

Docket: 2021-2014(IT)I

BETWEEN:

ALEX NICKERSON,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on August 23, 2023 and October 7–9, 2024,
at Halifax, Nova Scotia

Before: The Honourable Justice Joanna Hill

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Sean Karmali

AMENDED JUDGMENT

In accordance with the attached Reasons for Judgment, the appeals from reassessments issued for the Appellant's 2013, 2014, and 2015 taxation years are allowed, without costs, as follows:

1. The Notice of Reassessment dated August 16, 2018 for the 2013 taxation year is vacated; and
2. The Appellant is entitled to deduct additional business expenses of \$10,418.11 for the 2014 taxation year and \$16,359.82 for the 2015 taxation year.

This Amended Judgment is issued in substitution for the Judgment issued January 10, 2025, further to the correction contained in the attached Amended Reasons for Judgment.

Signed at Ottawa, Canada, this 29th day of January 2025.

“Joanna Hill”

Hill J.

Citation: 2025TCC3
Date: 20250129
Docket: 2021-2014(IT)I

BETWEEN:

ALEX NICKERSON,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

AMENDED REASONS FOR JUDGMENT

These Amended Reasons for Judgment are issued in substitution for the Reasons for Judgment issued on January 10, 2025, to revise a typographical error in paragraph 24.c.

Hill J.

A. Introduction

[1] Mr. Nickerson has appealed reassessments disallowing various business expenses he claimed in the 2013, 2014, and 2015 taxation years. Mr. Nickerson believes he is entitled to those expenses on the basis that the Minister of National Revenue misunderstood the nature and extent of his business activities under the Life Leadership Multilevel Marketing Program.

[2] The hearing of the appeal began on August 23, 2023, but could not be completed due to the number of documents Mr. Nickerson brought to Court. I asked the parties to review those documents in the interim adjournment to see if they could reach a settlement or at least narrow the amounts at issue.

[3] Based on that review, the Respondent concedes \$2,303.62, \$8,420.98, and \$11,987.38 in additional business expenses should be allowed for the 2013, 2014, and 2015 years respectively. However, the concession for the 2013 taxation year is moot because the reassessment was issued beyond the normal reassessment period for that taxation year. The Respondent did not establish, on a balance of

probabilities, that Mr. Nickerson filed a waiver within the time required under the *Income Tax Act* to permit the late reassessment.

[4] Otherwise, Mr. Nickerson has the burden of demonstrating that he is entitled to claim the remaining expenses at issue in the 2014 and 2015 taxation years. Mr. Nickerson did not meet that burden because he was unable to establish a proper business purpose for the majority of expenses at issue. While I found Mr. Nickerson to be a credible witness, his evidence was not consistently reliable. He brought binders of disorganized documents when the hearing first began in August 2023. He had a more organized set of documents when the hearing resumed in October 2024, but he relied on faulty calculations and was unable to reconcile his documents with expenses that had already been allowed.

B. The 2013 reassessment is invalid

[5] The Respondent has the burden of establishing that the Minister was entitled to reassess Mr. Nickerson for the 2013 taxation year after the three-year normal reassessment period in subsection 152(3.1) of the *Income Tax Act*. The Minister originally assessed Mr. Nickerson for that year by notice dated June 18, 2015 and reassessed him more than three years later, on August 16, 2018.

[6] Notably, the Reply to the Notice of Appeal does not make any mention of this issue either in the assumptions of fact or in the statement of the statutory provisions and grounds relied on.

[7] At the hearing, the Respondent argued that the Minister was entitled to reassess because the Appellant provided a waiver, further to the exception under subparagraph 152(4)(a)(ii) of the *Income Tax Act*. On cross-examination, counsel for the Respondent presented Mr. Nickerson with a scanned copy of a waiver for the 2013 taxation year dated June 12, 2018. Mr. Nickerson recognized his signature and agreed that he likely signed the waiver and sent it to the Canada Revenue Agency. He otherwise did not recall the circumstances in which he signed it or what the waiver represents.

[8] Notwithstanding these admissions, the Respondent's argument fails because counsel did not lead evidence to establish that the deadline under subparagraph 152(4)(a)(ii) was met. That provision requires that the waiver be filed "within the normal reassessment period".¹ In the present case, this means that the

¹ *Csak v HMTK*, 2024 TCC 9, para 156.

waiver had to be filed before June 18, 2018. The scanned copy of the waiver entered as an exhibit does not have a date stamp from the CRA and the Respondent did not call a witness from the CRA to provide evidence in this regard.

[9] In light of the Respondent's failure to meet this burden, the 2013 reassessment is invalid and must be vacated.

C. The 2014 and 2015 business expenses at issue

[10] With respect to the remaining taxation years at issue, the Appellant has not met his burden to establish that the 2014 and 2015 reassessments are incorrect to the extent required to obtain all the relief he seeks in this appeal.

[11] Mr. Nickerson and his wife participated in the Life Leadership Program as a partnership. They were required to regularly buy products and training materials that they would sell to other Life Leadership Program members on their team who in turn were supposed to sell them to others. They also were required to attend and participate in meetings, seminars, conventions, and promotional events in various locations, including in the United States. The Nickersons were further required to organize and pay for meetings, promotional materials, and events for their existing team members and to recruit new members. They accumulated profit sharing points and earned money based on their participation and the participation of others they recruited.

[12] Based on advice from more senior Life Leadership Program members, Mr. Nickerson and his wife reported high gross business income along with high business expenses from their participation in the program. In the two remaining years at issue, those amounts were as follows:

	2014	2015
Gross business Income	\$149,674	\$282,609
Business expenses	\$126,346	\$237,824
Net business income	\$23,328	\$44,785

[13] At the hearing, Mr. Nickerson was unable to clarify his business activities in relation to the specific expenses at issue, likely because of the way the Life

Leadership Program was structured. Many of the activities were personal in nature, such as rewards and prizes designed to keep members in the program.

[14] Notwithstanding the problems with the Life Leadership Program business model, the Minister accepts that the Nickersons earned business income and could therefore deduct expenses accordingly. The Minister allowed a significant portion of the expenses claimed, \$83,328 for 2014 and \$152,046 for 2015.

[15] Mr. Nickerson's 50% share of the disallowed expenses, minus the Respondent's concessions, is at issue in the appeal.

	Disallowed	50% portion	Minus Respondent's concessions	Remaining amounts at issue
2014	\$43,018	\$21,509	\$8,420.98	\$13,088.02
2015	\$85,778	\$42,889	\$11,987.38	\$30,901.62

[16] Mr. Nickerson used the CRA audit working papers that listed the disallowed (and allowed) expenses as a guide for his explanations and supporting documents. However, his testimony was problematic for a number of reasons including that (a) he was unable to establish a proper business purpose for many expenses that are typically personal in nature, (b) he did not have proof of payment for various expenses, and (c) he relied on documents and records for expenses that had already been allowed.

[17] Considering the extensive travel and activities required under the Life Leadership Program, it is surprising that Mr. Nickerson did not maintain proper paperwork to establish he incurred the expenses or that they were tied to a true business purpose.

[18] That being said, Mr. Nickerson was able to establish, on a balance of probabilities, that he is entitled to some additional business expenses. The following expenses are allowed because Mr. Nickerson's testimony was supported by documentation regarding the specific business activity and proof of payment.

2014 allowed expenses

[19] In light of the Minister's general acceptance of the Life Leadership Program business model, the Respondent's position that the Nickersons did not have any advertising and promotion expenses in 2014 is unreasonable and ignores documentation provided. As a result, the following amounts will be allowed in this regard:

- \$305.32 for a "Ladies Night Out on the Town" promotional event;²
- \$333.50 for Halifax Moosehead hockey tickets;³ and
- \$360.50 for Operation Advance Qualifiers Baseball tickets.⁴

[20] Mr. Nickerson is also entitled to deduct:

- \$614.08 for attendance at a "major convention" held in Ottawa;⁵ and
- \$383.73 for professional fees paid to Grant Thornton LLP.⁶

2015 allowed expenses

[21] For 2015, Mr. Nickerson is entitled to deduct:

- \$3,729 for the bus hired to transport their team to a "major convention" in Ottawa;⁷
- \$368.80 for attendance at a "major convention" in Massachusetts for which he was a speaker;⁸ and
- \$274.64 for a corn maze promotional event.⁹

² Exhibit A-59: 50% of \$204.10 + \$406.53.

³ *Ibid*, (50% of \$667.00).

⁴ *Ibid*, (50% of \$721.00).

⁵ Exhibit A-57: 50% of \$721.86+506.30.

⁶ Exhibit A-64: 50% of \$767.46.

⁷ Exhibit A-71: 50% of \$7458.

⁸ Exhibit A-76: 50% of \$654.11 + \$83.48.

⁹ Exhibit A-83: 50% of \$18.01 + \$531.27.

[22] The Respondent argues that some of the above convention expenses should not be allowed because subsection 20(10) of the *Income Tax Act* limits business expense claims to two conventions in a taxation year. While the Respondent relied on a compelling authority this regard,¹⁰ I was not provided with evidence outlining the two conventions for which expenses had already been allowed for each taxation year. This information was not stated in the assumptions of fact in the Reply and the Respondent did not lead evidence from a CRA witness. The audit working papers Mr. Nickerson relied on in his testimony were not entered into evidence because he did not create them or conduct the underlying analysis and calculations. They were marked for identification purposes because Mr. Nickerson organized his testimony and documents based on those documents. In any event, the audit working papers are not easy to read and require clarification.

[23] Absent specific evidence from the Respondent in this regard, I was unable to determine whether any of the above allowed expenses related to conventions in excess of the limit in subsection 20(10).

D. Conclusion

[24] Based on the foregoing, the appeal is allowed, without costs, to:

- a. vacate the 2013 reassessment dated August 16, 2018;
- b. allow \$10,418.11 of additional business expenses for 2014:

Respondent's concession	\$8,420.98
"Ladies Night Out on the Town" promotional event	\$305.32
Halifax Moosehead promotional event	\$333.50
Operation Advance Qualifiers promotional event	\$360.50
Ottawa "Major Convention"	\$614.08
Accounting fees	\$383.73
Total	\$10,418.11

¹⁰ *Shaver v HMTQ*, 2004 TCC 10, paras 30-44.

c. allow \$16,359.82 of additional business expenses for **2015**:

Respondent's concession	\$11,987.38
Bus to Ottawa "Major Convention"	\$3,729
Hotels for Massachusetts "Major Convention"	\$368.80
Corn maze promotional event	\$274.64
Total	\$16,359.82

Signed at Ottawa, Canada, this 29th day of January 2025.

"Joanna Hill"

Hill J.

CITATION: 2025 TCC 3

COURT FILE NO.: 2021-2014(IT)I

STYLE OF CAUSE: Alex Nickerson v. His Majesty The King

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: August 23, 2023 and October 7–9, 2024

REASONS FOR JUDGMENT BY: The Honourable Justice Joanna Hill

DATE OF JUDGMENT: January 29, 2025

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Sean Karmali

COUNSEL OF RECORD:

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Firm: N/A

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