

Docket: 2006-2524(IT)I

BETWEEN:

MARCEL G. RIOUX,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on February 1, 2007, at Montréal, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant: Daniel Toupin

Counsel for the Respondent: Mounes Ayadi

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2001 and 2002 taxation years are dismissed, in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 16th day of February 2007.

"Réal Favreau"

Favreau J.

Translation certified true
on this 10th day of August 2007.

Brian McCordick, Translator

Citation: 2007TCC82
Date: 20070216
Docket: 2006-2524(IT)I

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Appellant,

and

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REASONS FOR JUDGMENT

Favreau J.

[1] These appeals were heard under the informal procedure. The Appellant is contesting assessments for the 2001 and 2002 taxation years, by which the Minister of National Revenue ("the Minister") disallowed his deduction of employment-related expenses.

[2] The issue for determination is whether the Minister properly disallowed the \$7,988 claimed as employment expenses for the 2001 taxation year and the \$5,592 claimed as employment expenses for the 2002 taxation year.

[3] The expenses disallowed for the 2001 taxation year fall under the following categories:

- (a) \$5,496.17 for personal supplies such as a refrigerator, sofa, groceries, pharmaceuticals and newspaper subscriptions;

- (b) \$433.83 worth of telecommunications expenses for telephone lines at the taxpayer's residence; and
- (c) \$2,058.52 for clothing.

[4] The expenses disallowed for the 2002 taxation year fall under the following categories:

- (a) \$1,962.11 for personal supplies such as a refrigerator, sofa, groceries, pharmaceuticals and newspaper subscriptions;
- (b) \$450.94 worth of telecommunications expenses for telephone lines at the taxpayer's residence;
- (c) \$2,048.24 for clothing; and
- (d) \$1,130.12 for home office expenses.

[5] The Appellant is a full-service investment advisor registered with the Autorité des marchés financiers and the Investment Dealers Association of Canada, and, during the 2001 and 2002 taxation years, he carried on business from his home and from a 558-square-foot office located at 365 Laurier Boulevard in Beloeil.

[6] On July 1, 1999, the date on which Whalen, Béliveau & Associés Inc. sold the assets of its brokerage business to Canaccord Capital Corporation ("Canaccord"), the Appellant authorized the transfer of his clients' accounts to Canaccord in order to continue to do business with a securities broker. During the 2001 and 2002 taxation years, the Appellant was still doing business with Canaccord.

[7] The Appellant's remuneration consists of commissions that Canaccord paid and that Canaccord considered employment income. Hence, Canaccord issued a T4 slip to the Appellant for each of the years in issue.

[8] The Appellant filed his income tax return for each of the years in issue, treating his commissions as employment income and claiming employment-related expenses using Form T2200.

[9] In his Notice of Appeal, the Appellant alleges that he is self-employed, not an employee, and that since he is self-employed, he is entitled, under sections 9 to 37 of the *Income Tax Act* ("the Act"), to deduct expenses incurred to earn his income as an investment advisor. The question of the Appellant's legal status was not raised in the notices of objection submitted to the Minister.

[10] At the hearing, counsel for the Appellant submitted numerous facts and documents tending to establish the Appellant's status as a self-employed worker, but produced no agreement connecting the Appellant with Canaccord. The Appellant produced an agreement with Whalen, Béliveau & Associés Inc. dated December 7, 1994, and argued that it was now binding on Canaccord, but no document issued by Canaccord was produced in support of this assertion. According to the Appellant, Canaccord refuses to recognize its commissioned salespersons as self-employed in order to ensure that they pay their taxes.

[11] At the hearing, the Appellant did not attempt to justify the disallowed expenses and did not produce any supporting documents to claim additional expenses in the event that he was adjudged self-employed.

[12] In his oral submissions, counsel for the Appellant asserted that a taxpayer is entitled to raise a new argument against an unfounded assessment, and he sought to establish that the Appellant was self-employed.

[13] Counsel for the Respondent submitted that the Court cannot render a declaratory judgment concerning a taxpayer's legal status, and alleged that there is no evidence to justify the deduction of the disallowed or additional expenses.

[14] Without having the agreements governing the Appellant's relationship with Canaccord, I have nothing before me that would enable me to reverse Canaccord's decision to treat the Appellant as an employee. Since there is no evidence justifying the deduction of the disallowed expenses for the 2001 and 2002 taxation years, the Appellant's appeals from the notices of reassessment dated May 26, 2006, in respect of the 2001 and 2002 taxation years, are dismissed.

Signed at Montréal, Quebec, this 16th day of February 2007.

"Réal Favreau"

Favreau J.

Translation certified true
on this 10th day of August 2007.

Brian McCordick, Translator

CITATION: 2007TCC82

COURT FILE NO.: 2006-2524(IT)I

STYLE OF CAUSE: Marcel G. Rioux and Her Majesty the Queen

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 1, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau

DATE OF JUDGMENT: February 16, 2007

APPEARANCES:

 Counsel for the Appellant: Daniel Toupin

 Counsel for the Respondent: Mounes Ayadi

COUNSEL OF RECORD:

 For the Appellant:
 Name: Daniel Toupin
 City: St-Jérôme, Quebec

 For the Respondent: John H. Sims, Q.C.,
 Deputy Minister of Justice and
 Deputy Attorney General of Canada
 Ottawa, Canada