Docket: 2016-1692(IT)G

BETWEEN:

MINI ENTREPÔT LONGUEUIL INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on March 26, 2018, at Montreal, Quebec.

Before: The Honourable Justice Dominique Lafleur

Appearances:
Counsel for the Appellant: Jacques Trudeau

Counsel for the Respondent: Julien Dubé-Senécal

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* (the "Act") for the taxation year ending April 30, 2012, is allowed, without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the terms of the consent given by the respondent at the beginning of the hearing on March 26, 2018.

The appeal from the reassessments made under the Act for the taxation years ending April 30, 2013, and April 30, 2014, is dismissed, with costs in favour of the respondent, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 30th day of May 2018.

"Dominique Lafleur"

Lafleur J.

Translation certified true
on this 6th day of April 2020.

Janine Anderson, Revisor

Citation: 2018 TCC 106
Date: 20180530
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REASONS FOR JUDGMENT

Lafleur J.

I. BACKGROUND

[1] Mini Entrepôt Longueuil Inc. (the "Corporation" or the "appellant") is appealing the reassessments made by the Minister of National Revenue (the "Minister") under the *Income Tax Act* (R.S.C. 1985, c. 1 (5th Supp.), as amended) (the "Act") for the Corporation's taxation years ending April 30, 2012, April 30, 2013, and April 30, 2014, notices of which are dated October 28, 2014. Under these reassessments, the Minister disallowed the small business deduction (the "SBD") claimed by the Corporation pursuant to subsection 125(1) of the Act in the amount of $23,750, $28,974 and $39,335, respectively, on the ground that the business carried on by the Corporation was a specified investment business within the meaning of subsection 125(7) of the Act and, as a result, the Corporation could not benefit from the SBD.

[2] At the beginning of the hearing, the respondent informed the Court that the respondent consented to the Court rendering a judgment to the effect that the Corporation was entitled to the SBD for the taxation year ending April 30, 2012, on the ground that the Corporation's income for that taxation year was from an active business and not from a specified investment business.

[3] Consequently, the dispute before the Court concerns only the Corporation's taxation years ending April 30, 2013, and April 30, 2014 (the "years at issue").

[4] The Corporation is of the opinion that it is entitled to the SBD on the income from its self-storage unit rental business because it employed in its business throughout the years at issue more than five full-time employees. Consequently, the business that it carries on is considered an active business and not a specified investment business because the conditions set out in paragraph (a) of the definition of that term have been met.

[5] According to the Minister, because the Corporation did not employ in its business throughout the years at issue more than five full-time employees, the business carried on by the Corporation is considered a specified investment business. Consequently, the Corporation cannot claim the SBD in respect of the income from the business for the years at issue.

II. RELEVANT STATUTORY PROVISIONS

[6] The relevant provisions of the Act read as follows:

125(1) Small business deduction — There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was, throughout the taxation year, a Canadian-controlled private corporation, an amount equal to the corporation's small business deduction rate for the taxation year multiplied by the least of

(*a*) the amount, if any, by which the total of

(i) the total of all amounts each of which is the amount of income of the corporation for the year from an active business carried on in Canada, other than an amount that is

. . .

(7) Definitions — In this section,

active business carried on by a corporation means any business

125(1) Déduction accordée aux petites entreprises — La société qui est tout au long d'une année d'imposition une société privée sous contrôle canadien peut déduire de son impôt payable par ailleurs pour l'année en vertu de la présente partie une somme égale au produit de la multiplication du taux de la déduction pour petite entreprise qui lui est applicable pour l'année par la moins élevée des sommes suivantes :

a) l'excédent éventuel du total des montants suivants :

i) le total des sommes dont chacune est le montant de revenu de la société pour l'année provenant d'une entreprise exploitée activement au Canada, sauf l'une des sommes suivantes :

carried on by the corporation other than a specified investment business or a personal services business and includes an adventure or concern in the nature of trade; (*entreprise exploitée activement*)

. . .

specified investment business, carried on by a corporation in a taxation year, means a business (other than a business carried on by a credit union or a business of leasing property other than real or immovable property) the principal purpose of which is to derive income (including interest, dividends, rents and royalties) from property but, except where the corporation was a prescribed labour-sponsored venture capital corporation at any time in the year, does not include a business carried on by the corporation in the year where

(*a*) the corporation employs in the business throughout the year more than 5 full-time employees, or

(*b*) any other corporation associated with the corporation provides, in the course of carrying on an active business, managerial, administrative, financial, maintenance or other similar services to the corporation in the year and the corporation could reasonably be expected to require more than 5 full-time employees if those services had not been provided; (*entreprise de placement déterminée*)

. . .

. . .

(7) Définitions — Les définitions qui suivent s'appliquent au présent article.

. . .

entreprise de placement déterminée Entreprise, sauf une entreprise exploitée par une caisse de crédit ou une entreprise de location de biens autres que des biens immeubles ou réels, dont le but principal est de tirer un revenu de biens, notamment des intérêts, des dividendes, des loyers et des redevances. Toutefois, sauf dans le cas où la société est une société à capital de risque de travailleurs visée par règlement au cours de l'année, l'entreprise exploitée par une société au cours d'une année d'imposition n'est pas une entreprise [de placement] déterminée si, selon le cas :

a) la société emploie dans l'entreprise plus de cinq employés à plein temps tout au long de l'année;

b) une autre société associée à la société lui fournit au cours de l'année, dans le cadre de l'exploitation active d'une entreprise, des services de gestion ou d'administration, des services financiers, des services d'entretien ou d'autres services semblables et il est raisonnable de considérer que la société aurait eu besoin de plus de cinq employés à plein temps si ces services ne lui avaient pas été fournis. (*specified investment business*)

. . .

entreprise exploitée activement Toute entreprise exploitée par une société, autre qu'une entreprise de

> placement déterminée ou une entreprise de prestation de services personnels mais y compris un projet comportant un risque ou une affaire de caractère commercial. (*active business carried on by a corporation*)
>
> . . .

[Emphasis added.]

[7] In these reasons, any reference to statutory provisions are references to the Act, unless otherwise indicated.

III. THE ISSUE

[8] In this case, it is not in dispute that the principal purpose of the business carried on by the Corporation during the years at issue was to derive income from property in the form of rent collected for the rental of storage spaces. The only issue before this Court is whether the Corporation employed in its business throughout the years at issue more than five full-time employees. If the Court finds that that was the case, the Corporation will be able to claim the SBD on the income from the business because the income will be considered as being from an active business. However, if the Court finds that the Corporation did not employ in its business throughout the years at issue more than five full-time employees, the Corporation's business will be considered a specified investment business and, consequently, the Corporation will not be able to claim the SBD on that income.

IV. THE FACTS

[9] At the hearing, only Denis Bienvenue, the Corporation's sole shareholder and director, testified. Mr. Bienvenue testified that, during the years at issue, the Corporation employed from 10 to 15 people, all of whom were between the ages of 60 and 65. Those employees, most of whom were receiving pension income, worked for the Corporation to supplement their income. According to Mr. Bienvenue, those individuals did not want to work 40 hours per week. Thus, the Corporation employed them for 20 to 30 hours per week, on average. Mr. Bienvenue also gave the example of an employee who worked about 25 hours per week because she had to take care of her sick mother.

[10] Mr. Bienvenue testified that he was flexible with respect to the working hours of the Corporation's employees. He testified that the Corporation employed three, four or five people per year and that they worked 30 hours or more per week, not including the controller, who worked 30 hours per week, as well as himself, who worked more than 30 hours per week.

[11] Copies of the payroll records for the years at issue were filed at the hearing as exhibits A-1 and A-2. The appellant and the respondent also jointly filed tables prepared by the respondent, marked as Exhibit I-2 (taxation year ending April 30, 2013, "Table 2013") and Exhibit I-3 (taxation year ending April 30, 2014, "Table 2014"), which summarize the information in the payroll records and show the number of hours worked and paid for each employee of the Corporation for each month of the years at issue. The tables indicate that about 12,000 hours were worked and paid to the employees during each of the years at issue.

[12] Mr. Bienvenue explained to the Court that during January, February, March and April 2013, he worked approximately 35 hours per week for the Corporation, whereas Table 2013 indicates that he was not paid for any hours of work during those four months. In fact, he received dividends instead of salary for that period.

V. POSITIONS OF THE PARTIES

1. *Appellant's position*

[13] According to the appellant, the purpose of section 125 is to allow corporations that are sufficiently active to claim the SBD. The respondent proposes a strict interpretation of the exception found in paragraph (a) of the definition of the term "specified investment business".

[14] It would be unfair to disallow the Corporation's SBD because of the choice it made to offer jobs to a greater number of people who would work fewer hours per week. In this case, considering the number of hours worked by the Corporation's employees, that is, an average of 12,000 hours per year, it is clear that the Corporation is not inactive. Furthermore, the number of hours is much higher than the number of hours equivalent to the work of five employees working 30 hours per week for 52 weeks, that is, 7,800 hours. In this regard, the appellant points out that the criterion that an employee must work at least 30 hours per week to be considered a full-time employee has not been discussed in the case law and merely reflects the administrative position of the Canada Revenue Agency (the "CRA").

[15] According to the appellant, the notions of full-time work and part-time work must be defined in comparison with other employees within the same entity, which is consistent with the recommendations of the International Labour Organization ("ILO") and the decision in *Ben Raedarc Holdings Ltd v. The Queen*, 1997 CanLII 176 (TCC).

[16] Lastly, the appellant draws this Court's attention to other provisions of the Act in which the words "full-time" can be found, such as the tuition tax credit provision (paragraph 118.5(1)(b)) and the medical expense credit provision (paragraph 118.2(2)(b)), and submits that the same interpretation of the words "full-time" must be followed for the purposes of the SBD.

2. *Respondent's position*

[17] Given the object of the provision of the Act, which is "to ensure that the business of a corporation that invested in rental properties would not be considered 'active' unless there was sufficient activity in the corporation's business to justify the employment of over five full-time employees" (*Lerric Investments Corp v. The Queen*, 1999 CanLII 396 (TCC) at paragraph 24 [*Lerric*]), and the case law, according to which the number of part-time employees cannot be counted when determining the total number of full-time employees (*Lerric*, *supra*, paragraph 16 and *Huntly Investments Limited v. The Queen*, 2017 TCC 255, at paragraph 64 [*Huntly*]), the respondent submits that the Corporation did not employ in its business throughout the years at issue more than five full-time employees. According to the respondent, this is very clear from Table 2013 and Table 2014.

[18] Furthermore, since the Minister assumes that [TRANSLATION] "employment is full-time when the number of hours worked per week is higher than or equal to 30 hours" and this assumption of fact was not demolished by the appellant, the Court must therefore assume this fact and conclude that this number is to be taken into account in determining whether the Corporation's business had more than five full-time employees.

[19] In addition, according to the respondent, the case law seems to indicate that 29 hours per week is full-time employment (*Town Properties Ltd v. The Queen*, 2004 TCC 375 at paragraph 6, doctrine confirmed on appeal in *Baker v. Canada*, 2005 FCA 185, [2005] FCJ No. 901 (QL) [*Baker*]).

VI. <u>DISCUSSION</u>

1. *Minister's assumptions*

[20] Before an analysis is undertaken, the Court wants to specify that it unequivocally rejects the respondent's argument that given that the appellant did not demolish the Minister's assumption that [TRANSLATION] "employment is full-time when the number of hours worked per week is higher than or equal to 30 hours", the Court must accept this fact and conclude that employment is full-time if the number of hours worked per week is higher than or equal to 30.

[21] This assumption is not an assumption of fact but is instead a conclusion of law that has no place in the recitation of the factual assumptions on which the Minister relied in issuing the assessment. The question of what constitutes full-time employment is one that this Court must answer. In the present appeal, this Court must determine whether the appellant employed in its business throughout the years at issue more than five full-time employees.

[22] The Federal Court of Appeal's comments in *Canada v. Anchor Pointe Energy Ltd.*, 2003 FCA 294, [2003] FCJ No. 1045 (QL), are clear:

> 25 I agree that legal statements or conclusions have no place in the recitation of the Minister's factual assumptions. The implication is that the taxpayer has the onus of demolishing the legal statement or conclusion and, of course, that is not correct. The legal test to be applied is not subject to proof by the parties as if it was a fact. The parties are to make their arguments as to the legal test, but it is the Court that has the ultimate obligation of ruling on questions of law.

2. *The SBD – generalities/purpose of the SBD*

[23] Section 125 contains the relevant provisions in this case. More specifically, subsection 125(1) defines the rules for calculating the SBD. The definitions of the various terms found in section 125 are provided in subsection 125(7).

[24] The SBD rate applies only to a corporation's income from an "active business". The definition of an "active business" excludes a "specified investment business", i.e. a business that has the principal purpose of deriving income from property except where the corporation employs in the business throughout the year more than five full-time employees. Therefore, if the Court finds that the appellant is carrying on a specified investment business, it is not entitled to the SBD on the income from that business.

[25] In *Lerric*, *supra*, Bowman J., who had to determine whether the appellant employed in its business more than five full-time employees and whether it was therefore entitled to the SBD, stated the following about the purpose of the SBD:

> [23] What, then, is the statute aiming at? The concept of specified investment business seems to have been a response to certain decisions of the courts which treated virtually any commercial activity of a corporation, however passive, even where it was carried under contract by independent contractors who were not employees, as an active business (see, for example, *The Queen v. Cadboro Bay Holdings Ltd.*, 77 DTC 5115 (F.C.T.D.); *The Queen v. Rockmore Investments Ltd.*, 76 DTC 6157; *E.S.G. Holdings Limited v. The Queen*, 76 DTC 6158; *The Queen v. M.R.T. Investments Ltd.*, 76 DTC 6158).
>
> [24] The result was the introduction of the concept of specified investment business the purpose of which [*sic*] to ensure that "active" meant truly active and that the word not be, in effect, judicially written out of the *Act*. Therefore the object of the new legislation was to ensure that the business of a corporation that invested in rental properties would not be considered "active" unless there was sufficient activity in the corporation's business to justify the employment of over five full-time employees.

[26] In *Lerric Investments Corp. v. Canada*, 2001 FCA 14, [2001] FCJ No. 239 (QL), the Federal Court of Appeal approved Bowman J.'s statement (paragraph 6) and added the following:

> [9] Section 125 distinguishes between active and inactive corporations, only the former being eligible for the small business deduction. Ordinarily, a business whose income is primarily derived from property is treated as inactive and therefore ineligible for the deduction. Subparagraph 125(7)(*e*)(i) provides an exception to this rule and allows the small business deduction to a corporation that derives income from property where that corporation is sufficiently active -- employment being the indicia of activity. As Bowman J.T.C.C. explained, the requirement that the corporation employ more than five full-time employees simply operates as a test to ensure that a corporation is sufficiently active such that it should qualify for the deduction.

[27] In *Baker*, *supra*, the Federal Court of Appeal reiterated this approval (paragraph 11).

[28] Thus, employing more than five full-time employees throughout the taxation year is the minimum operational threshold Parliament requires for a corporation carrying on a business that has the principal purpose of deriving income from property to be able to benefit from the SBD on that income.

3. *Specified investment business – employment of more than five full-time employees throughout the year*

i) Principles established in the case law

[29] According to the case law, a corporation satisfies the test of employing "more than 5 full-time employees" if it employs five full-time employees and one part-time employee (*489599 B.C. Ltd. v. The Queen*, 2008 TCC 332 at paragraphs 17 and 18 [*489599 B.C. Ltd.*]). However, in determining the total number of full-time employees, the number of part-time employees cannot be taken into account (*Lerric*, *supra*, at paragraph 16). Therefore, employing many part-time employees cannot satisfy the obligation of employing five full-time employees (*489599 B.C. Ltd.*, *supra*, at paragraph 16).

[30] The courts have consistently held that a corporation cannot add up part-time employees to equate to full-time employees. Recently, in *Huntly*, *supra*, at paragraph 64, Paris J. made the following observation:

> [64] . . . However, it is clear that in reaching five full-time employees, part-time employees could not be counted or added up to constitute full-time *Lerric Investments Corp v. The Queen*, [1999] 2 CTC 2714.

[31] In *Baker*, *supra*, the Federal Court of Appeal clarified the notion of full-time employment for the purposes of the SBD and concluded that this notion is in contradistinction to the notion of part-time employment; in addition, it specified that the threshold of at least five full-time employees does not apply in an inconsistent and subjective manner or depending on the industry or the region where the activities take place. In that case, the Federal Court of Appeal concluded that employment requiring 20 hours of work per week did not constitute full-time employment:

> [13] Defining "full-time employment" to be equivalent to the standard number of hours worked in an industry and area where the activities take place as proposed in *Ben Raedarc*, *supra*, is inconsistent with the scheme which is to ensure that a certain minimum level of activity exists in a corporation prior to allowing it the small business deduction. Such a test would lead to differing criteria for "full-time employment" between industries and regions. Section 125 would thus be applied in an inconsistent and subjective manner, violating the principle that similarly situated taxpayers should be taxed equally.
>
> [14] In my view, the conclusion by Muldoon J. in *Hughes and Co.*, *supra*, at page 6517, that the term "full-time" employment in the definition of "specified

> investment business" is used in contra-distinction with "part-time" employment, is correct. This distinction reflects the broad consideration which Parliament had in mind when it provided for a minimum of five full-time employment throughout the year. Only full-time employment, as opposed to part-time employment, qualifies.
>
> [15] While Town Properties employees worked five days a week, and to that extent were regularly employed, they did not work the normal working hours of each day, week and month. Indeed, their schedule of four hours per day allowed them to pursue more than one job with relative ease.
>
> [16] Counsel for the appellants pointed out that it is difficult to equate the normal working hours of each day with a precise number of hours. He suggested that a range of hours best identifies the number of hours which come within that description. It may be that a narrow range is appropriate. However, this is not the case to deal with this as regardless of the approach, four hours a day falls short of the normal working hours of each day.
>
> [Emphasis added.]

[32] After analyzing the applicable case law, particularly *Baker*, *supra*, Paris J., in *Huntly*, *supra*, proposed the application of the following test to determine whether the employment at issue is full time, and this Court agrees with this test:

> [67] Following the Federal Court of Appeal's decision in *Baker*, the test to determine whether an employee is full-time involves examining whether the employees worked normal working hours each day, week and month.

[33] With regard to *Baker*, *supra*, the Federal Court of Appeal did not make a determination about the number of hours that must be worked for employment to be considered full time. However, the Court is of the view that five pronouncements were made in that decision (paragraphs 9 to 16):

- A full-time employee works a normal number of hours each day, week and month;
- Employment requiring 20 hours of work per week does not constitute full-time employment;
- Full-time employment is defined in contradistinction to part-time employment;
- A part-time employee may work more than one job with relative ease;

– The normal working hours of each day, week and month must not be examined based on the standard in the industry and region where the activities take place.

[34] Furthermore, as the Act stipulates in paragraph (a) of the definition of "specified investment business", the criterion of employing at least five full-time employees must be met throughout the taxation year of the corporation that is claiming the SBD in respect of income from business that has the principal purpose of deriving income from property.

ii) Application of principles from the case law

[35] According to the appellant, since the word "full-time" is used in the context of the tuition credit (paragraph 118.5(1)(b)) and the medical expense tax credit (paragraph 118.2(2)(b)), it should receive the same interpretation in the context of the SBD.

[36] Firstly, the appellant cites *Robinson v. The Queen*, 2006 TCC 664 (paragraphs 4 and 8), which deals with tuition credits and education credits. In that decision, the Court found that the appellant was enrolled as a full-time student at an educational institution even though the facts demonstrated that there was no consistency in her study periods. According to the appellant, an analogy can be made between the educational environment and the work environment, and the appellant adds the following:

> [TRANSLATION]
>
> . . . it appears that consistency in the hours devoted to studies is not a criterion for determining whether a person is considered to be studying full time. Therefore, fluctuations in hours during the various months of the year cannot be considered a factor that fails to respect the notion of full time. . . .

[37] Furthermore, the appellant cites the CRA's position as expressed in Health and Medical Folio S1-F1-C1, "Medical Expense Tax Credit" (June 21, 2016) at sections 1.32 and 1.33:

> [TRANSLATION]
>
> **1.32** . . . Where the expression **one full-time attendant** is used, it is not intended to mean one attendant only looking after the patient on a continuous basis but rather several attendants could be utilized over a specific period of time so long as there is only one attendant for any given period of time.

[38] Thus, according to the appellant, a fixed factor cannot be used to determine what constitutes full-time employment. According to the appellant, the particular facts applicable to the business carried on by the Corporation must be considered, and the appellant concluded the following: [TRANSLATION] "In the case at bar, the business has no needs to be met for a standard period of eight hours per day. Schedules vary depending on the business's needs, and employees are called upon to work the hours set by the employer and required by the operations in this type of business."

[39] In the Court's view, the appellant's arguments cannot be accepted for several reasons. First, the appellant's analogy of the credits mentioned above is irrelevant as the purposes of those provisions are not the same. Also, accepting the appellant's interpretation would result in this Court rejecting the doctrine established by the Federal Court of Appeal and by this Court, outlined in the previous section. In *Baker*, *supra*, the Federal Court of Appeal clearly rejected the argument that the threshold of at least five full-time employees does not apply in an inconsistent and subjective manner or depending on the industry or region where the activities take place.

[40] In addition, the wording in the legislative provisions is different. Paragraph 118.5(1)(b) states that "where the individual was during the year a student in full-time attendance at a university", he or she is entitled to a credit (if the other conditions have been met). In place of the underlined words above, the French version uses the expression "*au cours de l'année*". Paragraph (a) of the definition of "specified investment business" reads as follows: "the corporation employs in the business throughout the year more than 5 full-time employees". The French version reads as follows: "*la société emploie dans l'entreprise plus de cinq employés à plein temps tout au long de l'année*". The Act is clear: The minimum number of employees must be maintained throughout the year and not only during the year, contrary to the tax credits pointed out by the appellant.

[41] There is no doubt that some flexibility is necessary given the realities of the employment world and the business world. That said, according to the doctrine established by the Federal Court of Appeal in *Baker*, *supra*, in order for there to be full-time employment, the individual must work a normal number of hours per day, week and month. In addition, the business's particular situation, the type of business at issue and the area where the activities take place are irrelevant (*Baker*, *supra*, paragraph 13). Similarly, the appellant's argument that it would be unfair to disallow the Corporation's SBD because it chose to offer jobs to a greater number of people who would work fewer hours per week cannot be accepted. The fact that

12,000 hours are worked annually in the Corporation's business, which is much higher than 7,800 hours (the equivalent of five employees working 30 hours per week for 52 weeks) is irrelevant: it does not meet the standard of the exception, that is, employing more than five full-time employees throughout the year. The Courts have made clear that employing numerous part-time employees does not satisfy the obligation of employing five full-time employees. Parliament set out a specific exception in the definition of a specified investment business, and that exception must be interpreted in accordance with the above case law.

[42] In reviewing Table 2013 and Table 2014 in light of the case law, the Court finds that, for the years at issue, the Corporation did not employ in its business throughout those years more than five full-time employees and, therefore, the Corporation's business is a specified investment business. Consequently, the Corporation cannot benefit from the SBD in respect of the income derived from its business for the years at issue.

Table 2013 – Taxation year 2013

[43] For the 2013 taxation year, the Court is of the opinion that, in September, October, November and December 2012, the Corporation employed in its business only four full-time employees, that is, Côté C., Sauvé R., Roy N. and Mr. Bienvenue. These individuals generally worked more than 29 to 30 hours per week, that is, more than 128 hours per month.

[44] More specifically, in September 2012, the other employees who worked for the business clearly cannot be considered full-time employees because they worked on average between 16 and 25 hours per week, that is, 109 hours (Bergeron D.), 97 hours (Boileau L.), 86 hours (Laforest T.), 68 hours (Lapointe D.) and 80 hours (Williston H.).

[45] In October 2012, the other employees who worked for the business clearly cannot be considered full-time employees because they worked on average between 19 and 23.5 hours per week, that is, 81 hours (Bergeron D.), 101 hours (Boileau L.), 82 hours (Laforest T.) and 100 hours (Williston H.).

[46] In November 2012, the other employees who worked for the business clearly cannot be considered full-time employees because they worked on average between 13.5 and 20 hours per week, that is, 86 hours (Boileau L.), 58 hours (Laforest T.), and 73 hours (Williston H.). Bergeron D. worked only 24 hours that month.

[47] In December 2012, the other employees who worked for the business clearly cannot be considered full-time employees because they worked on average between 13.5 and 21 hours per week, that is, 90 hours (Boileau L.), 58 hours (Laforest T.), 64 hours (Lafrance G.), and 80 hours (Williston H.) during the month.

[48] This Court's finding with regard to the employees who cannot be considered full-time employees is also supported by a review of the number of hours they worked throughout the 2013 taxation year. Thus, Williston H. worked for the entire year; however, for eight months, he worked 80 hours or less per month, that is, 18.6 hours or less per week. Although Laforest T. worked for the entire year, he worked 86 hours or less per month for eight months, that is, 20 hours or less per week. As for Boileau L., although he worked for the entire year, there were six months in the year during which he worked 101 hours or less (97 hours in September 2012, 101 hours in October 2012, 86 hours in November 2012, 90 hours in December 2012, 83 hours in February 2013, and 48 hours in March 2013). The Court is of the opinion that this employee cannot be considered a full-time employee because of the number of hours worked during those six months of the year. In this respect, the Court notes that no evidence was submitted at the hearing to explain those hours.

[49] Having found that in September, October, November and December 2012 the Corporation employed only four full-time employees, the Corporation therefore does not satisfy the conditions of having employed in its business throughout the 2013 taxation year more than five full-time employees. Consequently, the Corporation cannot claim the SBD in respect of its income for the 2013 taxation year because the business carried on by the Corporation was a specified investment business.

[50] Considering this finding, it is not necessary for this Court to answer the question of whether the Corporation employed Mr. Bienvenue on a full-time basis from January to April 2013, as he received dividends instead of a salary during those months.

Table 2014 – Taxation year 2014

[51] For the 2014 taxation year, the Court is of the opinion that in January, February, March and April 2014, the Corporation employed in its business only three or four full-time employees, that is, Côté C., Sauvé R. and Mr. Bienvenue. These individuals generally worked more than 29 to 30 hours per week, that is,

more than 125 to 130 hours per month. The fourth full-time employee was Boileau L., but only for January 2014 (128 hours, that is, approximately 29.8 hours per week) and possibly for April 2014 (122 hours, that is, approximately 28.4 hours per week), although the Court does not need to make a determination in this regard because the criterion of at least five full-time employees clearly was not met for those four months.

[52] More specifically, in January 2014, in addition to Boileau L, Côté C., Sauvé R. and Mr. Bienvenue, who are considered full-time employees, the other employees who worked for the business clearly cannot be considered full-time employees as they worked on average between 12 and 20 hours per week, that is, 67 hours (Laforest T.), 80 hours (Roy N.), 86 hours (Williston H.) and 53 hours (Wilson N.) during that month. Thus, the Corporation employed in its business only four full-time employees in January 2014.

[53] In February 2014, in addition to Côté C., Sauvé R. and Mr. Bienvenue, who are considered full-time employees, the other employees who worked for the business clearly cannot be considered full-time employees as they worked on average between 14 and 22 hours per week, that is, 96 hours (Laforest T.), 90 hours (Williston H.) and 60 hours (Wilson N.). Boileau L. did not work any hours in February 2014. However, even if February 2014 were to be considered a vacation month and this employee were to be considered a full-time employee (although no evidence was submitted at the hearing in this respect), the Corporation would nonetheless have employed in its business only four full-time employees in February 2014.

[54] In March 2014, in addition to Côté C., Sauvé R. and Mr. Bienvenue, who are considered full-time employees, the other employees who worked for the business clearly cannot be considered full-time employees as they worked on average between 14 and 23 hours per week, that is, 67 hours (Laforest T.), 99 hours (Williston H.) and 60 hours (Wilson N.). With respect to Boileau L., who worked 94 hours during the month, by applying the same reasoning as that which was applied to February 2014 and by considering this employee to be a full-time employee, the fact remains that the Corporation employed in its business only four full-time employees in March 2014.

[55] In April 2014, in addition to Boileau L., Côté C., Sauvé R. and Mr. Bienvenue, who are considered full-time employees, the other employees who worked for the business clearly cannot be considered full-time employees as they worked on average between 10.5 and 20 hours per week, that is, 45 hours (Laforest

T.), 81 hours (Williston H.), 85 hours (Wilson N.), and 54 hours (Laroque M.) during the month. Thus, the Corporation employed in its business only four full-time employees in April 2014.

[56] This Court's finding with regard to the employees who cannot be considered full-time employees is also supported by a review of the number of hours they worked throughout the 2014 taxation year. Thus, Laroque M. worked only 54 hours during the year, and those 54 hours were worked in April 2014. Wilson N. worked only part of the year, that is, from September 2013 to April 2014; he worked 90 hours or less per month, that is, 20 hours or less per week. Williston H. worked for the entire year; however, for eight months, he worked 90 hours or less per month, that is, 20 hours or less per week. Although Laforest T. worked for the entire year, he worked 83 hours or less per month for seven months, that is, less than 20 hours per week. Although Roy N. was considered a full-time employee from May 2013 to December 2013, he cannot be considered a full-time employee for January 2014 because he worked only 80 hours, or 18.4 hours per week, and he did not work from February to April 2014. No evidence was submitted at the hearing to explain those hours.

[57] Having found that during the months of January, February, March and April 2014 the Corporation employed only three or four full-time employees, the Corporation therefore does not satisfy the conditions of having employed in its business throughout the 2014 taxation year more than five full-time employees. Consequently, the Corporation cannot claim the SBD in respect of its income for the 2014 taxation year because the business carried on by the Corporation was a specified investment business.

VII. CONCLUSION

[58] For these reasons, for the taxation years ending April 30, 2013, and April 30, 2014, the appeal is dismissed, with costs in favour of the respondent.

[59] The appeal from the reassessment made under the Act for the taxation year ending April 30, 2012, is allowed, without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the terms of the consent given by the respondent at the beginning of the hearing.

Signed at Ottawa, Canada, this 30th day of May 2018.

"Dominique Lafleur"

Lafleur J.

Translation certified true
on this 6th day of April 2020.

Janine Anderson, Revisor

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