her income was exempt from tax, Ms. Vincent can not succeed in her appeal. The appeal is dismissed.

Signed at Ottawa, Canada, this 20th day of September 2011.

"G.A. Sheridan"

Sheridan J.

CITATION:	2011TCC430
COURT FILE NO.:	2008-4199(IT)I
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DATE OF JUDGMENT:	September 20, 2011

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Gordon Bourgard April Tate

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:	Myles J. Kirvan Deputy Attorney General of Canada Ottawa, Canada