

Docket: 2007-4575(IT)I

BETWEEN:

JAMES C. GRILL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 5, 2008 at Vancouver, British Columbia

Before: The Honourable Justice L.M. Little

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Pavanjit Mahil

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2005 taxation year is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 5th day of January 2009.

“L.M. Little”

Little J.

Citation: 2009 TCC 5
Date: 20090105
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BETWEEN:

JAMES C. GRILL,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Little J.

A. Facts

[1] In May 1995, the Appellant began working at Envision Credit Union (“Envision”) at its business location at 32711 South Fraser Way in Abbotsford, British Columbia (the “Workplace”).

[2] During the 1995 taxation year the Appellant and his wife lived at 51575 Ferry Road in Rosedale, British Columbia (the “Ferry Road Residence”).

[3] In early 1996, the Appellant and his wife purchased a vacant lot located at 10303 Royalwood Boulevard in Rosedale. The Appellant and his wife constructed a new residence on the property (the “Royalwood Residence”).

[4] In October 1996, the Appellant and his wife moved from the Ferry Road Residence to the Royalwood Residence.

[5] The distance between the Royalwood Residence and the Workplace was approximately 50 kilometres.

[6] On July 1, 2004, the Appellant and his wife separated.

[7] The Appellant and his wife agreed to sell the Royalwood Residence. It was subsequently sold in November 2005.

[8] On November 29, 2005, the Appellant moved from the Royalwood Residence to a new residence at #2-35931 Empress Drive in Abbotsford (the “Abbotsford Residence”).

[9] The distance between the Royalwood Residence and the Workplace was more than 40 kilometres than the distance between the Abbotsford Residence and the Workplace.

[10] Throughout the period of the 1995 to 2005 taxation years, the Appellant continued to work at Envision and his work location remained at the Workplace in Abbotsford.

[11] In computing his income for the 2005 taxation year, the Appellant claimed a deduction for moving expenses in the amount of \$22,984.54. These expenses include travel costs, meals, cost of temporary accommodations, transportation and storage costs, and various legal and real estate fees in respect of the Appellant’s move from the Royalwood Residence to the Abbotsford Residence.

B. Issue

[12] The issue is whether the Appellant is entitled to deduct moving expenses in the amount of \$22,984.54 in computing his income for the 2005 taxation year.

C. Analysis

[13] Subsections 62(1) and (3) of the *Income Tax Act* (the “Act”) read as follows:

Moving Expenses

62. (1) There may be deducted in computing a taxpayer’s income for a taxation year amounts paid by the taxpayer as or on account of moving expenses incurred in respect of an eligible relocation, to the extent that

(a) they were not paid on the taxpayer's behalf in respect of, in the course of or because of, the taxpayer's office or employment;

(b) they were not deductible because of this section in computing the taxpayer's income for the preceding taxation year;

(c) the total of those amounts does not exceed

(i) in any case described in subparagraph (a)(i) of the definition "eligible relocation" in subsection 248(1), the taxpayer's income for the year from the taxpayer's employment at a new work location or from carrying on the business at the new work location, as the case may be, and

(ii) in any case described in subparagraph (a)(ii) of the definition "eligible relocation" in subsection 248(1), the total of amounts included in computing the taxpayer's income for the year because of paragraphs 56(1)(n) and (o); and

(d) all reimbursements and allowances received by the taxpayer in respect of those expenses are included in computing the taxpayer's income.

[Emphasis added]

Definition of "moving expenses"

62. (3) In subsection 62(1), "moving expenses" includes any expense incurred as or on account of

(a) travel costs (including a reasonable amount expended for meals and lodging), in the course of moving the taxpayer and members of the taxpayer's household from the old residence to the new residence,

(b) the cost to the taxpayer of transporting or storing household effects in the course of moving from the old residence to the new residence,

(c) the cost to the taxpayer of meals and lodging near the old residence or the new residence for the taxpayer and members of the taxpayer's household for a period not exceeding 15 days,

(d) the cost to the taxpayer of cancelling the lease by virtue of which the taxpayer was the lessee of the old residence,

(e) the taxpayer's selling costs in respect of the sale of the old residence,

(f) where the old residence is sold by the taxpayer or the taxpayer's spouse or common-law partner as a result of the move, the cost to the taxpayer of legal services in respect of the purchase of the new residence and of any tax, fee or duty

(other than any goods and services tax or value-added tax) imposed on the transfer or registration of title to the new residence,

(g) interest, property taxes, insurance premiums and the cost of heating and utilities in respect of the old residence, to the extent of the lesser of \$5,000 and the total of such expenses of the taxpayer for the period

(i) throughout which the old residence is neither ordinarily occupied by the taxpayer or by any other person who ordinarily resided with the taxpayer at the old residence immediately before the move nor rented by the taxpayer to any other person, and

(ii) in which reasonable efforts are made to sell the old residence, and

(h) the cost of revising legal documents to reflect the address of the taxpayer's new residence, of replacing drivers' licenses and non-commercial vehicle permits (excluding any cost for vehicle insurance) and of connecting or disconnecting utilities,

but, for greater certainty, does not include costs (other than costs referred to in paragraph 62(3)(f)) incurred by the taxpayer in respect of the acquisition of the new residence.

[14] The phrase "eligible relocation" is defined under subsection 248(1) of the *Act* as follows:

"eligible relocation" means a relocation of a taxpayer where

(a) the relocation occurs to enable the taxpayer

(i) to carry on a business or to be employed at a location in Canada (in section 62 and this subsection referred to as "the new work location"), or

(ii) to be a student in full-time attendance enrolled in a program at a post-secondary level at a location of a university, college or other educational institution (in section 62 and in this subsection referred to as "the new work location"),

(b) both the residence at which the taxpayer ordinarily resided before the relocation (in section 62 and this subsection referred to as "the old residence") and the residence at which the taxpayer ordinarily resided after the relocation (in section 62 and this subsection referred to as "the new residence") are in Canada, and

(c) the distance between the old residence and the new work location is not less than 40 kilometres greater than the distance between the new residence and the new work location

except that, in applying subsections 6(19) to (23) and section 62 in respect of a relocation of a taxpayer who is absent from but resident in Canada, this definition shall be read without reference to the words “in Canada” in subparagraph (a)(i), and without reference to paragraph (b);

[Emphasis added]

[15] In *Bracken v. The Minister of National Revenue*, 84 DTC 1813 (T.C.C.), Chief Justice Christie, as he then was, established four conditions that a taxpayer must meet in order to qualify for a deduction for moving expenses under subsection 62(1). On page 1819, Chief Justice Christie states:

My reading of subsection 62(1) is that it contemplates the existence of four separate elements: old work location, new work location, old residence and new residence, and the comparison of two distances, i.e. the distance from the old residence to the new work location with the distance from the new residence to the new work location the former of which must exceed the latter by 40 or more kilometres in order for the moving expenses to be deductible. ...

[16] I agree with the interpretation by Chief Justice Christie of subsection 62(1). It is clear from the words in subparagraph 62(1)(c)(i), that a taxpayer is only entitled to deduct moving expenses from his or her employment and/or business income if he or she relocates in connection with “a new work location”. The definition of the phrase “eligible relocation” under subsection 248(1) of the *Act* requires that the relocation occurred “to enable the taxpayer ... to carry on a business or to be employed at a location in Canada (in section 62 and this subsection referred to as “the new work location”)”. Therefore, the words of the *Act* clearly contemplate, or require, that there be a “new work location” in order for the taxpayer to qualify for the moving expenses deduction. (Emphasis added)

[17] In *Giannakopoulos v. The Minister of National Revenue*, [1995] 3 F.C. 294 (F.C.A.), the Federal Court of Appeal also considered the deduction of moving expenses under subsection 62(1). At paragraph 7, Justice Marceau stated:

Subsection 62(1) permits a taxpayer to deduct moving expenses when he moves closer to a new workplace. An employee must live within a reasonable distance of his work. When he accepts a new position, the employee may have to move in order to remain within a practical commuting distance of his job. Subsection 62(1) recognizes that relocation is a legitimate work-related expense. In order to prevent the provision from being invoked when a taxpayer simply desires a change in

residence, the provision requires that the move bring the taxpayer at least forty kilometres closer to work.

[18] The Appellant argued that his Workplace in Abbotsford should be characterized as the “new work location” for the purposes of subsection 62(1). Although the Appellant began working at Envision at the Workplace in 1995, he argued that his move to Abbotsford in 2005 was for the purpose of enabling him to work at the Workplace.

[19] However, the Appellant’s work location did not change. Although the Appellant’s move from the Royalwood Residence to the Abbotsford Residence in 2005 brought him more than 40 kilometres closer to his Workplace, I am unable to find that the moving expenses claimed by the Appellant can be deducted from any income earned at a “new work location”.

[20] Based on the above facts, I am unable to stretch the words of the *Act* in order to find that the Appellant’s claim for the moving expenses deduction in 2005 falls within the ambit of subsection 62(1).

[21] The appeal is dismissed, without costs.

Signed at Vancouver, British Columbia, this 5th day of January 2009.

“L.M. Little”

Little J.

CITATION: 2009 TCC 5

COURT FILE NO.: 2007-4575(IT)I

STYLE OF CAUSE: James C. Grill
and Her Majesty the Queen

PLACE OF HEARING: Vancouver, British Columbia

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REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little

DATE OF JUDGMENT: January 5, 2009

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Pavanjit Mahil

COUNSEL OF RECORD:

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Name:

Firm:

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