Docket: 2007-227(GST)I

BETWEEN:

J. RAYMOND COUVREUR INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of ***Mathieu Joubert*** **(2007-4154(IT)I)**, ***Joseph Raymond*** **(2007-4157(IT)I)**, ***Sébastien Raymond*** **(2007-4158(IT)I)** and ***Steve Raymond*** **(2007-4159(IT)I)** on October 10, 2008, at Montréal, Quebec.

Before: The Honourable Justice Lucie Lamarre

Appearances:

Counsel for the Appellant:	Christopher Mostovac
Counsel for the Respondent:	Kim Marcil

JUDGMENT

The appeal from the assessment made under Part IX of the *Excise Tax Act*, for which the notice is dated September 1, 2006, and is numbered 032G0112840, for the period from September 1, 2002, to February 28, 2006, is dismissed.

Signed at Montréal, Quebec, this 30th day of October 2008.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 6th day of February 2009.
Bella Lewkowicz, Translator

Docket: 2007-4154(IT)I

BETWEEN:

MATHIEU JOUBERT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of ***J. Raymond Couvreur Inc.*** **(2007-2276(GST)I)**, ***Joseph Raymond*** **(2007-4157(IT)I)**, ***Sébastien Raymond*** **(2007-4158(IT)I)** and ***Steve Raymond*** **(2007-4159(IT)I)** on October 10, 2008, at Montréal, Quebec.

Before: The Honourable Justice Lucie Lamarre

Appearances:

Counsel for the Appellant:	Christopher Mostovac
Counsel for the Respondent:	Nancy Dagenais

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2003 and 2004 taxation years are dismissed.

Signed at Montréal, Quebec, this 30th day of October 2008.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 6th day of February 2009.
Bella Lewkowicz, Translator

Docket: 2007-4157(IT)I

BETWEEN:

JOSEPH RAYMOND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of ***J. Raymond Couvreur Inc.*** **(2007-2276(GST)I)**, ***Mathieu Joubert*** **(2007-4154(IT)I)**, ***Sébastien Raymond*** **(2007-4158(IT)I)** and ***Steve Raymond*** **(2007-4159(IT)I)** on October 10, 2008, at Montréal, Quebec.

Before: The Honourable Justice Lucie Lamarre

Appearances:

Counsel for the Appellant:	Christopher Mostovac
Counsel for the Respondent:	Nancy Dagenais

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2002, 2003 and 2004 taxation years are dismissed.

Signed at Montréal, Quebec, this 30th day of October 2008.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 6th day of February 2009.
Bella Lewkowicz, Translator

Docket: 2007-4158(IT)I

BETWEEN:

SÉBASTIEN RAYMOND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of ***J. Raymond Couvreur Inc.*** **(2007-2276(GST)I)**, ***Joseph Raymond*** **(2007-4157(IT)I)**, ***Mathieu Joubert*** **(2007-4154(IT)I)** and ***Steve Raymond*** **(2007-4159(IT)I)** on October 10, 2008, at Montréal, Quebec.

Before: The Honourable Justice Lucie Lamarre

Appearances:

Counsel for the Appellant:	Christopher Mostovac
Counsel for the Respondent:	Nancy Dagenais

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2003 and 2004 taxation years are dismissed.

Signed at Montréal, Quebec, this 30th day of October 2008.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 6th day of February 2009.
Bella Lewkowicz, Translator

Docket: 2007-4159(IT)I

BETWEEN:

STEVE RAYMOND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of ***J. Raymond Couvreur Inc.*** **(2007-2276(GST)I)**, ***Joseph Raymond*** **(2007-4157(IT)I)**, ***Sébastien Raymond*** **(2007-4158(IT)I)** and ***Mathieu Joubert*** **(2007-4154(IT)I)** on October 10, 2008, at Montréal, Quebec.

Before: The Honourable Justice Lucie Lamarre

Appearances:

Counsel for the Appellant:	Christopher Mostovac
Counsel for the Respondent:	Nancy Dagenais

JUDGMENT

The appeals from the assessments made under the Income Tax Act for the 2003 and 2004 taxation years are dismissed.

Signed at Montréal, Quebec, this 30th day of October 2008.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 6th day of February 2009.
Bella Lewkowicz, Translator

Citation: 2008 TCC 587
Date: 20081030
Dockets: 2007-2276(GST)I,
2007-4154(IT)I, 2007-4157(IT)I,
2007-4158(IT)I, 2007-4159(IT)I,

BETWEEN:

J. RAYMOND COUVREUR INC.,
MATHIEU JOUBERT,
JOSEPH RAYMOND,
SÉBASTIEN RAYMOND,
STEVE RAYMOND,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Lamarre J.

[1] All of the appeals were heard on common evidence. The three Appellants Mathieu Joubert, Sébastien Raymond and Steve Raymond are appealing from the assessments made by the Minister of National Revenue (the Minister), in which benefits related to the use of an automobile provided by the corporation J. Raymond Couvreur Inc. (the Corporation) for employment purposes were included in their income for the 2003 and 2004 taxation years pursuant to paragraphs 6(1)(*e*) and 6(1)(*k*) and subsection 248(1) of the *Income Tax Act* (ITA). The amounts included in the income of these three Appellants are as follows:

	2003	2004

Mathieu Joubert	$1,258	$1,801
Sébastien Raymond	$1,242	$1,242
Steve Raymond	$1,653	$1,653

[2] In the case of Appellant Joseph Raymond, the Minister made assessments for taxation years 2002, 2003 and 2004, in which the amounts of $5,581, $1,858 and $1,765 in benefits related to the use of an automobile made available to him by the Corporation were added to his income as a shareholder of the corporation pursuant to subsections 15(1), 15(5) and 248(1) of the ITA. Additional amounts were added to his income for the automobile made available to his former spouse by the Corporation during the same taxation years. These additional amounts were $11,480 in 2002, $16,086 in 2003 and $19,439 in 2004 and were included in Appellant Joseph Raymond's income pursuant to subsections 15(1) and 56(2) of the ITA. Moreover, the Minister disallowed the deduction claimed in respect of these amounts as support payments on the basis that they did not qualify as an allowance on a periodic basis, pursuant to subsection 56.1(4) and paragraph 60(*b*) of the ITA.

[3] For its part, Appellant J. Raymond Couvreur Inc. is appealing from assessments made by the Minister pursuant to section 173 of the *Excise Tax Act* (ETA), in which goods and services tax (GST) was calculated in the amount of $2,461.02 with respect to the benefits conferred on the four other appellants for the use of the automobile made available to them, and that are the subject of these appeals, for the years at issue. The Minister disallowed input tax credits (ITCs) related to these amounts that were considered to be personal expenses ($3,279.75 in ITCs disallowed), and imposed the corresponding interest and penalties.

[4] The relevant statutory provisions read as follows:

Income Tax Act

Inclusions

SECTION 6: Amounts to be included as income from office or employment

(1) There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable

► 6(1)(*e*) ◄

(*e*) Standby charge for automobile—where the taxpayer's employer or a person related to the employer made an automobile available to the taxpayer, or to a person related to the taxpayer, in the year, the amount, if any, by which

(i) an amount that is a reasonable standby charge for the automobile for the total number of days in the year during which it was made so available

exceeds

(ii) the total of all amounts, each of which is an amount (other than an expense related to the operation of the automobile) paid in the year to the employer or the person related to the employer by the taxpayer or the person related to the taxpayer for the use of the automobile;

► 6(1)(*k*) ◄

(*k*) Automobile operating expense benefit − where

(i) an amount is determined under subparagraph 6(1)(*e*)(i) in respect of an automobile in computing the taxpayer's income for the year,

(ii) amounts related to the operation (otherwise than in connection with or in the course of the taxpayer's office or employment) of the automobile for the period or periods in the year during which the automobile was made available to the taxpayer or a person related to the taxpayer are paid or payable by the taxpayer's employer or a person related to the taxpayer's employer (each of whom is in this paragraph referred to as the "payor"), and

(iii) the total of the amounts so paid or payable is not paid in the year or within 45 days after the end of the year to the payor by the taxpayer or by the person related to the taxpayer,

the amount in respect of the operation of the automobile determined by the formula

A - B

where

A is

(iv) where the automobile is used primarily in the performance of the duties of the taxpayer's office or employment during the period or periods referred to in subparagraph (ii) and the taxpayer notifies the employer in writing before the end of the year of the taxpayer's intention to have this subparagraph apply, 1/2 of the amount determined under subparagraph 6(1)(*e*)(i) in respect of the automobile in computing the taxpayer's income for the year, and

(v) in any other case, the amount equal to the product obtained when the amount prescribed for the year is multiplied by the total number of kilometres that the automobile is driven (otherwise than in connection with or in the course of the taxpayer's office or employment) during the period or periods referred to in subparagraph 6(1)(*k*)(ii), and

B is the total of all amounts in respect of the operation of the automobile in the year paid in the year or within 45 days after the end of the year to the payor by the taxpayer or by the person related to the taxpayer;

SECTION 15: Benefit conferred on shareholder

(1) Where at any time in a taxation year a benefit is conferred on a shareholder, or on a person in contemplation of the person becoming a shareholder, by a corporation…the amount or value thereof shall…be included in computing the income of the shareholder for the year.

► 15(5) ◄

(5) Automobile benefit. For the purposes of subsection 15(1), the value of the benefit to be included in computing a shareholder's income for a taxation year with respect to an automobile made available to the shareholder, or a person related to the shareholder, by a corporation shall (except where an amount is determined under subparagraph 6(1)(*e*)(i) in respect of the automobile in computing the shareholder's income for the year) be computed on the assumption that subsections 6(1), 6(1.1), 6(2) and 6(7) apply, with such modifications as the circumstances require, and as though the references therein to "the employer of the taxpayer", "the taxpayer's employer" and "the employer" were read as "the corporation".

► 56(2) ◄

(2) Indirect payments. A payment or transfer of property made pursuant to the direction of, or with the concurrence of, a taxpayer to some other person for the benefit of the taxpayer or as a benefit that the taxpayer desired to have conferred on the other person (other than by an assignment of any portion of a retirement pension pursuant to section 65.1 of the *Canada Pension Plan* or a comparable provision of a provincial pension plan as

defined in section 3 of that Act or of a prescribed provincial pension plan) shall be included in computing the taxpayer's income to the extent that it would be if the payment or transfer had been made to the taxpayer.

SECTION 56.1: Support

(1) For the purposes of paragraph 56(1)(*b*) and subsection 118(5), where an order or agreement, or any variation thereof, provides for the payment of an amount to a taxpayer or for the benefit of the taxpayer, children in the taxpayer's custody or both the taxpayer and those children, the amount or any part thereof

(*a*) when payable, is deemed to be payable to and receivable by the taxpayer; and

(*b*) when paid, is deemed to have been paid to and received by the taxpayer.

► 56.1(2) ◄

(2) Agreement. For the purposes of section 56, this section and subsection 118(5), the amount determined by the formula

A - B

where

A is the total of all amounts each of which is an amount (other than an amount that is otherwise a support amount) that became payable by a person in a taxation year, under an order of a competent tribunal or under a written agreement, in respect of an expense (other than an expenditure in respect of a self-contained domestic establishment in which the person resides or an expenditure for the acquisition of tangible property that is not an expenditure on account of a medical or education expense or in respect of the acquisition, improvement or maintenance of a self-contained domestic establishment in which the taxpayer described in paragraph (*a*) or (*b*) resides) incurred in the year or the preceding taxation year for the maintenance of a taxpayer, children in the taxpayer's custody or both the taxpayer and those children, where the taxpayer is

(*a*) the person's spouse or common-law partner or former spouse or common-law partner, or

(*b*) where the amount became payable under an order made by a competent tribunal in accordance with the laws of a province, an individual who is the parent of a child of whom the person is a legal parent,

and

B is the amount, if any, by which

(*a*) the total of all amounts each of which is an amount included in the total determined for A in respect of the acquisition or improvement of a self-contained domestic establishment in which the taxpayer resides, including any payment of principal or interest in respect of a loan made or indebtedness incurred to finance, in any manner whatever, such acquisition or improvement

exceeds

(*b*) the total of all amounts each of which is an amount equal to 1/5 of the original principal amount of a loan or indebtedness described in paragraph (*a*),

is, where the order or written agreement, as the case may be, provides that this subsection and subsection 60.1(2) shall apply to any amount paid or payable thereunder, deemed to be an amount payable to and receivable by the taxpayer as an allowance on a periodic basis, and the taxpayer is deemed to have discretion as to the use of that amount.

► 56.1(4) ◄

"support amount" − means an amount payable or receivable as an allowance on a periodic basis for the maintenance of the recipient, children of the recipient or both the recipient and children of the recipient, if the recipient has discretion as to the use of the amount, and
(*a*) the recipient is the spouse or common-law partner or former spouse or common-law partner of the payer, the recipient and payer are living separate and apart because of the breakdown of their marriage or common-law partnership and the amount is receivable under an order of a competent tribunal or under a written agreement; or
(*b*) the payer is a legal parent of a child of the recipient and the amount is receivable under an order made by a competent tribunal in accordance with the laws of a province.

► 60(*b*) ◄

(*b*) Support − the total of all amounts each of which is an amount determined by the formula

A - (B + C)

where

A is the total of all amounts each of which is a support amount received after 1996 and before the end of the year by the taxpayer from a particular

person where the taxpayer and the particular person were living separate and apart at the time the amount was paid,

B is the total of all amounts each of which is a child support amount that became receivable by the taxpayer from the particular person under an agreement or order on or after its commencement day and before the end of the year in respect of a period that began on or after its commencement day, and

C is the total of all amounts each of which is a support amount received after 1996 by the taxpayer from the particular person and included in the taxpayer's income for a preceding taxation year;

SECTION 60.1: Support

(1) For the purposes of paragraph 60(*b*) and subsection 118(5), where an order or agreement, or any variation thereof, provides for the payment of an amount by a taxpayer to a person or for the benefit of the person, children in the person's custody or both the person and those children, the amount or any part thereof

(*a*) when payable, is deemed to be payable to and receivable by that person; and

(*b*) when paid, is deemed to have been paid to and received by that person.

► 60.1(2) ◄

(2) Agreement. For the purposes of section 60, this section and subsection 118(5), the amount determined by the formula

A - B

where

A is the total of all amounts each of which is an amount (other than an amount that is otherwise a support amount) that became payable by a taxpayer in a taxation year, under an order of a competent tribunal or under a written agreement, in respect of an expense (other than an expenditure in respect of a self-contained domestic establishment in which the taxpayer resides or an expenditure for the acquisition of tangible property that is not an expenditure on account of a medical or education expense or in respect of the acquisition, improvement or maintenance of a self-contained domestic establishment in which the person described in paragraph (*a*) or (*b*) resides) incurred in the year or the preceding taxation year for the maintenance of a person, children in the person's custody or both the person and those children, where the person is

(*a*) the taxpayer's spouse or common-law partner or former spouse or common-law partner, or

(*b*) where the amount became payable under an order made by a competent tribunal in accordance with the laws of a province, an individual who is a parent of a child of whom the taxpayer is a legal parent,

and

B is the amount, if any, by which

(*a*) the total of all amounts each of which is an amount included in the total determined for A in respect of the acquisition or improvement of a self-contained domestic establishment in which that person resides, including any payment of principal or interest in respect of a loan made or indebtedness incurred to finance, in any manner whatever, such acquisition or improvement

exceeds

(*b*) the total of all amounts each of which is an amount equal to 1/5 of the original principal amount of a loan or indebtedness described in paragraph (*a*),

is, where the order or written agreement, as the case may be, provides that this subsection and subsection 56.1(2) shall apply to any amount paid or payable thereunder, deemed to be an amount payable by the taxpayer to that person and receivable by that person as an allowance on a periodic basis, and that person is deemed to have discretion as to the use of that amount.

► 60.1(4) ◄

(4) Definitions. The definitions in subsection 56.1(4) apply in this section and section 60.

ARTICLE 248: Definitions

(1) In this Act,

"automobile" means

(*a*) a motor vehicle that is designed or adapted primarily to carry individuals on highways and streets and that has a seating capacity for not more than the driver and 8 passengers,

but does not include

…
(*e*) a motor vehicle
(i) of a type commonly called a van or pick-up truck, or a similar vehicle, that has a seating capacity for not more than the driver and two passengers and that, in the taxation year in which it is acquired or leased, is used primarily for the transportation of goods or equipment in the course of gaining or producing income,

(ii) of a type commonly called a van or pick-up truck, or a similar vehicle, the use of which, in the taxation year in which it is acquired or leased, is all or substantially all for the transportation of goods, equipment or passengers in the course of gaining or producing income,

Excise Tax Act

Taxable Benefits

S. 173. Employee and shareholder benefits

(1) Employee and shareholder benefits

Where a registrant makes a supply (other than an exempt or zero-rated supply) of property or a service to an individual or a person related to the individual and

(*a*) an amount (in this subsection referred to as the "benefit amount") in respect of the supply is required under paragraph 6(1)(*a*), (*e*), (*k*) or (*l*) or subsection 15(1) of the *Income Tax Act* to be included in computing the individual's income for a taxation year of the individual, or
(*b*) the supply relates to the use or operation of an automobile and an amount (in this subsection referred to as a "reimbursement") is paid by the individual or a person related to the individual that reduces the amount in respect of the supply that would otherwise be required under paragraph 6(1)(*e*), (*k*) or (*l*) or subsection 15(1) of that Act to be so included,

the following rules apply:

(*c*) in the case of a supply of property otherwise than by way of sale, the use made by the registrant in so providing the property to the individual or person related to the individual is deemed, for the purposes of this Part, to be use in commercial activities of the registrant and, to the extent that the registrant acquired or imported the property or brought it into a participating province for the purpose of making that supply, the registrant is deemed, for the purposes of this Part, to have so acquired or imported the property or brought it into the province, as the case may be, for use in commercial activities of the registrant, and

(d) in any case, except where

(i) the registrant was, because of section 170, not entitled to claim an input tax credit in respect of the last acquisition, importation or bringing into a participating province of the property or service by the registrant,

(ii) an election under subsection (2) by the registrant in respect of the property is in effect at the beginning of the taxation year,

(iii) the registrant is an individual or a partnership and the property is a passenger vehicle or aircraft of the registrant that is not used by the registrant exclusively in commercial activities of the registrant, or

(iv) the registrant is not an individual, a partnership or a financial institution and the property is a passenger vehicle or aircraft of the registrant that is not used by the registrant primarily in commercial activities of the registrant, for the purpose of determining the net tax of the registrant,

(v) the total of the benefit amount and all reimbursements is deemed to be the total consideration payable in respect of the provision during the year of the property or service to the individual or person related to the individual,

(vi) the tax calculated on the total consideration is deemed to be equal to

(A) where the benefit amount is an amount that is or would, if the individual were an employee of the registrant and no reimbursements were paid, be required under paragraph 6(1)(*k*) or (*l*) of the *Income Tax Act* to be included in computing the individual's income, the prescribed percentage of the total consideration, and

(B) in any other case, the amount determined by the formula

$$(A/B) \times C$$

where

A is

(I) where

1. the benefit amount is required to be included under paragraph 6(1)(*a*) or (*e*) of the *Income Tax Act* in computing the individual's income from an office or employment and the last establishment of the employer at which the individual ordinarily worked or to which the individual ordinarily reported in the year in relation to that office or employment is located in a participating province, or

2. the benefit amount is required under subsection 15(1) of that Act to be included in computing the individual's income and the individual is resident in a participating province at the end of the year,

the total of 4% and the tax rate for the participating province, and

(II) in any other case, 4%,

B is the total of 100% and the percentage determined for A, and

C is the total consideration.

(vii) that tax is deemed to have become collectible, and to have been collected, by the registrant

(A) except where clause (B) applies, on the last day of February of the year following the taxation year, and

(B) where the benefit amount is or would, if no reimbursements were paid, be required under subsection 15(1) of that Act to be included in computing the individual's income and relates to the provision of the property or service in a taxation year of the registrant, on the last day of that taxation year.

[5] Counsel for the Appellants contends that during the years at issue, there were no benefits conferred on the Appellants for the use of an automobile made available by the Corporation. He submits that the vehicles made available to the Appellants do not meet the definition of an automobile in subsection 248(1), and that they were utility vehicles used almost exclusively for transporting equipment in the course of gaining or producing income. He also submits that the vehicles were made available to the Appellants at all times for business purposes and that it cannot be concluded that the Appellants were using them for personal purposes. With respect to the automobile provided by the Corporation to Joseph Raymond's former spouse, Counsel for the Appellant acknowledges that he must include the amount calculated by the Minister as a shareholder benefit pursuant to subsection 15(1) of the ITA, but he is claiming an equivalent deduction on the ground that it is a support amount.

[6] Counsel for the Respondent are contesting the Appellants' arguments in every respect. As for the assessment pursuant to the ETA, it results directly from the decision that will be rendered with respect to the existence of a taxable benefit for the use of an automobile, which is the subject of the case at bar.

Vehicles made available to the Appellants

Facts

[7] The Corporation runs a business specializing in residential and commercial roofing. Joseph Raymond is the president and majority shareholder. During the years at issue, the Corporation had $6 million in sales. This figure is now around $10-12 million. During the years at issue, the Corporation employed between 35 and 40 employees, in positions varying between roofers, apprentice roofers, estimators, and project managers. The Corporation provided vehicles to estimators and project managers.

[8] Mathieu Joubert, one of the Appellants, was an estimator for the residential department and said he needed a vehicle at all times. He met clients early in the morning or at the end of the day in order to accommodate them. He always had a ladder with him so that he could go up to the roof and he always brought his tool kit, which contained the instruments necessary to cut roofing material so that he could make more accurate estimates.

[9] Joubert was also on the call list for services the Corporation guaranteed at all times. To respond to calls quickly, Joubert said he required a vehicle from the Corporation at all times. This vehicle had a permanent Corporation name and logo on it. Steve, Sébastien and Joseph Raymond were the other three who responded to service calls. Steve and Sébastien are Joseph Raymond's sons. His sons both had larger utility vehicles for towing purposes.

[10] In his testimony, Joseph Raymond said that he used the Corporation-provided vehicle for personal purposes two to five percent of the time. His personal time included stopping for groceries and the times he used it to go up to his cottage. He said his spouse at the time had a vehicle and he usually went to the cottage with her. He had a motorcycle and bought a sports car on May 27, 2004. He used the Corporation utility vehicle only for going to work. The vehicle is an extended-cab pick-up truck, with rear seats that could seat at least four people.

[11] In the questionnaire filled out at the request of the Canada Revenue Agency (CRA) (Exhibit I-1, tab 3), he indicated he drove 30,000 km per year with the Corporation vehicle. He entered 4 km as the distance between his home and place of employment, and a personal use of 4,500 km. In his testimony, he said that he also included the distance travelled between his home and place of employment. He insisted, however, that he did not believe this distance should be counted in personal use as he rarely went from home to the office without first going to a work site or stopping by a client's, as often at the start as at the end of the day.

[12] He said that he and both his sons were mainly project managers. Apparently, there were between five and nine active projects at all times. He and his two sons divided the projects between themselves: two to three projects each and all three went to them almost every morning of the week except when it was raining. One morning a week, Joseph Raymond held coordination meetings at the office and everyone came directly to work without going to a work site first.

[13] The Corporation did business with another corporation, ABC Cité Comm s.e.n.c. (Cité Comm), which handled service calls. Three bills from this Corporation were submitted as Exhibit A-2. One of them shows that there were six service calls in one month; another indicates four calls and the third, 12 calls. When cross-examined, Joseph Raymond said clients often called him directly during an emergency without going through Cité Comm. In any case, he said the number of calls varied a lot and he had to be available at all times, which is why he kept the Corporation vehicle. He committed to being on site by a certain time, which did not give him enough time to go by the Corporation's garage to get a fully equipped Corporation vehicle.

[14] Mathieu Joubert said he did not have a personal vehicle, but his girlfriend owns one. He owns a motorcycle. He estimates that he makes use of the Corporation vehicle three to five percent of the time for personal purposes to go to the grocery store or the Société des alcools du Québec (SAQ). He estimates that he sees a client to make an estimate before going into the office three times per week.

[15] On the form filled out at the request of the CRA and submitted as Exhibit I-1, tab 4, he indicated that he travelled 20,000 km per year with the Corporation vehicle. He indicated that the distance between his residence and place of employment was 2 kilometres and that he used the vehicle for personal purposes for a distance of 4,800 km. In Court, he indicated that his kilometrage included the distance between his home and place of employment. He also said that he has relatives in Sherbrooke.

[16] Steve Raymond has a spouse and had two children during the period at issue. He said he used his spouse's vehicle for personal purposes.

[17] The vehicle made available to him by the Corporation had an extended cab and could seat five people. He said he used this vehicle for personal purposes approximately five percent of the time.

[18] On the form completed at the request of the CRA (Exhibit I-1, tab 1), he said that he travelled between 25,000 and 30,000 km per year with this vehicle. He said

he lives 10 km from his place of employment and indicated 4,000 km as the distance travelled for personal purposes. In Court, he said that the Corporation's bookkeeper had completed the form and that the 4,000 km included the distance between his residence and place of employment.

[19] Finally, Sébastien Raymond said he went straight to work sites almost every morning and once or twice a week during evenings. He calculated having travelled 20,000 km with the Corporation-provided vehicle. He said in Court that his personal use of the vehicle amounted to a maximum of 2,000 to 2,500 km for the purpose of stopping for groceries or going to hockey games. On the form completed at the request of the CRA (Exhibit I-1, tab 2), he indicated that he lived 5 km from his place of employment and used his vehicle for personal purposes over a distance of 3,500 km. He said he did not have a personal vehicle but he owns a motorcycle, which he used during his vacations.

[20] He explained that he needed the Corporation vehicle at all times because he was on the call list that clients had access to and frequently visited work sites during the week.

[21] Ronald Audy, Revenu Québec auditor, was working on a draft tax audit of the Corporation for the years preceding the case at bar. He was on the business premises in 2002 in order to conduct his audit. Even though his audit was not primarily based on the same issue and he had very little information, he decided not to include a taxable benefit for the use of the vehicles; although the distance travelled between home and work is considered personal use, it was very negligible in his opinion, given the total kilometrage travelled for work. Neither Sébastien Raymond nor Mathieu Joubert worked for the Corporation in 2002. He saw the vehicles and confirmed that they all held at least three passengers. He considered, without further verification, that the vehicles were used for commercial purposes over 90% of the time in the years preceding 2002.

[22] Sonia Dionne, who carried out the audit and made the assessments being appealed, did not see the vehicles. She calculated the taxable benefit based on the information on the forms filled out by the Appellants, submitted as Exhibit I-1. Moreover, none of the Appellants had a personal vehicle except Joseph Raymond, who bought himself a sports car in May 2004. Moreover, in November 2005, Joseph Raymond confirmed the information provided in the forms on travel applied for all the preceding years (Exhibit I-2).

[23] During the audit, the Appellants never indicated that they misunderstood the question being asked on the form with respect to personal use or that what they wrote was erroneous.

Vehicle provided to Joseph Raymond's former spouse

[24] Joseph Raymond's former spouse worked for the Corporation until January 7, 2002. The Corporation made a vehicle available to her beginning in 1997 for which she received a T4 slip indicating a taxable benefit (Exhibit A-5).

[25] On June 7, 2002, a provisional judgment from the Superior Court of Quebec (Exhibit A-4) ordered Joseph Raymond to pay his former spouse $2,000 gross in spousal support per month. The judgment also indicated the former spouse was to keep the use of the vehicle [TRANSLATION] "Trail Blazer currently in her possession". Joseph Raymond said the vehicle belonged to the Corporation and that he had during the provisional hearing asked that his former spouse get another personal vehicle, which was clearly not accepted in the judgment.

[26] Following this judgment, the Corporation issued T4 slips to the former spouse so that she could include taxable benefits related to the use of a Corporation vehicle in her income (Exhibits A-6 and A-7). She refused to do so. The Minister included this benefit in Joseph Raymond's income instead, as the former spouse was no longer an employee of the Corporation and it was Mr. Raymond's personal obligation to provide a car for his former spouse under the provisional judgment. Joseph Raymond does not contest the inclusion of this taxable benefit in his income but is claiming a deduction for support payments with respect to this vehicle. On September 30, 2004, the final divorce judgment was rendered by the Superior Court of Quebec (Exhibit A-8).

[27] In this judgment, Mr. Raymond's former spouse was awarded a lump sum of $65,000 so, among other things, she could get a car in her own name (paragraph 92 of the judgment, Exhibit A-8).

[28] Moreover, Mr. Raymond is also responsible for increasing support payments to his former spouse to $2,750 per month, since the Court took into consideration, among other things, the cost of transportation (paragraphs 115 and 116, Exhibit A-8).

[29] The Corporation vehicle was returned to the Corporation in October 2004 and was immediately returned to the dealer.

Analysis

Vehicles provided to the Appellants for work

[30] Counsel for the Appellants is arguing, first of all, that the vehicles were not "automobiles" within the meaning of subsection 248(1) of ITA. According to him, the vehicles in question are excluded from the definition of the word "automobile" by paragraph (*e*), as these vehicles are minivans or trucks, or similar vehicles, the use of which, in the taxation year in which they were acquired or leased, was all or substantially all for the transportation of equipment in the course of gaining or producing income. Counsel for the Appellants explained that the vehicles in question are pick-ups with permanent racks built in to transport a ladder in order to climb up to roofs, and in which the Appellants leave the basic tools they need for emergency repairs. According to him, these vehicles did not have the potential for personal use, which was also Mr. Audy's conclusion during a previous audit in which he found that these were utility vehicles that were used more than 90% of the time for commercial purposes. According to counsel, the fact that the Appellants had to have their vehicles at all times for work-related reasons removes all personal aspects as, even if, in fact, there may be some minor personal use. Moreover, it is not the number of service calls received in a month that counts. What is important is that the Appellants are always reachable for emergencies or service calls.

[31] Moreover, the fact that the Appellants wrote their personal kilometrage on the forms submitted as Exhibit I-1 does not have to change the actual facts. The Appellants included the distance travelled between their homes and place of employment in this kilometrage. However, according to him, the evidence shows that the Appellants went to work sites more often before going into the office, and thus the kilometres travelled are not personal but work-related. He reiterates that the mere fact of having to keep the work vehicle at all times at the Corporation's request removes any personal element with respect to the use of the vehicle. The Appellants therefore did not have to log the use of their vehicles.

[32] For her part, the Respondent is arguing that the vehicles in question are automobiles within the meaning of the ITA. They are vehicles designed to carry individuals and that can seat more than three passengers, and therefore it cannot be said that all or substantially all of the use during the taxation year in which the vehicles were acquired or leased was to transport equipment in the course of gaining or producing income.

[33] Moreover, for the purposes of paragraphs 6(1)(*e*) and 6(1)(*k*), she says that once an automobile is made available to a taxpayer, there is a taxable benefit. This benefit will be reduced depending on the actual number of kilometres travelled by the automobile for work, which reduction was granted by the Minister to the Appellants, based on the information provided by them in the forms submitted as Exhibit I-1. She says the Appellants never contested the information submitted in these forms throughout the audit.

[34] In my opinion, the Appellants did not successfully prove that the information they themselves submitted to the CRA (Exhibit I-1), and which the Minister used to calculate the taxable benefit, was incorrect. While it is easy to recognize that the vehicles in question were mostly used for work purposes, the Appellants all acknowledged on the forms that they used these vehicles for personal purposes more than 10% of the time.

[35] Counsel for the Appellants maintains that from the moment when a taxpayer is obliged to have access to a company-provided vehicle at all times, personal use is no longer part of the equation. This argument does not correspond with the evidence before me. According to the documentary evidence, they did not receive that many service calls. Even if the Appellants said in their evidence that the clients could call them directly without going through Cité Comm, the evidence is insufficient in my opinion to argue that three employees and the president had to have a vehicle at all times to respond to these calls. Moreover, according to the evidence, no one worked seven days per week at all times (see Exhibit I-1). Everyone benefited from a vehicle in their spare time and they all acknowledged a certain amount of personal use (to go to the cottage, hockey games, for groceries, the SAQ, etc.). None of them kept an exact log of the kilometres travelled for personal or work purposes. The Minister accepted the kilometrage indicated in the forms filled out in this regard. From the moment when the Appellants recanted and contested the personal kilometrage they themselves provided, it is up to them to prove the exact kilometrage actually travelled for personal and work purposes (see *Adams v. Canada*, [1998] F.C.J. No. 477 (QL)). It is not sufficient to say in Court that they often went to work sites before going into work.

[36] As the Federal Court of Appeal said in *Adams*, there is a taxable benefit as soon as a vehicle is made available to an employee or shareholder. This benefit is reduced depending on the kilometrage actually travelled for work. The Appellants are responsible for demonstrating this; in this case, a logbook would have been important. As they were not capable of proving with supporting documentation that the information submitted to the CRA, which indicates more than 10% for personal

use (Exhibit I-1), was not adequate, I conclude that not all or substantially all of these use of these vehicles was to transport equipment in the course of gaining or producing income. Also, there is no proof that these vehicles were not designed to carry three passengers or less. The Appellants did not demonstrate that these vehicles were not automobiles within the meaning of the ITA. I conclude that the Minister was correct to calculate a taxable benefit for each of the Appellants for the vehicles provided to them by their Corporation during the years at issue. The assessments are therefore well-founded on this point.

Vehicle provided by the Corporation to Appellant Joseph-Raymond's former spouse: can he claim a support payment deduction?

[37] As previously mentioned, Joseph Raymond recognizes he is responsible pursuant to subsection 15(1) of the ITA for a taxable benefit on a vehicle provided by the Corporation to his former spouse for the years at issue. However, counsel for Joseph Raymond argues that he is entitled to support payment deductions because the provisional judgment made the Corporation responsible for leaving the vehicle in his former spouse's possession. He maintains that this judgment seems to indicate that this constitutes a support payment taxable for the former spouse and deductible for the Appellant.

[38] The Respondent maintains the Appellant did not pay his former spouse directly for the use of the vehicle and there is nothing in the provisional judgment that says that the former spouse agrees to be taxed under subsection 56.1(2) of the ITA, which would give a deduction to the Appellant under subsection 60.1(2) of the ITA.

[39] I agree with the Respondent that the provisional judgment does not specifically state that subsections 56.1(2) and 60.1(2) of the ITA must be applied. The judgment also does not contain any provisions stipulating that the benefit thus conferred on the Appellant by the Corporation by the provision of a vehicle to his former spouse to meet his support obligation towards her is taxable for her and deductible for him (see *Stohl v. Canada,* [2004] T.C.J. No. 595 (QL), confirmed by [2006] F.C.J. No. 705 (QL)).

[40] Moreover, the Appellant maintains that the provision of the vehicle to his former spouse is part of the support payable by him. To support this argument, he submits that this is confirmed by the final divorce judgment rendered in September 2004, in which the support payments were increased from $2,000 to $2,750

specifically so that she could get herself a vehicle in her own name. This reasoning does not conform to the actual terms of the divorce judgment. The final judgment establishes a lump sum ($65,000) for, among other things, the purchase of a car by her, which is not expressly part of the new amount of support payments established at $2,750 per month. Even if this amount has to cover transportation expenses, it does not cover the capital investment to acquire a vehicle. Joseph Raymond cannot claim that the provision of a vehicle to his former spouse was part of his support payment. Accordingly, he did not prove that he was entitled to a support payment deduction to reduce the taxable benefit on which he must pay tax for the personal use of the vehicle provided by the Corporation to his former spouse during the years at issue.

Conclusion

[41] The Appellants did not successfully demonstrate, on a balance of probabilities, that the taxable benefits added to the Appellants' income for the personal use of the vehicle made available to them by the Corporation during the years at issue were erroneous. Joseph Raymond also failed to demonstrate that he was entitled to a support payment deduction to reduce the taxable benefit amount on which he was assessed for his former spouse's personal use of a vehicle made available to her by the Corporation. As a result, all the assessments made pursuant to the ITA under appeal are confirmed. The assessment made in respect of the Corporation pursuant to subsection 173(1) of the ETA directly results from the other assessments. It is also confirmed.

[42] The appeals are dismissed.

Signed at Montréal, Quebec, this 30th day of October 2008.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 6th day of February 2009.
Bella Lewkowicz, Translator

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