

Docket: 2006-1814(IT)I

BETWEEN:

KENNETH ROBERT LOWE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 11, 2007, at Kingston, Ontario.

Before: The Honourable Justice Wyman W. Webb

Appearances:

Agent for the Appellant: Art Lucas, CGA
Counsel for the Respondent: Richard Gobeil

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2003 taxation year is dismissed, without costs.

Signed at Halifax, Nova Scotia, this 18th day of June 2007.

"Wyman W. Webb"

Webb J.

Citation: 2007TCC332
Date: 20070618
Docket: 2006-1814(IT)I

BETWEEN:

KENNETH ROBERT LOWE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb J.

[1] The Appellant moved twice in two years. In 2002 the Appellant moved from Madoc, Ontario to Toronto and in 2003 the Appellant moved from Toronto back to Madoc, Ontario. The issue in this case relates to the claim for certain amounts as moving expenses in computing his income for the 2003 taxation year in relation to the move from Toronto to Madoc. The Respondent did not contest that the Appellant changed his residence from Madoc to Toronto in 2002 and from Toronto back to Madoc in 2003. The issue in this case is not whether the Appellant was justified in moving twice in two years but whether the expenses that were claimed qualify as “moving expenses” for the purposes of the *Income Tax Act* ("Act").

[2] In 2002 the Appellant had accepted a full time probationary position of professor, faculty of technology of the George Brown College of Applied Arts and Technology in Toronto. Prior to accepting this position the Appellant was working in Belleville which is approximately 40 minutes from his home in Madoc. Upon accepting the position at the George Brown College the Appellant rented an apartment in Toronto. He worked as a professor for George Brown College for one year. While working at George Brown College the Appellant received an offer of employment from General Mills at a significantly higher rate of pay and decided to accept this offer and move back to Madoc.

[3] While the Appellant was living in Toronto his wife would be staying with him and occasionally she would go back to the property in Madoc to look after this property. The Appellant did not list his property in Madoc for sale when he relocated to Toronto as the position that he had at George Brown College was a probationary position with the probationary period being two years. He did not want to sell his property until the probationary period had expired. He did indicate to family and friends by word of mouth that he would be selling his property in Madoc.

[4] The amounts that he claimed as moving expenses in 2003 were the following:

Parking		\$ 480.00
Cost to maintain residence in Madoc		
Hydro for 6 months	\$ 755.02	
Heat for 6 months	\$1,262.95	
Property taxes	\$ 382.09	
Home insurance	\$ 259.74	
Total for the cost to maintain the residence in Madoc		<u>\$2,659.80</u>
Total for all expenses		\$3,139.80

[5] The Appellant clearly stated that the expenses that are referred to above were claimed in relation to his move from Toronto to Madoc in 2003. The expenses that were claimed in relation to parking, were for the costs of parking in Toronto while the Appellant was working for George Brown College.

[6] In order for the expenses to be deductible as moving expenses, the expenses would have to qualify as "moving expenses" as defined in subsection 62(3) of the *Act*. None of the enumerated expenses in paragraphs 62(3)(a) to (h) include an amount for parking while working and therefore the amounts claimed in relation to parking in Toronto while the Appellant was working at George Brown College do not qualify as moving expenses and are therefore not deductible as such under the *Act*.

[7] With respect to the claim in relation to maintaining the Madoc residence, paragraph 62(3)(g) of the *Act* is the paragraph that deals with expenses related to maintaining the "old residence". However, the "old residence" in relation to the move from Toronto to Madoc would be the residence in Toronto not the Madoc

residence. Since these expenses relate to the Madoc residence, which would not be the old residence in relation to this move, these expenses are not moving expenses in relation to the move from Toronto to Madoc and the Appellant is not entitled to deduct these amounts as moving expenses.

[8] Although this was not raised by the Appellant who clearly indicated that the expenses claimed were in relation to the move from Toronto to Madoc, in analyzing the definition of "moving expenses" in relation to the move of the Appellant from Madoc to Toronto (in which case the Madoc residence would be the "old residence") there is an additional requirement in paragraph 62(3)(g) of the *Act* that in order for the costs of maintaining the residence to be deductible the Appellant must make reasonable efforts to sell the old residence. Since the only effort that the Appellant made in relation to selling the Madoc residence was to tell family and friends that the property would be for sale and, since the Appellant indicated that he did not want to sell his property until the probationary period for his new job had expired (which would have been two years), the Appellant was not making reasonable efforts to sell the Madoc residence during the period from January to June of 2003 (which is the period to which the expenses relate). Therefore in relation to this move, the expenses would not be deductible by the Appellant.

[9] The appeal is dismissed without costs.

Signed at Halifax, Nova Scotia, this 18th day of June 2007.

"Wyman W. Webb"

Webb J.

CITATION: 2007TCC332
COURT FILE NO.: 2006-1814(IT)I
STYLE OF CAUSE: KENNETH ROBERT LOWE AND HER
MAJESTY THE QUEEN
PLACE OF HEARING: Kingston, Ontario
DATE OF HEARING: June 11, 2007
REASONS FOR JUDGMENT BY: The Honourable Justice Wyman W. Webb
DATE OF JUDGMENT: June 18, 2007

APPEARANCES:

Agent for the Appellant: Art Lucas, CGA
Counsel for the Respondent: Richard Gobeil

COUNSEL OF RECORD:

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