

Citation: 2009TCC380

2008-2614(IT)I

BETWEEN:

HENRI WITTMANN,

APPELLANT,

AND

HER MAJESTY THE QUEEN,

RESPONDENT.

[OFFICIAL ENGLISH TRANSLATION]

**TRANSCRIPT
OF REASONS FOR JUDGMENT**

Let the attached certified copy of the Reasons for Judgment delivered orally from the Bench at Shawinigan, Quebec, on May 15, 2009, be filed.

"François Angers"
Angers J.

Signed at Edmunston, New Brunswick, this 4th day of August 2009.

Translation certified true
on this 25th day of September 2009
Margarita Gorbounova, Translator

TAX COURT OF CANADA
RE INCOME TAX ACT

2008-2614(IT)I

BETWEEN: **HENRI WITTMANN**
 Appellant

-and-

HER MAJESTY THE QUEEN
Respondent

[OFFICIAL ENGLISH TRANSLATION]

Held before the Honourable Justice **FRANÇOIS ANGERS**, Tax
Court of Canada, Shawinigan, Quebec, on **May 15, 2009**.

REASONS FOR JUDGMENT

APPEARANCES:

HENRI WITTMANN
for himself.

Nancy Dagenais
for the respondent.

Registrar/Technician: Nicole Champagne

RIOPEL, GAGNON, LAROSE & ASSOCIÉS
215 Saint-Jacques St.
Suite 328
Montréal, Quebec
H2Y 1M6

IT-5288

per: **JEAN LAROSE**

1 START OF REASONS FOR JUDGMENT:

2 HIS HONOUR: But it's not lost;
3 it's just that you have to pay tax on it. That is what it
4 means: that money is not lost, except that RRSPs are a
5 sort of deferred income, if you'd like; you don't pay tax
6 as long as you qualify for the RRSP amount that you can
7 deposit per year. It's deferred tax, if you'd like.

8 But I... what you are asking me, I
9 cannot... I have no jurisdiction to do that. You will have
10 to make changes to your tax return and submit it to
11 Revenue Canada. Then, a decision will be issued, and you
12 will appeal that decision. But if those are not the
13 things...

14 HENRI WITTMANN: So I should redo
15 this one.

16 HIS HONOUR: No, I'm not even
17 telling you what to do; it's not my... It's not up to me to
18 give you advice. All I'm saying is, if the assessment
19 before me is the way it is described in the Reply to the
20 Notice of Appeal, and you do not object to it, then there
21 is nothing I can do but dismiss your appeal. If you have
22 other submissions to make to Revenue Canada concerning
23 the 2003 taxation year, make them.

24 HENRI WITTMANN: So I'm starting
25 from scratch.

26 HIS HONOUR: Well, start from

1 scratch, but if you want to defer that income in some way
2 through accounting, you say that any accountant could do
3 it, so consult one. Then submit it to Revenue Canada, and
4 they will give you a decision or a determination or an
5 assessment. Then, if you don't agree, you will appeal it.
6 And then we might be able to deal with this issue. But at
7 the moment, that's not what is before me. What is before
8 me is an assessment that you do not object to. So, at the
9 moment, I have no jurisdiction to do anything other than
10 process it. But then, you don't object to it, so there is
11 nothing I can do.

12 So if you think that you can correct
13 this in some other way so that you don't have to pay tax
14 on the portion of expenses that was disallowed, because I
15 imagine that, at first, you thought that all of them were
16 going to be allowed and there wouldn't be any tax to pay...

17 HENRI WITTMANN: No, I wouldn't
18 have taken out the RRSPs.

19 HIS HONOUR: Well, maybe you
20 wouldn't have taken out the whole amount; you might have
21 left the \$16,000 in there, okay.

22 HENRI WITTMANN: Yes, that's right.

23 HIS HONOUR: Yes, listen, but
24 if the expenses you claimed are incorrect with respect to
25 the *Income Tax Act*, well, then they make up a surplus
26 that becomes taxable.

1 HENRI WITTMANN: Hard to predict.

2 HIS HONOUR: Well, I
3 understand that, but listen, claiming \$15,000 as an
4 expense to begin with... I mean you should have thought
5 about it. Okay. We don't deduct tax as an expense; that
6 would be too much fun. Okay. So I cannot do more than
7 that, Mr. Wittmann.

8 HENRI WITTMANN: All right.

9 HIS HONOUR: Okay. The appeal is
10 thus dismissed.

11 END OF REASONS FOR JUDGMENT

12 *****

13

14 Translation certified true

15 on this 25th day of September 2009

16 Margarita Gorbounova, Translator

17

18