

Docket: 2020-1856(IT)I

BETWEEN:

TERESA A. HILL,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on June 26, 2024, at Hamilton, Ontario

Before: The Honourable Justice David E. Graham

Appearances:

Agent for the Appellant: Wilfred Davey

Counsel for the Respondent: Seth Eichhorst
Devon Peavoy

JUDGMENT

The appeals of the reassessments of the Appellant's 2013 to 2016 taxation years are dismissed.

The appeals of the Appellant's 1993 to 2011 tax years and 2017 and 2018 tax years are quashed.

Signed at Ottawa, Canada, this 5th day of July 2024.

“David E. Graham”

Graham J.

Citation: 2024 TCC 92
Date: 20240705
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BETWEEN:

TERESA A. HILL,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Graham J.

[1] Teresa Hill is a Haudenosaunee Iroquois Confederacy Treaty Indian from the Six Nations of Grand River. She lives on the Six Nations reserve and works as a unit clerk at the West Haldimand General Hospital in Hagersville, Ontario (the “Hospital”).

[2] Ms. Hill takes the position that the income she earned from 2013 to 2016 from working at the Hospital was exempt from tax under paragraph 87(1)(b) of the *Indian Act*.

[3] Ms. Hill and her agent, Wilfred Davey, both testified. I found them to be credible witnesses. That said, the facts are not really in dispute.

A. Issue

[4] Ms. Hill is an “Indian” within the meaning of the *Indian Act*. Under paragraph 87(1)(b), the personal property of an Indian situated on a reserve is exempt from tax. The employment income of an Indian is personal property (*Nowegijick v. The*

*Queen*¹). Therefore, Ms. Hill's employment income from her work at the Hospital was exempt from tax if it was situated on the Six Nations reserve.

B. Williams Test

[5] In *Williams v. The Queen*,² the Supreme Court of Canada held that whether income is situated on a reserve is determined based on whether there are sufficient connecting factors to the reserve. The Court set out a two-step test. First, identify the potentially relevant connecting factors. Then, analyze those factors to determine what weight should be given to them.

C. Potentially Relevant Factors

[6] In *Bastien v. The Queen*,³ the Supreme Court emphasized that, in considering potential connecting factors, it is essential to consider the type of income in question. The list of connecting factors relevant to one type of income will not necessarily be the same as the list of factors for another type of income.⁴

[7] The Supreme Court has repeatedly emphasized the purpose of subsection 87(1) is to "preserve the entitlement of Indians to their reserve lands and to ensure that the use of their property on their reserve lands [is] not eroded by the ability of governments to tax, or creditors to seize". Its purpose is "not to confer a general economic benefit" upon Indians.⁵ It is that purpose that I must consider when deciding what factors are relevant.

[8] In *Morriseau v. The Queen*, Justice Sommerfeldt set out the following five connecting factors as ones that the case law has identified as being potentially relevant in the context of employment income:⁶

- a) the residence of the employer;
- b) the residence of the employee;
- c) the location where the employee is paid;

¹ [1983] 1 SCR 29.

² [1992] 1 SCR 877.

³ 2011 SCC 38 at para. 38.

⁴ *Bastien* at para. 38.

⁵ *Williams* at pg. 885. Cited with approval in *Bastien* at para. 23.

⁶ 2020 TCC 5, at para 27.

- d) the location where the work is performed; and
- e) the nature of the services performed or the special circumstances in which they are performed.

[9] I find that these connecting factors are relevant to Ms. Hill's employment. I will now consider them.

Employer's Residence

[10] There was no evidence regarding the residence of the Hospital. Notably, there was no suggestion that the central management and control of the Hospital occurred on the Six Nations reserve. This factor argues for taxation.

Employee's Residence

[11] Ms. Hill lives on the Six Nations reserve about a 10 minute drive from the Hospital. This factor argues for exemption from taxation.

Place Where Payment Occurs

[12] Ms. Hill is paid by direct deposit to her bank account on the reserve. This factor argues for exemption from taxation.

Location of Work

[13] Ms. Hill performed the vast majority of her work at the Hospital. I do not consider the fact that she occasionally brought some scheduling work home with her to be material.

[14] The fact that Ms. Hill performed her work off the reserve argues for taxation.

[15] Although the Hospital is located within one kilometer of the boundary of the Six Nations reserve, it is not on the reserve. The Hospital is located on private land (the "Hospital Land"). Mr. Davey testified that his review of the abstract of the Hospital Land indicated that the registered owner of the land donated it to the Hospital in 1961.

[16] Ms. Hill takes the position that the Hospital Land belongs to the Six Nations, having been given to them in 1784 under the *Haldimand Proclamation* in

recognition of their service to the Crown during the American Revolution. She submits that *Haldimand Proclamation* gave the Six Nations all land within 6 miles of the Grand River - a massive swath of land that Mr. Davey described as being approximately 9,000,000 acres, only 5% of which is covered by the Six Nations reserve.

[17] Mr. Davey testified that the Hospital Lands lie within 6 miles of the Grand River. He produced a Google Earth map showing the distance.⁷ While I accepted the map into evidence, on a more detailed review of it, I am left uncertain whether the Hospital Lands fall within 6 miles of the Grand River. I am, however, certain that I cannot rely on the map to reach that conclusion. The map states that the distance from the Hospital Lands to the Grand River is “13,516.70 meters 2.55 miles”. This combination of imperial and metric measurements makes no sense. One does not measure a distance in a combination of imperial and metric measurements. It cannot be that the map is providing the measurements in both systems as 13,516.70 metres is equal to approximately 8.4 miles. While it is difficult to read, the map appears to have a scale in the bottom right corner which suggests that the 13.5 km measurement is more likely to be accurate. Based on the foregoing, I am not satisfied that the Hospital Lands actually fall within the land covered by the *Haldimand Proclamation*. That said, I have not been asked to make that determination.

[18] Ms. Hill says that the Hospital Land was improperly taken from the Six Nations by the Crown in the mid-1800s. Ms. Hill is not asking me to decide whether the Hospital Land rightfully belongs to the Six Nations. She recognizes that a Tax Court of Canada informal procedure appeal is not the appropriate forum to resolve that issue.

[19] Ms. Hill is also not arguing that the Hospital Land is part of the Six Nations reserve. The term “reserve” is defined in subsection 2(1) of the *Indian Act* as a tract of land, the legal title to which is vested in His Majesty, that has been set apart by His Majesty for the use and benefit of a band. Since legal title to the Hospital Land is not vested in His Majesty (even though Ms. Hill’s position is that it should be), it is not a reserve.

[20] What Ms. Hill is essentially asking is that I recognize that she performs her work on what I will call “disputed land”. For the purposes of this appeal, I am prepared to accept the Hospital is located on disputed land. However, as explained in more detail below, I find that the fact that the Hospital is located on disputed land

⁷ Exhibit A-1, page 2.

does not, in itself, outweigh the fact that it is not on the Six Nations reserve and thus that the location-of-work factor argues for taxation.

Nature of Services Performed or Special Circumstances

[21] Ms. Hill did not point to anything about the nature of the services she performs or the operations of the Hospital that would connect her services to the reserve.

[22] As a unit clerk, Ms. Hill processes doctors' orders, answers phones and call bells, does scheduling, orders supplies, relieves others on switchboard duties, and moves beds if needed.

[23] There was no evidence to suggest that the bulk of the Hospital's patients came from the reserve. Ms. Hill testified that maybe three of the Hospital's approximately 100 employees live on the Six Nations reserve.

[24] The Hospital is a smaller hospital that serves the surrounding community, including people who live on the reserve. Ms. Hill believes the Hospital began operating in 1953. There has not been a hospital on the reserve since 1968.

[25] The Hospital is one of five hospitals in the area. My understanding is that people living on the Six Nations reserve will generally go to whichever hospital is closest to where they live. Ms. Hill explained that one of the other hospitals is at the other end of the reserve and that the remaining three are approximately a 40 to 45 minute drive from the reserve.

[26] The Hospital has 23 in-patient beds and an emergency department with 9 to 10 beds. There is a long term care facility on the second floor of the Hospital that operates independently from the Hospital. Patients with more serious issues are generally transferred to a larger hospital in the region. Ms. Hill explained that most of those patients are sent to Hamilton.

[27] There was no evidence to suggest that the Hospital receives specific federal funding or, if so, that that funding was by virtue of its proximity to the reserve or services it provides to people on the reserve.

[28] Ms. Hill testified that in the last year the Hospital has started having ceremonies led by Six Nations members which staff, volunteers, patients and others were welcome to attend. As these ceremonies occurred well outside of the years in question, I do not have to consider them. That said, since Ms. Hill continues to work

for the Hospital, I will say that, had the ceremonies occurred during the years in question, it would not have changed my overall decision on her appeal. The ceremonies neither change the nature of Ms. Hill's work nor of the Hospital itself.

Relationship Between the Income and Life on the Reserve

[29] In *Bastien*, the Supreme Court identified that the relationship between the income and life on the reserve may, in some cases, be something that strengthens or weakens connecting factors but is not a factor in itself.

[30] There was no evidence to suggest any sort of relationship between Ms. Hill's employment at the Hospital and life on the reserve. In the circumstances of this case, I consider this to be neutral rather than something that weakens other connecting factors.

D. Weight of the Factors

[31] In weighing the connecting factors, I give moderate weight to Ms. Hill's residence and that of her employer and significant weight to the location and nature of her work. I give little weight to the place of payment. Based on this weighing, I find that Ms. Hill's employment income was taxable.

[32] Ms. Hill submits that I should give considerable weight to the fact that the Hospital is on disputed land. That fact might have been relevant if the nature of Ms. Hill's work had been closely tied to the reserve but, in the circumstances, I attach little significance to it. To give that fact weight by itself would effectively re-draw the boundaries of the Six Nations reserve for the purposes of subsection 87(1) such that any employment occurring within 6 miles of the Grand River would occur on the Six Nations reserve.

[33] Ms. Hill says that I should follow the decision of the Federal Court of Appeal in *Folster v. The Queen*.⁸ *Folster* considered a case where an employee who resided on a reserve worked at a hospital off the reserve. The Court held that the employee's income was exempt from tax.

[34] I find *Folster* to be helpful but not in the way the Ms. Hill intends. The facts in *Folster* are very different from those in Ms. Hill's case and illustrate the importance of the nature of the employee's work. In particular, there was significant

⁸ 1997 CarswellNat 623.

evidence that Ms. Folster's work was closely tied to the reserve. The hospital in *Folster* had been located on the reserve until it burned down and was rebuilt adjacent to the reserve. The government was in the process of designating that land as part of the reserve and had previously considered income earned working in the hospital to be exempt. The hospital primarily served the reserve community. Approximately 80% of the hospital's patients were Indians. Ms. Folster was employed by the federal government and the Court held that the payments were "advanced as part of the Crown's responsibility for the health care of Indians and, in particular, the health of Indians on the Norway House Indian Reserve".⁹

[35] Ms. Hill also relies on the Federal Court of Appeal decision in *Robertson v. The Queen*¹⁰ for the proposition that income earned off-reserve can nonetheless be exempt. I do not find *Robertson* helpful. In *Robertson*, the taxpayers earned business income, not employment income and thus the relevant connecting factors were very different than those applied to employment income.

E. Conclusion

[36] Based on all of the foregoing, the appeal is dismissed.

F. Additional Arguments

[37] Ms. Hill's notice of appeal raised a number of other issues (including the application of section 35 of the *Constitution Act*). Ms. Hill abandoned all arguments other than the application of subsection 87(1) at the beginning of trial.

G. Additional Years

[38] Ms. Hill's notice of appeal also raised a number of other tax years. The Respondent had intended to argue that the appeals of Ms. Hill's 1993 to 2011 tax years and her 2017 and 2018 tax years should be quashed as the necessary preconditions for appealing had not been met. At the beginning of trial, Ms. Hill accepted that her appeal only dealt with her 2013 to 2016 tax years. It was unclear to me whether she had originally intended to appeal the other years or not. For certainty, I will quash the appeals of Ms. Hill's 1993 to 2011 tax years and her 2017 and 2018 tax years.

⁹ *Folster* para. 26.

¹⁰ 2012 FCA 94.

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Signed at Ottawa, Canada, this 5th day of July 2024.

“David E.Graham”

Graham J.

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REASONS FOR JUDGMENT BY: The Honourable Justice David E. Graham
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APPEARANCES:

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