

Docket: 2011-643(IT)I

BETWEEN:

LAIRD STEVENS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on March 21, 2012, at Montreal, Quebec.

Before: The Honourable Justice R  al Favreau

Appearances:

Agents for the Appellant: Guillaume Lavoie (student-at-law)
Jean-Fran  ois Perrouy (student-at-law)

Counsel for the Respondent: Amelia Fink

JUDGMENT

The appeals from the reassessments dated January 13, 2011 made under the *Income Tax Act* for the 2007 and 2008 taxation years are dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 25th day of September 2012.

"R  al Favreau"

Favreau J.

Citation: 2012 TCC 312
Date: 20120925
Docket: 2011-643(IT)I

BETWEEN:

LAIRD STEVENS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Favreau J.

[1] These are appeals under the informal procedure concerning the 2007 and 2008 taxation years.

[2] The points at issue are whether the Minister of National Revenue (the “Minister”) was justified in denying the deduction of the following expenses:

	<u>2007</u>	<u>2008</u>
Delivery (couriers and taxi)	\$ 869.00	\$1,075.00
Meals	\$ 500.00	\$ 500.00
Entertainment	\$ 583.22	\$ 693.11
Travel	\$15,418.98 (reduced to \$14,327.58 at hearing)	Nil

[3] During the 2007 and 2008 taxation years, the appellant was a part-time professor of English at Concordia University in Montreal and carried on professional activities as a writer.

[4] In his 2007 tax return, the appellant reported a loss from professional activities in the amount of \$21,368, which loss was claimed against a gross professional income of \$667.

[5] In his 2008 tax return, the appellant reported a loss from professional activities in the amount of \$5,699, which loss was claimed against a gross professional income of \$702.

[6] The appellant testified at the hearing and described himself as being a writer, musician and philosopher. In 2010, he published a novel called *The Death Fairy* and, in 2011, he published a book for children aged 3 to 8 called *Millie the Mouth*. From 2002 to 2007, he worked on a novel entitled *Paradise Lost*, which was still unpublished at the time of the hearing.

[7] Concerning his claim for travel expenses incurred in 2007, the appellant explained that the claim was in respect of a 30-day stay in Paris, France, and a 7-day stay in London, England. The appellant was accompanied by his spouse, his mother-in-law and his three-year-old son. The details of the travel expenses (as revised during the audit) were as follows:

Travel (revised)

Paris and England

Paris

Return airfare	\$	1,192.04
Accommodation**	\$	10,272.00
Per diem (30 days)	\$	<u>3,000.00</u>
Total	\$	14,464.04

England

Return airfare	\$	254.94
Accommodation	\$	0
Per diem (7 days)	\$	<u>700.00</u>
Total	\$	954.94

<u>Paris and England</u>	\$	14,464.04
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	\$	<u>954.94</u>
Grand total	\$	15,418.98
		(up from \$15,116.98)

** Accommodation includes:

Rent	4,800 euros
Agency fee	1,476 euros
Compulsory insurance	<u>144 euros</u>
Total	6,420 euros

Conversion to Canadian dollars	<u>x 1.6</u>
Total in Canadian dollars	\$ 10,272
	(reduced to \$9,180.60 at the hearing)

[8] The appellant explained that the purpose of his stay in Paris was to conduct research for his book *Paradise Lost* in which part of the action takes place in Paris. The appellant referred the Court to some excerpts from the book containing local descriptions. The appellant pointed out that the main research for the book was done in 2001 and that he returned to Paris every year from 2007 to 2011. No travel expenses were claimed by the appellant for the 2008 trip.

[9] His accommodation in Paris was a three-bedroom apartment with a kitchen located in the Latin Quarter (5th arrondissement) near the 6th arrondissement. The appellant found the accommodation by consulting the Michelin Guide; he considered that it was cheaper to rent an apartment than to rent a hotel room. The agency fee represented 30% of the amount of the rent and the per diem claimed was \$100.

[10] The appellant explained that the purpose of his stay in London was to show his ex-spouse the manuscript of his book. His ex-spouse, a former editor, took the week off to read his manuscript. During that week, the appellant and his family stayed at his ex-spouse's house and no accommodation expenses were claimed. The appellant claimed a per diem of \$100 and he paid the meals of his ex-spouse for that week. The appellant stated that he made changes to the wording of his manuscript as a result of his ex-spouse's review of it.

[11] Concerning his claims for delivery expenses incurred in 2007 and 2008, the appellant explained that he did not own a car and that he did not have a driver's

licence. Usually, he used a bus pass to go to downtown Montreal, but the days on which he taught at Concordia (Mondays and Wednesdays from 8 p.m. to 10 p.m.), he took a taxi in order to be able to work at the Concordia library before teaching. His work at the Concordia library consisted in rewriting his book *Paradise Lost* which took him five years to write and is 650 pages long. The appellant also said that he occasionally took a taxi to visit bookstores to see what was available there, and that is apparently why he wrote *Millie the Mouth*. The appellant acknowledged that none of his taxi receipts indicated either the starting point or the destination of the trip. The appellant referred to the fact that, in the 2002 and 2004 audits, all his taxi receipts were accepted by the Canada Revenue Agency (“CRA”).

[12] Concerning his claims for meal expenses incurred in 2007 and 2008, the appellant explained that the meals in question were taken with his spouse and his son so that they could discuss the philosophical content and the illustrations of his book *Millie the Mouth*. Meal expenses totalling \$500 per year were accepted by the CRA in a previous audit.

[13] Concerning his claims for entertainment expenses incurred in 2007 and 2008, the appellant explained that the expenses were for music CDs because he likes listening to music, mainly piano, when he writes, and for children's films because he intended to write a script for a movie and a cartoon series.

[14] In cross-examination, the appellant confirmed that his book *Paradise Lost* was finished during spring break in 2007.

[15] Mr. Serge Martin, an appeals officer with the CRA, testified at the hearing. He explained that, at the objection stage, the appellant had provided only a general description of the amounts of the various expenses claimed. No receipts were submitted by the appellant to the CRA even though the auditor had questioned whether the expenses claimed were business expenses. At a meeting with the appellant held on October 29, 2010, Mr. Martin asked him to provide the receipts so that it could be determined whether the expenses claimed were incurred for personal or for business purposes. In a letter dated November 9, 2010, the appellant refused to provide the receipts to the CRA. Despite the fact that the appellant's activities did not generate any profit, Mr. Martin accepted the activities of the appellant as being of a commercial nature on the basis of Interpretation Bulletin IT-504R2 and he allowed a deduction of \$871.00 for 2007 and \$2,443.00 for 2008 for professional expenses. The receipts for the expenses claimed were finally submitted to the CRA by the agents of the appellant shortly before the hearing of the case.

Position of the Appellant

[16] The appellant's agents submitted that the trip to Paris and London was not a vacation trip. The purpose of the Paris portion of the trip was to do research for *Paradise Lost* because he had decided to rewrite the two chapters in the novel that concerned Paris. The appellant is a very meticulous person and his book had to be exact and authentic. In making the trip, the appellant was meeting a professional obligation. The purpose of the London portion of the trip was the revision of his manuscript by a former editor.

[17] Concerning the delivery expenses (couriers and taxi), it was submitted that those expenses were incurred by the appellant in order to do research for his book at Concordia University, to check out the competition by seeing what was being offered by bookstores, and to work with his spouse on the illustration of his book.

[18] As far as the entertainment expenses were concerned, it was submitted that music was important and useful for the writing of the appellant's books. The children's DVDs were not exclusively for personal purposes.

[19] Concerning the meal expenses, it was submitted that they were incurred to meet other authors and members of the writers' association and to discuss ideas with his spouse and son for the illustration of his books.

[20] The appellant's agents also raised the issue of the reasonableness of the expenses claimed and referred specifically to the \$100 per diem for the Paris/London trip, to the 160 euros per day for board and lodging in Paris, and to the \$500 claim for meals. It was also mentioned that the appellant did not claim any deductions for the trips to Paris made in subsequent taxation years.

Position of the Respondent

[21] Counsel for the respondent submitted that the Minister was justified in refusing the deduction of the delivery, courier and taxi expenses and the meal, entertainment and travel expenses in accordance with paragraphs 18(1)(a) and 18(1)(h) of the *Act* as those expenses were not supported by any valid receipt and were incurred for personal purposes and were not related to the earning of income from the appellant's business in the 2007 and 2008 taxation years.

[22] Alternatively, counsel for the respondent submitted that (i) should the Court find the meal and entertainment expenses to be deductible, the appellant should only

be allowed the amounts provided for in sections 67 and 67.1 of the *Income Tax Act* (the "*Act*") and, (ii) should the Court find that the travel expenses were incurred in relation to the business of the appellant, they would be capital outlays and, pursuant to paragraph 18(1)(b) of the *Act*, not deductible.

Analysis

[23] Paragraphs 18(1)(a), 18(1)(b) and 18(1)(h), section 67, subsection 67.1(1) and the definition of "personal or living expenses" in subsection 248(1) of the *Act* read as follows:

Section 18

(1) **General limitations.** In computing the income of a taxpayer from a business or property no deduction shall be made in respect of

(a) **General limitation** — an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property;

(b) **Capital outlay or loss** — an outlay, loss or replacement of capital, a payment on account of capital or an allowance in respect of depreciation, obsolescence or depletion except as expressly permitted by this Part;

...

(h) **Personal and living expenses** — personal or living expenses of the taxpayer, other than travel expenses incurred by the taxpayer while away from home in the course of carrying on the taxpayer's business;

Section 67 General limitation re expenses.

In computing income, no deduction shall be made in respect of an outlay or expense in respect of which any amount is otherwise deductible under this Act, except to the extent that the outlay or expense was reasonable in the circumstances.

Section 67.1(1) Expenses for food, etc. Subject to subsection (1.1), for the purposes of this Act, other than sections 62, 63, 118.01 and 118.2, an amount paid or payable in respect of the human consumption of food or beverages or the enjoyment of entertainment is deemed to be 50 per cent of the lesser of

(a) the amount actually paid or payable in respect thereof, and

(b) an amount in respect thereof that would be reasonable in the circumstances.

Section 248

(1) **Definitions.** In this Act,

“*personal or living expenses*” — “personal or living expenses” includes

(a) the expenses of properties maintained by any person for the use or benefit of the taxpayer or any person connected with the taxpayer by blood relationship, marriage or common-law partnership or adoption, and not maintained in connection with a business carried on for profit or with a reasonable expectation of profit,

(b) the expenses, premiums or other costs of a policy of insurance, annuity contract or other like contract if the proceeds of the policy or contract are payable to or for the benefit of the taxpayer or a person connected with the taxpayer by blood relationship, marriage or common-law partnership or adoption, and

(c) expenses of properties maintained by an estate or trust for the benefit of the taxpayer as one of the beneficiaries.

[24] What is at issue in this appeal is not the existence of a source of income but the relationship between the expenses and the source to which they are purported to relate. Paragraph 18(1)(a) requires that the expenses be incurred for the purpose of gaining or producing income from a business of the taxpayer, and paragraph 18(1)(h) specifically disallows the deduction of personal or living expenses. In *Stewart v. Canada*, 2002 SCC 46, [2002] 2 S.C.R. 645, the Supreme Court of Canada made a clear distinction between the existence of a source of income and the deductibility of expenses in the following terms at paragraph 57:

. . . The fact that an expense is found to be a personal or living expense does not affect the characterization of the source of income to which the taxpayer attempts to allocate the expense, it simply means that the expense cannot be attributed to the source of income in question. As well, if, in the circumstances, the expense is unreasonable in relation to the source of income, then s. 67 of the Act provides a mechanism to reduce or eliminate the amount of the expense. Again, however, excessive or unreasonable expenses have no bearing on the characterization of a particular activity as a source of income.

[25] In *Symes v. Canada*, [1993] 4 S.C.R. 695, at page 736, Iacobucci J. made the following comment concerning the Courts' standpoint when called upon to consider the deductibility of expenses:

As in other areas of law where purpose or intention behind actions is to be ascertained, it must not be supposed that in responding to this question, courts will be guided only by a taxpayer's statements, *ex post facto* or otherwise, as to the subjective purpose of a particular expenditure. Courts will, instead, look for objective manifestations of purpose, and purpose is ultimately a question of fact to be decided with due regard for all of the circumstances. For these reasons, it is not possible to set forth a fixed list of circumstances which will tend to prove objectively an income gaining or producing purpose. . . .

[26] Most of the expenses claimed by the appellant in the present case could be described as “borderline” because they have a significant personal component and an economic benefit was received by members of the appellant’s family.

Travel Expenses

[27] The travel expenses in this case are not expenses incurred to produce income from a business or property but are, rather, personal or living expenses. The business component of the trip appears to have been only incidental to what was, in essence, a personal trip.

[28] The reservation of the accommodation in Paris was made on October 23, 2006. At that time, the novel was supposedly finished according to the following extract from the appellant’s notice of objection for the 2007 and 2008 taxation years:

Why was I in Paris, and why was I claiming this as an expense? In 1998, I visited Paris for the first time since I had lived there as a boy. It was there I had an idea for a novel. I did not begin actually writing the novel until 2002 and did not finish until 2006. However, I went back there in both 2001 and 2004 to do research for the novel. Then in 2007, I decided that I needed to rewrite the two chapters in the novel that concerned Paris, and so went back again to do yet more research. (The novel is called *Paradise Lost*. It is divided up into six chapters of about one hundred pages each.)

[29] During that trip to Paris and London, the appellant was accompanied by his spouse, his son and his mother-in-law. The appellant regularly made trips to Paris both before and after the 2007 trip. The appellant spent 30 days in Paris on that trip, which is a long and expensive stay for a business trip.

[30] Concerning the London portion of the trip, I am not convinced that the appellant had to be present with his ex-spouse while she was reading his manuscript. Here again, the business component of the London trip appears to have been only incidental to what was in essence a social trip.

[31] In *Henrie v. The Queen*, 2009 TCC 356, a case similar to the present case, I came to the conclusion, at paragraph 10, that the travel expenses incurred by the appellant (a writer) seemed to have been directed towards creating the ability to generate income by providing inspiration for new books, rather than towards generating additional income. The travel expenses were considered to be capital outlays, the deduction of which was prohibited by paragraph 18(1)(b) of the *Act*. The same reasoning applies in the present case.

[32] It is appropriate in this context to refer to the “once and for all test” adopted by Viscount Cave LC in *British Insulated and Helsby Cables v. Atherton*, [1926] A.C. 205 at pages 213-214:

. . . when an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, I think that there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital. . . .

[33] This test was subsequently referred to by the Supreme Court of Canada in *Johns-Manville Canada Inc. v. The Queen*, [1985] 2 S.C.R. 46 at pages 60-61.

[34] The book *Paradise Lost* was still unpublished at the time of the hearing of the case. The writing of a book like *Paradise Lost* requires a long-term investment in terms of time and money, and the expenses incurred by a writer in writing a book are generally considered to bring into existence an asset or an advantage for the enduring benefit of a trade.

[35] In this case, as in the *Henrie* case cited above, there is no cause and effect relationship between the expenses incurred and the income generated by those expenses. The travel expenses claimed for 2007 are clearly unreasonable considering the gross professional income of \$667 earned by the appellant in 2007. In the circumstances, the deduction of travel expenses claimed in the appellant’s calculation of income for his 2007 taxation year is prohibited under section 67 of the *Act*.

Delivery Expenses

[36] In *Daniels v. The Queen*, 2004 FCA 125, the Federal Court of Appeal clearly stated that travel expenses incurred by a taxpayer in travelling to and from his home

to his place of work are considered personal expenses. At paragraph 7, Desjardins J.A. said:

[7] It is well established that travel expenses incurred by a taxpayer in travelling to and from his home to his place of work are considered personal expenses. They are not travelling costs encountered in the course of the taxpayer's duties. Rather, they enable him to perform them

[37] The evidence in the present case was that the appellant did not have an office at Concordia University from which he could perform his duties on a regular basis. The explanation given by the appellant that, on the days when he taught, he took a taxi to Concordia University in order to be able to work on his book before teaching is not sufficient to establish that the expenses were incurred exclusively for business purposes. They were not for travel from one place of work to the other and were not incurred by the appellant in the performance of the duties of his office.

[38] The travelling expenses incurred by the appellant are also not allowed because the taxi receipts are deficient in that they show neither the starting point nor the destination of the trips.

Meals

[39] The cost of meals should be treated as a personal expense given that this is an expense that would have been incurred in any event. Almost all, if not all of the meals were taken by the appellant with his spouse and son. The fact that, during such informal gatherings, some time was devoted to a discussion of work matters, such as the illustration of a book, is not a sufficient reason to allow the deduction of the costs in question for tax purposes.

[40] The appellant's spouse did not testify at the hearing. She could have added evidence relevant to the disputed facts by confirming the principal purpose of the aforementioned gatherings. The appellant failed to adduce that evidence and an adverse inference should be drawn against him in that regard.

Entertainment Expenses

[41] I have concluded that the entertainment expenses claimed by the appellant are personal and living expenses as they were incurred for the personal enjoyment of the appellant. The evidence was not sufficient to permit a determination that they were incurred exclusively for business purposes.

Conclusion

The appeals from the reassessments dated January 13, 2011 for the 2007 and 2008 taxation years are therefore dismissed.

Signed at Ottawa, Canada, this 25th day of September 2012.

"Réal Favreau"

Favreau J.

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REASONS FOR JUDGMENT BY: The Honourable Justice R  al Favreau
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APPEARANCES:

Agents for the Appellant: Guillaume Lavoie (Student-at-law)
Jean-Fran  ois Perrouty (Student-at-law)

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