Docket: 2010-1747(IT)I

BETWEEN:

DEBORAH L. DIERCKENS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on February 7, 2011 at Winnipeg, Manitoba

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Rachelle Nadeau

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* (“*Act*”) for the 2008 taxation year is allowed and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant in entitled to deduct moving expenses of $6,623 in determining her income for 2008.

The Respondent shall pay costs to the Appellant which are fixed in the amount of $750.

Signed at Ottawa, Ontario, this 16th day of March, 2011.

“Wyman W. Webb”

Webb, J.

Citation: 2011TCC169
Date: 20110316
Docket: 2010-1747(IT)I

BETWEEN:

DEBORAH L. DIERCKENS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb, J.

[1] In determining her income for 2008 the Appellant claimed moving expenses of $6,623. The Respondent reassessed the Appellant to deny these expenses on the basis that the Appellant had been working for her employer for a number of years before she moved.

[2] The Appellant drives a school bus for the Lord Selkirk School Division in Selkirk, Manitoba and has been doing so for a number of years (approximately 10 years). The Appellant would be employed each school year (September to June) and laid off for the months of July and August. In 2008 the Appellant decided to move from Winnipeg to Selkirk. The distance from her residence in Winnipeg to her place of work is approximately 47 kilometres and the distance from her new residence to the place of work is less than one kilometre.

[3] As provided in subsection 62(1) of the *Income Tax Act* (the "*Act*") a taxpayer may claim moving expenses (that have not been reimbursed and that do not exceed the income from a "new work location" as defined within the definition of "eligible relocation" in subsection 248(1) of the *Act*) that have been incurred in respect of an eligible relocation. An eligible relocation is defined in subsection 248(1) of the *Act*, in part, 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
>
> …
>
> (*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*);

[4] In *Beyette* v. *Minister of National Revenue*, [1989] T.C.J. No. 1001, 89 D.T.C. 701, Justice Taylor stated that:

> The only issue raised in this appeal, is whether, all other conditions being met (and they were) the taxpayer is entitled to the deduction claimed for moving to his new employment site in 1986, from his old employment site after he had already been working at the new site (commuting daily) for the intervening five year period. The Respondent's assessment explanation read:
>
> "The general rule is that you may deduct moving expenses from your income if you move from the residence you ordinarily live in to commence employment at a new location. As the information submitted indicates that you commuted from Winnipeg to Beausejour for several years, you do not meet the above-mentioned criteria."
>
> Counsel for the Respondent argued that Section 62(1) of the Act implied a certain time limit - between the change of work site and the move - and that five years was unreasonable. In addition the critical word in the legislation was "commenced", in his view and there was a requirement for a relationship between the "commencement of employment" and the "move".

> I do not agree with either point raised by the Respondent. In this matter, I was satisfied from the evidence and testimony that there were good reasons for which the taxpayer delayed his move from Winnipeg to Beausejour - illness, lack of housing in Beausejour, inactive real estate selling market in Winnipeg, etc. - but that is probably irrelevant. In my opinion, the taxpayer and he alone is left to determine the timing of the move, and the costs associated with the move, and no time limit is expressed by the wording of the Act. While clearly five years is an unusually long period of time between the change of work locale and the move, that cannot be put in issue - the respondent has no basis upon which to conclude (I.T. Bulletin 178R2) that there is some time frame that is "reasonable" and another that is unreasonable. As I read Section 62(1) of the Act, it is a requirement that the taxpayer "-- has -- commenced to be employed previous to the move for which an expense claim is made. I do not see that one should read into the word "commenced" more than that. Mr. Beyette "commenced to be employed" in 1981 at the new work location, he "moved" in 1986 and is entitled to his costs of moving.

[5] In *Simard* v. *The Queen*, [1996] T.C.J. No. 626, [1998] 2 C.T.C. 2312, Justice Watson also allowed a taxpayer to deduct moving expenses that had been incurred five years after the taxpayer started to work at the "new work location", as then defined in section 62 of the *Act* (now defined within the definition of "eligible relocation" in subsection 248(1) of the *Act*). Justice Watson stated that:

> 17 I concur with Judge Taylor. In my view, the *Income Tax Act* does not require that the move to the new work location be completed within a prescribed period of time.

[6] Justice Watson quoted the provisions of section 62 as they read at that time. In part section 62 provided that:

> (1) Where a taxpayer has, at any time, commenced
>
> (a) to carry on a business or to be employed at a location in Canada (in this subsection referred to as his "new work location"), or
>
> …
>
> and by reason thereof has moved from the residence in Canada at which, before the move, he ordinarily resided (in this section referred to as his "old residence") to a residence in Canada at which, after the move, he ordinarily resided (in this section referred to as his "new residence"),…

[7] At the time that the decisions of this Court in *Beyette* and *Simard* were rendered, in order to claim moving expenses in relation to employment, a person must have commenced to be employed at a location and by reason of the

commencement of such employment, must have moved. The current wording is that there must be a relocation which enables the person to be employed at a "new work location". Just as the previous version of section 62 of the *Act* did not provide any time period within which a move must occur following the commencement of employment at a "new work location", the current version of section 62 of the *Act* and the definition of "eligible relocation" in subsection 248(1) of the *Act* do not provide any time period within which a move must occur following the commencement of employment at a "new work location".

[8] In *Attorney General of Canada* v. *Hoefele, et al.*, 95 DTC 5602, Justice Linden, writing on behalf of the majority of the Justices of the Federal Court of Appeal, stated that:

> …What must be determined is whether those portions of the mortgage loans taken out by the taxpayers in respect of the Toronto homes, and to which the interest subsidy was directed, came about 'because of', 'as a consequence of' or 'by virtue of' employment.
>
> In resolving this question, one must first note that subsection 80.4(1), whether in its older or newly amended form, requires a close connection between the loan or debt and employment, a connection much closer than that required by paragraph 6(1)(a) as between benefit and employment. In the latter, a benefit may arise if it is received merely 'in respect of' employment. The phrase 'in respect of' connotes only the slightest relation between two subjects and is intended to convey very wide scope. In *Nowegijick* v. *The Queen*, the Supreme Court of Canada stated the following concerning the words 'in respect of':
>
>> The words 'in respect of' are, in my opinion, words of the widest possible scope. They import such meanings as 'in relations to', 'with reference to' or 'in connection with'. The phrase 'in respect of' is probably the widest of any expression intended to convey some connection between two related subject matters. [FOOTNOTE 19 : 1 S.C.R. 29 at 39 per Dickson, J. See also Linden, J.A. in Blanchard.]
>
> On the other hand, the phrases used in the amended subsection 80.4(1), '***because of***', or '***as a consequence of***', as well as in the original version, '***by virtue of***', ***require a strong causal connection***. I find little or no difference between the meanings of the phrases '***because of', 'as a consequence of' and 'by virtue of'***. ***Each phrase implies a need for a strong causal relation between subject matters***, not merely a slight linkage between them.
>
> (emphasis added)

[9] It seems to me that "by reason of" would be equivalent to "because of", "as a consequence of" and "by virtue of". If the strong causal connection between the

commencement of employment and the move that would have been required when *Beyette* and *Simard* were decided, based on the wording of section 62 of the *Act* at that time, would not result in a time period within which the move must occur, then, in my opinion, the change in wording from the requirement that:

(a) a person had to commence work at the "new work location" and move by reason of the commencement of such employment,

to

(b) a relocation has occurred to enable a person to be employed at a "new work location"

cannot be construed as adding a time period within which a person must move or create any stronger connection or link between the move and the commencement of employment at the "new work location". If anything the change in wording to provide that a location must occur to enable the person to be employed suggests less of a causal connection between the move and the commencement of employment than did the previous requirement that the person had to move by reason of commencing employment. There is no longer any reference to the commencement of employment in section 62 of the *Act* or in the definition of "eligible relocation" in subsection 248(1) of the *Act*.

[10] Since it seems to me that it must be accepted that it is not necessary to move before the employment commences at the "new work location" in order to qualify for the deduction, whether the move occurs a short time after the commencement of the employment at the "new work location" or a longer time after such commencement, the relocation has occurred to enable the person to be employed. It does not seem to me that there is any reason to now read into the definition of eligible relocation a requirement that the person must move within a certain amount of time after commencing employment at a "new work location". If a move within one month of commencing such employment enables a person to be employed at that location, then a move within two months of commencing such employment would also enable the person to be employed at that location, as would a move within one year or two years and so on.

[11] Counsel for the Respondent did not refer to nor did she provide copies of the decisions of this Court rendered in *Beyette* or *Simard.* Counsel for the Respondent stated that she was aware of the decision of this Court in *Beyette* but did not refer to it because it was a decision under the Informal Procedure. However she did refer to the

decision of this Court in *Moreland* v. *The Queen*, 2010 TCC 483, which was also decided under the Informal Procedure. Therefore counsel cannot justify not submitting a copy of the decision of this Court in *Beyette* on the basis that it was an Informal Procedure case as the same counsel had also submitted another Informal Procedure case for consideration.

[12] Counsel for the Respondent had submitted a copy of the decision of this Court in *Moreland*, above, for the following statements:

> 12 I agree with Chief Judge Christie's interpretation of subsection 62(1). It is clear from the wording of 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 has relocated to a "*new work location*". The definition of the phrase "eligible relocation" in subsection 248(1) of the Act requires that the relocation have occurred "to enable the taxpayer ... to carry on a business or to be employed at a location in Canada (in section 62 and ... subsection [248(1)] referred to as "*the new work location*")". Therefore, the wording of the Act clearly contemplates, or requires, that there be a "*new work location*" in order for the taxpayer to qualify for the moving expense deduction.

[13] The expression “new work location” is defined in subsection 248(1) of the *Act* within the definition of “eligible relocation”. As noted above, the definition of “eligible relocation” in subsection 248(1) of the *Act* provides, in part, that:

> “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

[14] It seems to me that it is not appropriate to interpret the word “new” as creating any additional requirement in relation to the location. The location is the place where the taxpayer is employed and the relocation occurs to enable the taxpayer to be employed at this place. The word “new” is part of the term given to this location it is not a word that is used in determining whether a particular relocation is an eligible relocation. Therefore it should not be used to interpret the provision as providing a limit on the time within which a person must relocate on the basis that the work location will, after a period of time, no longer be “new”. The same expression “new work location” was also defined in section 62 of the *Act* when the decisions in *Beyette* and *Simard* were rendered.

[15] As a result, since there was no dispute that the Appellant otherwise satisfied the requirements of section 62 of the *Act* and the definition of “eligible relocation” in subsection 248(1) of the *Act*, the Appellant is entitled to deduct moving expenses incurred in computing her income for 2008.

[16] The amounts claimed as moving expenses included the commission paid to the real estate agent who sold the Appellant’s property in Winnipeg. The property included rental units but the Appellant only claimed the portion that related to the sale of the part of the property that she occupied as her residence. Counsel for the Respondent argued that this was not a moving expense. Subsection 62(3) of the *Act* provides in part that:

> (3) In subsection (1), “moving expenses” includes any expense incurred as or on account of
>
> …
>
> (*e*) the taxpayer's selling costs in respect of the sale of the old residence,

[17] The amount paid to the real estate agent to sell the Appellant’s property in Winnipeg would clearly be part of the selling costs in respect of that residence. In paragraph 12 of Interpretation Bulletin IT-178R3 — Moving Expenses [Consolidated] Dated February 28, 2001, the Canada Revenue Agency stated, in part, that:

> Eligible Moving Expenses
>
> 12. Under subsection 62(3), eligible moving expenses include any expense incurred as, or on account of,
>
> …
>
> (e) selling costs for the sale of the taxpayer's old residence, including advertising, notarial or legal fees, real estate commissions and mortgage prepayment or discharge fees incurred on the sale, but not including expenses for work done to make the property more saleable or any loss incurred on the sale;

[18] The Canada Revenue Agency has also acknowledged that real estate commissions incurred on the sale of the former residence are moving expenses.

[19] Counsel for the Respondent acknowledged that the other amounts claimed by the Appellant were reasonable.

[20] The appeal from the reassessment made under the *Act* for the 2008 taxation year is allowed and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant in entitled to deduct moving expenses of $6,623 in determining her income for 2008.

[21] The Respondent shall pay costs to the Appellant which are fixed in the amount of $750.

Signed at Ottawa, Ontario, this 16th day of March, 2011.

"Wyman W. Webb"

Webb, J.

CITATION:	2011TCC169
COURT FILE NO.:	2010-1747(IT)I
STYLE OF CAUSE:	DEBORAH L. DIERCKENS AND HER MAJESTY THE QUEEN
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DATE OF HEARING:	February 7, 2011
REASONS FOR JUDGMENT BY:	The Honourable Justice Wyman W. Webb
DATE OF JUDGMENT:	March 16, 2011

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Rachelle Nadeau

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:	Myles J. Kirvan Deputy Attorney General of Canada Ottawa, Canada