

Docket: 2006-2881(IT)I

BETWEEN:

RICHARD G. MACDONALD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 23, 2007, at Sydney, Nova Scotia.

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Lindsay Holland

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2004 taxation year is dismissed.

Signed at Halifax, Nova Scotia, this 30th day of April 2007.

"Wyman W. Webb"

Webb J.

Citation: 2007TCC250
Date: 20070430
Docket: 2006-2881(IT)I

BETWEEN:

RICHARD G. MACDONALD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb J.

[1] Mr. MacDonald claimed the expenses related to three trips in 2004 as moving expenses under section 62 of the *Income Tax Act* ("Act").

[2] Mr. MacDonald is a journeyman pipe fitter. He would work on various construction jobs in different locations. In 2004 he was unable to find any work on Cape Breton Island. In May 2004 he travelled by truck to Alberta to deposit his travel card in Alberta in the hope that he would be able to find work in Alberta. He returned home to Nova Scotia in May as he was unable to find any work at that time. The expenses related to the travel from Nova Scotia to Alberta were the basis of one of the claims for moving expenses in 2004.

[3] In October 2004 he again travelled to Alberta, but this time he worked in Alberta for approximately six weeks. When he was laid off he returned to Nova Scotia where he started work with Stora Enso in Port Hawkesbury.

[4] The expenses related to the trip to Alberta in October 2004 and the expenses related to the trip from Alberta to Nova Scotia in December 2004 were the basis for the balance of the amount claimed as moving expenses in 2004.

[5] While Mr. MacDonald was in Alberta he lived in temporary accommodations. He did not purchase a home in Alberta. In 2004 he had three houses in Cape Breton.

[6] Mr. MacDonald kept his Nova Scotia driver's licence throughout 2004 and he maintained his medical insurance coverage with the province of Nova Scotia throughout 2004. He did not move his bank accounts to Alberta.

[7] In 2004 his common-law spouse remained in Nova Scotia. He also did not join any clubs or associations while in the province of Alberta. He was in the province of Alberta simply to work and because there was no work available in Nova Scotia.

[8] In order for the expenses to qualify as moving expenses under section 62 of the *Act*, the expenses must be incurred in respect of an eligible relocation. One of the components of "eligible relocation" (which is defined in subsection 248(1) of the *Act*) is that:

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

[9] In other words, if the residence of the taxpayer has not changed then this test will not be met and it will not be an eligible relocation. Residence for the purposes of this definition would mean the ordinary residence of the taxpayer.

[10] Miller J. in the case of *Calvano v The Queen*, 2004 TCC 227, 2004 DTC 2471 stated that:

The starting point on any discussion of "ordinarily resided" is the Supreme Court of Canada case of *Thomson v. Minister of National Revenue* and particularly, Justice Estey's following comment, which can be found at pages 231-2:

A reference to the dictionary and judicial comments upon the meaning of these terms indicates that one is "ordinarily resident" in the place where in the settled routine of his life he regularly, normally or customarily lives. One "sojourns" at a place where he unusually, casually or intermittently visits or stays. In the former the element of permanence; in the latter that of the temporary predominates. The difference cannot be stated in precise and definite terms, but each case must be determined after all of the

relevant factors are taken into consideration, but the foregoing indicates in a general way the essential difference.

[11] Mr. MacDonald has failed to establish that he changed the place where he ordinarily resided in 2004 from Nova Scotia to Alberta. He maintained a Nova Scotia driver's licence in 2004. He continued to be covered by the provincial health insurance plan of Nova Scotia. He did not take all of his belongings with him to Alberta (he only took what he could take in his truck). His common-law spouse remained in Nova Scotia. He had and maintained three houses in Nova Scotia. He did not purchase any property in Alberta. He did not relocate his bank accounts to Alberta. He did not change his mailing address to Alberta.

[12] Unfortunately he simply incurred travel costs to find work in Alberta because work was not available in Nova Scotia. In order to be eligible to claim moving expenses the travel costs must relate to a change in residence not simply travel to a work location that is a significant distance from home.

[13] In the case of *Munroe v. R.*, 1992 CarswellNat 1705, Sarchuk J. confirmed that in a similar situation the Appellant was not entitled to moving expenses nor was the Appellant entitled to claim the travel costs as a deduction in determining his employment income under section 8 of the *Act*.

[14] As a result the appeal is dismissed.

Signed at Halifax, Nova Scotia, this 30th day of April 2007.

"Wyman W. Webb"

Webb J.

CITATION: 2007TCC250

COURT FILE NO.: 2006-2881(IT)I

STYLE OF CAUSE: RICHARD G. MACDONALD AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Sydney, Nova Scotia

DATE OF HEARING: April 23, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice Wyman W. Webb

DATE OF JUDGMENT: April 30, 2007

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Lindsay Holland

COUNSEL OF RECORD:

For the Appellant:

Name:	
Firm:	

For the Respondent:

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