

Docket: 2017-4332(IT)I

BETWEEN:

MARIE-FRANCE SOTTILE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on July 4, 2018, in Quebec City, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

Representative of the
Appellant:

Denis Petitclerc

Counsel for the Respondent:

Sara Jahanbakhsh

JUDGMENT

The appeal from the reassessment under the *Income Tax Act* for the 2015 taxation year is allowed, without costs, for the sole purpose of awarding the Appellant's deduction for temporary accommodation for a 15-day period at the cost of \$25 per night, given the Respondent's admission at the hearing; as for the other aspects of the appeal, they are denied as being unfounded, as per the attached reasons for judgment.

Signed at Ottawa, Canada, this 29th day of October 2018.

“Alain Tardif”

Citation: 2018 TCC 209

Date: 20181029

Docket: 2017-4332(IT)I

BETWEEN:

MARIE-FRANCE SOTTILE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Tardif J.

[1] Ms. Marie-France Sottile is appealing under the informal reassessment procedure established under the *Income Tax Act* (the “ITA”) for the 2015 taxation year. The Court is asked to rule on whether the Appellant was entitled to deduct certain costs as moving expenses under section 62 of the ITA.

[2] The Appellant has been employed as a science editor since 1992 with Quebec’s Ministry of Sustainable Development, Environment and the Fight against Climate Change. From January 2004 to March 2015, the Appellant was assigned to a satellite organization of her employer in Montreal. To that end, the Appellant purchased a condo.

[3] In 2015, further to various circumstances that led to such things including a work stoppage, the Appellant was reassigned to her position in Quebec City. For the purpose of that reassignment, the Appellant received a lump sum compensation payment of \$15,258.42 from her employer to reimburse her for moving expenses.

[4] Starting April 2015, the Appellant began a gradual return to work in Quebec City. From April 2015 to June 2015, the Appellant regularly made Quebec

City-Montreal round trips because she was still the owner of her condo in Montreal and wanted to keep the property.

[5] During that same period, the Appellant was accommodated by friends in Quebec City for a total of 51 days, at a cost of \$25 per night. The Appellant therefore deducted \$25 per day for lodging (total of \$1,275) as well as \$51 per day for food using the Canada Revenue Agency’s simplified calculation method (total of \$2,601).

[6] In July 2015, the Appellant purchased and fully moved into a condo in Quebec City. With respect to that condo, the Appellant incurred \$8,770 in expenses for cleaning and repairs. Those expenses included: washing the condo, installing a washer/dryer, purchasing and installing light fixtures, laying ceramic in the kitchen, and purchasing an air conditioner for \$4,599. The Appellant testified having incurred those various expenses to duplicate the quality of life she had in her Montreal condo.

[7] The Minister of National Revenue (the “Minister”) granted the meals and lodging deduction for 15 days on the basis of paragraph 62(3)(c) of the ITA. As for the cleaning and repairs expenses, the Minister denied all of them. The following table summarizes the expenses that the Appellant deducted and those that were denied by the Minister:

Expense	Deducted	Granted	Denied
Mover	\$1,702	\$1,702	\$0
Travel	\$131	\$131	\$0
Lodging	\$1,275	\$375 ¹	\$900
Meals	\$2,601	\$765	\$1,836
Cleaning and repairs	\$8,770	\$0	\$8,770
Hook-up	\$268	\$268	\$0
Notary public	\$1,845	\$1,845	\$0
Transfer taxes	\$2,000	\$2,000	\$0
Total	\$18,592	\$7,086	\$11,506

¹ It was at the hearing that the Respondent conceded that the Appellant was entitled to deduct the amount of \$375, representing the amount of \$25 for 15 days.

[8] Subsection 62(1) of the ITA states that a taxpayer can deduct from his/her income the amounts that he/she paid as moving expenses incurred in connection with an eligible relocation. First, it is understood that this is an “eligible relocation” within the meaning of subsection 248(1) of the ITA. As such, the only debate involves the acceptability of the expenses claimed by the Appellant.

[9] In this regard, subsection 62(3) of the ITA sets out expenses that are included in the moving costs incurred. The Federal Court of Appeal (“FCA”), in *Séguin*,² acknowledged that the list in subsection 62(3) of the ITA is not comprehensive and that its purpose is not to cover all possible moving costs. However, according to the FCA, those expenses incurred must pertain directly to a move and cannot be incidental expenses.

[10] In *Nazih*,³ this Court more recently reiterated these principles. In that case, Justice Smith, among other things, denied the deduction claimed for a new central vacuum cleaner because that was an incidental expense.

[11] On a balance of probabilities, the Appellant has not satisfied me that the various expenses totalling \$8,770 in cleaning and repair costs meet the requirements set out in *Séguin*. As the evidence shows, the Appellant incurred those expenses only to maintain the lifestyle that she had in her Montreal condo. Similar to the purchase of a new central vacuum in *Nazih*, these expenses are incidental to the move.

[12] Regarding the expenses incurred for lodging and meals, paragraph 62(3)(c) of the ITA states that expenses for meals and lodging are deductible for a maximum of 15 days. In *Vickers*,⁴ Justice Hogan provided some background for subsection 62(3) of the ITA. He rightly pointed out the following subtlety: while paragraph 62(3)(a) of the ITA allows for the deduction of the taxpayer’s moving expenses with no real limit, paragraph 62(3)(c) of the ITA does not require such a connection with the move, but imposes a 15-day threshold:

[TRANSLATION]

² *Canada (Attorney General) v. Séguin*, [1998] 2 C.T.C. 13 (FCA).

³ *Nazih v. The Queen*, 2016 TCC 70 [informal procedure].

⁴ *Vickers v. The Queen*, 2011 TCC 2.

33 [...] It should be pointed out that a more logical outcome would be reached if the ordinary meaning of the term were kept and if paragraph 62(3)(a) of the Act were interpreted as meaning that it authorizes the deducting of all travel expenses incurred for the move *per se*, and paragraph 62(3)(c) of the Act as meaning that it authorizes the deducting of other meal and lodging expenses incurred near the old or new residence, expenses such as those often incurred for looking for a new residence, for getting settled in a residence or for leaving a residence before the move *per se*.

[13] In addition, Justice Favreau ruled, in *Christian*,⁵ that paragraph 62(3)(c) of the ITA provides no exceptions and must be respected. However, in *Sirivar*,⁶ an informal procedure case, this Court granted a deduction for a period greater than 15 days for temporary accommodation in a case where the taxpayer had been required by his employer to divide his time between Toronto and Ottawa.

[14] The facts of *Sirivar* are quite different from those of the case before us. In this case, the Appellant was not required by her employer to divide her time between Montreal and Quebec City. It was the Appellant's personal decision to keep living in her Montreal condo during the period from April to June 2015. In fact, unlike in *Sirivar*, the Appellant is claiming not just costs for temporary accommodation, but also expenses for meals.

[15] Thus, as stated by Justice Favreau in *Christian*, paragraph 62(3)(c) of the ITA provides no exceptions and must be respected. Therefore, the Appellant cannot deduct an amount greater than 15 days for temporary accommodation and the meals arising from it.

[16] I must, however, allow the appeal for the sole purpose of granting the Appellant's temporary accommodation deduction for a period of 15 days at the cost of \$25 per night, given the Respondent's admission at the hearing. As for the other aspects of the appeal, they are denied as being unfounded.

Signed at Ottawa, Canada, this 29th day of October 2018.

⁵ *Christian v. The Queen*, 2010 TCC 458.

⁶ *Sirivar v. The Queen*, 2014 TCC 24 [informal procedure].

“Alain Tardif”

Justice Tardif

CITATION: 2018 TCC 209
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STYLE OF CAUSE: MARIE-FRANCE SOTTILE v.
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REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif
DATE OF JUDGMENT: October 29, 2018

APPEARANCES:

Representative of the Appellant: Denis Petitclerc
Counsel for the Respondent: Sara Jahanbakhsh

COUNSEL OF RECORD:

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