

Docket: 2005-1083(IT)I

BETWEEN:

YVON TREMBLAY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

---

Appeals heard on August 24, 2006, at Chicoutimi, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Christina Ham

---

**JUDGMENT**

The appeals from the assessments made under the *Income Tax Act* for the 2000 and 2001 taxation years are dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 14th day of September 2006.

"Alain Tardif"

---

Tardif J.

Translation certified true  
on this 28th day of June, 2007.

Brian McCordick, Translator

Citation: 2006TCC486  
Date: 20060914  
Docket: 2005-1083(IT)I

BETWEEN:

YVON TREMBLAY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

**REASONS FOR JUDGMENT**

Tardif J.

[1] These are appeals from assessments made by the Minister of National Revenue ("the Minister") under the *Income Tax Act* ("the Act") in respect of the 2000 and 2001 taxation years.

[2] The issue is whether, in computing the Appellant's income from an office or employment for these taxation years, the Minister properly disallowed the deduction of the amounts of \$8,315 and \$10,699, which had been claimed as "other employment expenses".

[3] In making and confirming the assessments, the Minister assumed the following facts:

[TRANSLATION]

- (a) During the taxation years in issue, the Appellant was employed by Combined Insurance Company of America. (**admitted**)

- (b) During the taxation years in issue, the Appellant was sub-regional manager for the Chicoutimi, Saguenay, Lac Saint-Jean, La Baie, Dolbeau, Forestville and Charlevoix area. **(admitted)**
- (c) The Appellant was responsible for a team of 30 agents during the taxation years in issue. **(admitted)**
- (d) During the 2000 and 2001 taxation years, the Appellant reported the amounts of \$15,305 and \$18,218, respectively, as gross commissions. **(admitted)**
- (e) The Appellant claimed the amounts of \$13,465 and \$15,697, respectively, as "other employment expenses" for the 2000 and 2001 taxation years. **(admitted)**
- (f) According to Form T2200, the "Declaration of Conditions of Employment" filled out by the employer, the Appellant was entitled to the following reimbursements in respect of the 2000 taxation year: **(admitted in part)**
- |                                     |                 |
|-------------------------------------|-----------------|
| (i) automobile expenses             | \$6,832         |
| (ii) expenses (perfor'ce of duties) | \$18,994        |
| (iii) home-office expenses          | <u>\$3,868</u>  |
|                                     | <u>\$29,694</u> |
- (g) According to Form T2200, the "Declaration of Conditions of Employment" filled out by the employer, the Appellant was entitled to the following reimbursements in respect of the 2001 taxation year: **(denied)**
- |                                     |                 |
|-------------------------------------|-----------------|
| (i) automobile expenses             | \$5,218         |
| (ii) expenses (perfor'ce of duties) | \$19,483        |
| (iii) home office expenses          | <u>\$2,400</u>  |
|                                     | <u>\$27,101</u> |
- (h) According to form T2200, the "Declaration of Conditions of Employment" filled out by the employer in respect of the 2000 taxation year, the Appellant was reimbursed at a rate of \$0.23 per kilometre for 29,704 business-related kilometres driven. **(admitted)**
- (i) According to form T2200, the "Declaration of Conditions of Employment" filled out by the employer in respect of the 2001 taxation year, the Appellant was reimbursed at a rate of \$0.23 per kilometre for 22,688 business-related kilometres driven. **(admitted)**

- (j) For the taxation year 2000, a total of \$4,477 worth of automobile expenses was allowed based on the following calculations: **(admitted)**

(i) fuel	\$3,736
(ii) maintenance and repair	\$1,173
(iii) insurance	\$960
(iv) registration	\$203
(v) rental costs	<u>\$8,064</u>
	\$14,136
(vi) personal use 20%	<u>\$2,827</u>
	\$11,309
(vii) reimbursement by employer	<u>\$6,832</u>
	<u>\$4,477</u>

- (k) For the 2000 taxation year, the Minister allowed the following expenses: **(denied)**

(i) automobile expenses	\$4,477
(ii) advertising and promotion	\$523
(iii) accounting fees	<u>\$150</u>
	<u>\$5,150</u>

- (l) For the 2001 taxation year, an amount of \$4,153 worth of automobile expenses was allowed based on the following calculation: **(denied)**

(i) fuel	\$2,912
(ii) maintenance of repair	\$1,263
(iii) insurance	\$1,022
(iv) registration	\$377
(v) rental costs	<u>\$7,515</u>
	\$13,089
(vi) personal use 28%	<u>\$3,718</u>
	\$9,371

- (m) **(denied)**

reimbursement by employer	<u>\$5,218</u>
	<u>\$4,153;</u>

- (n) For the 2001 taxation year, the Minister allowed the following expenses: **(denied)**

(i) automobile expenses	\$4,153
(ii) advertising and promotion	\$695
(iii) accounting fees	<u>\$150</u>
	<u>\$4,998</u>

- (o) For each of the taxation years in issue, expenses were disallowed because they had been reimbursed by the employer. **(denied)**

	<u>Year</u>	<u>Claimed</u>	<u>Allowed</u>	<u>Disallowed</u>
(i)	2000	13,465	5,150	8,315
(ii)	2001	15,697	4,998	10,699

[4] In support of his case, which he had the burden to prove, the Appellant essentially argued that he received income in two different capacities: as an employee of Combined Insurance Company of America, and as a commissioned salesperson with the same company.

[5] He submitted two contracts in support of his arguments: his commissioned agent's contract and his district manager's contract.

[6] The Appellant was reimbursed by Combined Insurance Company of America for the expenses associated with his work as a salaried manager.

[7] Thus, he claimed that the only expenses for which he was reimbursed were the expenses incurred as part of his salaried employment. He submitted that in addition to being reimbursed by his employer for his expenses, he was entitled to deduct the expenses incurred in relation to his commissioned work.

[8] For his part, the person responsible for the Appellant's file explained the steps leading up to his assessment. He admitted that he assumed that the expenses had been incurred for the Appellant's work as a whole. The expenses taken into account were the ones that the employer reimbursed.

[9] In order to establish that his claim was meritorious, the Appellant, to avoid confusion, would have had to persuasively and coherently show which expenses were directly related to each of his two positions.

[10] The Appellant was unable accurately to show how many kilometres were driven in connection with each of his positions; with very little conviction, he submitted that the office expense reimbursement essentially corresponded to the cost of long-distance calls, but the relevant documents did not support this interpretation at all.

[11] Otherwise, the bulk of the Appellant's representations sought to show that a distinction should be drawn between his two sources of income: employment income; and income from commissioned self-employment.

[12] Even the evidence submitted with respect to this aspect was not decisive. Indeed, the fact that the Appellant signed a contract several years ago, setting out his conditions of employment and establishing that he was paid by commission, does not automatically have the effect of demonstrating the validity of his allegations, especially since the legal relationship described in the contract might well have been necessary in order for the Appellant to have employee status, which enabled him occasionally to hold himself up as an example to the salespersons under his supervision.

[13] All assessments are presumed to have been made in accordance with the relevant facts and applicable legislation. An attack against the merits of an assessment requires more than mere criticism of the Minister's approach; it is absolutely essential to prove what the assessment should have been.

[14] Here, the Appellant essentially submitted that he had two different functions, and that this enabled him to claim expenses in excess of what his employer reimbursed. It would have been important, and perhaps even fundamental, for him to submit decisive evidence as to the details of the disallowed expenses that were associated exclusively with his self-employment.

[15] In the absence of such evidence, I must find that the Appellant has not met his burden of proof, and, consequently, the appeals are dismissed.

Signed at Ottawa, Canada, this 14th day of September 2006.

"Alain Tardif"

---

Tardif J.

Translation certified true  
on this 28th day of June, 2007.

Brian McCordick, Translator

CITATION: 2006TCC486

COURT FILE NO.: 2005-1083(IT)I

STYLE OF CAUSE: Yvon Tremblay and Her Majesty the Queen

PLACE OF HEARING: Chicoutimi, Quebec

DATE OF HEARING: August 24, 2006

REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif

DATE OF JUDGMENT: September 14, 2006

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Christina Ham

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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