Docket: 2010-2677(IT)I

BETWEEN:

LAURA T. WILLIAMS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on January 20, 2011 at Toronto, Ontario

Before: The Honourable Justice Wyman W. Webb

Appearances:

Agent for the Appellant:	Glenn Williams
Counsel for the Respondent:	Samantha Hurst

JUDGMENT

The appeal is allowed, without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled, in computing her income for 2008, to a deduction under paragraph 8(1)(c) of the *Income Tax Act* in the amount of $495.

Signed at Halifax, Nova Scotia, this 4th day of February, 2011.

"Wyman W. Webb"

Webb, J.

Citation: 2011TCC66
Date: 20110204
Docket: 2010-2677(IT)I

BETWEEN:

LAURA T. WILLIAMS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb, J.

[1] The issue in this Appeal is whether a member of the clergy, who satisfied the status requirement as set out in subparagraph 8(1)(c)(i) of the *Income Tax Act* (the "*Act*") and the function requirement as set out in subparagraph 8(1)(c)(ii) of the *Act* and who received a housing allowance in relation to a house that the person was renting with her spouse (who was also eligible to claim a deduction under paragraph 8(1)(c) of the *Act*), is able to choose whether to claim a deduction under either subparagraph 8(1)(c)(iii) or (iv) of the *Act*.

[2] There is no dispute in this Appeal that the Appellant was a member of the clergy and that she ministered to a congregation. The Appellant lived with her spouse who was also a member of the clergy and who also ministered to a congregation. The Appellant and her spouse received the following total amounts as housing allowances from their respective employers in 2008:

	Appellant	Appellant's Spouse
Housing Allowance	$19,805	$19,999

[3] The total amount paid by the Appellant and her spouse for rent and utilities for their house in 2008 was $20,493.87. Neither party in this case indicated or suggested

that the amount paid for rent or utilities was not the fair market value thereof. The total amount received by the Appellant and her spouse for housing allowances for 2008 was $39,804 ($19,805 + $19,999) and this amount exceeded the amount paid for rent and utilities for their house by $19,310 ($39,804 - $20,494).

[4] Paragraph 8(1)(c) of the *Act* provides as follows:

> 8. (1) In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:
>
> …
>
> (c) where, in the year, the taxpayer
>
> (i) is a member of the clergy or of a religious order or a regular minister of a religious denomination, and
>
> (ii) is
>
> (A) in charge of a diocese, parish or congregation,
>
> (B) ministering to a diocese, parish or congregation, or
>
> (C) engaged exclusively in full-time administrative service by appointment of a religious order or religious denomination,
>
> the amount, not exceeding the taxpayer's remuneration for the year from the office or employment, equal to
>
> (iii) the total of all amounts including amounts in respect of utilities, included in computing the taxpayer's income for the year under section 6 in respect of the residence or other living accommodation occupied by the taxpayer in the course of, or because of, the taxpayer's office or employment as such a member or minister so in charge of or ministering to a diocese, parish or congregation, or so engaged in such administrative service, or
>
> (iv) rent and utilities paid by the taxpayer for the taxpayer's principal place of residence (or other principal living accommodation), ordinarily occupied during the year by the taxpayer, or the fair rental value of such a residence (or other living accommodation), including utilities, owned by the taxpayer or the taxpayer's spouse or common-law partner, not exceeding the lesser of
>
> (A) the greater of

> (I) $1,000 multiplied by the number of months (to a maximum of ten) in the year, during which the taxpayer is a person described in subparagraphs (i) and (ii), and
>
> (II) one-third of the taxpayer's remuneration for the year from the office or employment, and
>
> (B) the amount, if any, by which
>
> (I) the rent paid or the fair rental value of the residence or living accommodation, including utilities
>
> exceeds
>
> (II) the total of all amounts each of which is an amount deducted, in connection with the same accommodation or residence, in computing an individual's income for the year from an office or employment or from a business (other than an amount deducted under this paragraph by the taxpayer), to the extent that the amount can reasonably be considered to relate to the period, or a portion of the period, in respect of which an amount is claimed by the taxpayer under this paragraph;

[5] It is the position of the Appellant that, in this case, she has the right to choose whether to claim a deduction under subparagraph (iii) or subparagraph (iv) of paragraph 8(1)(c) of the *Act*.

[6] The amount deductible under subparagraph (iv) (since the Appellant was renting the house) will be limited to the rent and utilities paid by the taxpayer. The same limitation would apply to the Appellant's spouse under this subsection. The Appellant would not be entitled to claim a deduction under subparagraph (iv) based on the rent (and utilities) paid by her spouse and nor would her spouse be entitled to a deduction under this subparagraph (iv) for rent and utilities paid by her. Each would determine their own deduction based on what that person paid for rent and utilities, as required by the opening words of subparagraph (iv). Since the Appellant's spouse was permitted to claim a deduction of $19,999 under paragraph 8(1)(c) of the *Act*, assuming that he deducted the amount under subparagraph (iv), the Appellant's spouse must have paid rent and utilities of $19,999. If the Appellant would have paid the rent and utilities then the Appellant's spouse would not have been entitled to deduct $19,999 pursuant to subparagraph (iv) as the amount deductible under this subparagraph is the amount "equal to … rent and utilities ***paid by the taxpayer***", not exceeding the lesser of the amounts determined under clauses (A) and (B). Since the Appellant was not disputing that her spouse was entitled to deduct $19,999 in

computing his income, if the applicable provision is subparagraph (iv), then the Appellant's spouse must have paid $19,999 in rent and utilities. Assuming that the Appellant paid the balance of the rent and utilities of $495 ($20,494 - $19,999) from her housing allowance, her claim under subparagraph (iv) would be limited to $495. It seems to me that it is more likely than not that she paid a portion of the rent and utilities and I find that she did pay $495 for rent and utilities.

[7] Since the opening words of subparagraph (iv) refer to the "rent and utilities ***paid by the taxpayer***" and subclause (B)(I) refers to "the rent paid … including utilities" it is not entirely clear whether this second reference to the rent paid is intended to refer only to the rent paid by the Appellant or to the total rent paid for the residence regardless of who has paid the rent. It seems to me that the limitation in subclause 8(1)(c)(iv)(B)(I) of the *Act* should be interpreted as providing a limitation based on the total amount paid as rent and utilities by both the Appellant and her spouse and not just the amount paid by the Appellant. A simple example will illustrate the problem that will arise if only the rent (including utilities) paid by the Appellant is used in determining the amount for (B)(I).

[8] In this case, the Appellant and her spouse received housing allowances of $19,805 and $19,999 respectively. The total amount paid for rent and utilities was $20,494. If it is assumed that each paid one-half of the rent and utilities, then each would have paid $10,247.

[9] In determining the amount that the Appellant's spouse could claim under subparagraph (iv), the opening words of this subparagraph would limit his deduction to the amount that he paid for rent and utilities or $10,247 in this example. There are further limitations in clauses (A) and (B) and his claim will be limited to the least of $10,247, the amount determined under (A) and the amount determined under (B) (since his claim is equal to the amount he paid not exceeding the lesser of (A) and (B)). Assume that the amount for (A) is greater than $10,247.

[10] In determining the amount for (B) for the Appellant's spouse it will not matter whether the amount for (B)(I) is only the rent (including utilities) paid by the Appellant's spouse or whether it would be all of the rent (including utilities) paid in relation to the residence, since, in this example, the amount that the Appellant's spouse may claim is being determined first. Whichever amount is used his deduction will remain the same - $10,247.

[11] However, when determining, in this example, the amount that the Appellant could deduct it will be relevant. If only the rent (including utilities) paid by the

Appellant is used in determining the amount for (B)(I), since the Appellant's spouse has claimed, in this example, a deduction of $10,247 for the same residence for the same period of time, the following would be the amount determined under (B):

(I) Rent paid (including utilities):	$10,247
Minus	
(II) Amount deducted by the Appellant's spouse:	$10,247
(B):	0

[12] Since the amount that the Appellant may claim is limited to the lesser of (A) and (B), the result of only including the amount paid by the Appellant for rent and utilities in (B)(I) is that the Appellant would not be entitled to any claim under subparagraph (iv). If, instead, the amount included for (B)(I) is the total amount paid for rent (including utilities) the following would be the amount determined for (B):

(I) Rent paid (including utilities):	$20,494
Minus	
(II) Amount deducted by the Appellant's spouse:	$10,247
(B):	$10,247

[13] It seems to me that this would have been the intended result. It does not seem to me that it would have been intended that if spouses are both ministers and each pay one-half of the rent and utilities, that only one of these individuals would be entitled to a deduction for only one-half of the rent and utilities paid in relation to the residence.

[14] Therefore it seems to me that, in this case, the following would be the amount that would be determined for (B) for the Appellant:

(I) Rent paid (including utilities):	$20,494
Minus	
(II) Amount deducted by the Appellant's spouse:	$19,999

(B): $495

[15] Since the deduction is limited to the lesser of (A) and (B) and since her remuneration for the year from her employment was more than $1,485, the Appellant's deduction under subparagraph (iv) would be limited to $495.

[16] However the Appellant submits that she has the right to choose to deduct $19,805 (the amount included in her income pursuant to section 6) pursuant to subparagraph (iii). I am unable to agree with the position of the Appellant. It seems to me that there is a significant qualification under subparagraph (iii). The deduction available under this subparagraph is only available in relation to "amounts … included in … income … in respect of the residence … occupied by the taxpayer ***in the course of, or because of, the taxpayer's … employment***". Therefore the issue is whether the Appellant was occupying this particular residence in 2008 in the course of or because of her employment.

[17] In *Workmen's Compensation Board* v. *Boissonneault*, [1977] N.B.J. No. 182, 18 N.B.R. (2d) 621, Chief Justice Hughes, writing on behalf of the New Brunswick Supreme Court, Appeal Division, stated as follows:

> 4 In *Armstrong* v. *Redford*, [1920] A.C. 757 (H.L.), the phrase "in the course of employment" was commented upon by Lord Parmoor, who said at p. 778:
>
> > "The meaning of the words "in the course of employment" has been determined in this House in the case of *Davidson* v. *M'Robb*, [1918] A.C. 304. "'In the course of employment' does not mean during the currency of the engagement, but means in the course of the work which the workman is employed to do and what is incident to it." . . .
>
> In the case of *Davidson* v. *M'Robb* Lord Dunedin said, referring to course of employment: "It connotes, to my mind, the idea that the workman or servant is doing something which is part of his service to his employer or master. No doubt it need not be actual work, but it must, I think, be work, or the natural incidents connected with the class of work, e.g., in the workman's case the taking of meals during the hours of labour.""
>
> 5 In *St. Helens Colliery Company Limited* v. *Hewitson*, [1924] A.C. 59, Lord Atkinson commented at p. 71: [*page626]
>
> > ". . . a workman is acting in the course of his employment . . . when he is doing something in discharge of a duty to his employer, directly or indirectly, imposed upon him by his contract of service. . . ."

[18] It does not seem to me that this house was occupied by her in the course of her employment as a minister. It seems to me that to occupy the residence in the course of her employment would require that she would occupy the house as part of her employment or as a condition of her employment and not simply while she was employed. In this case the house that was occupied by the Appellant was not provided by her employer nor was it a house in which she was required to reside. It appears that it was simply a house in which she and her spouse chose to reside while she was employed. Therefore she did not occupy this residence in the course of her employment as a minister in 2008.

[19] Even though she did not occupy this residence in the course of her employment as a minister in 2008, if she occupied this residence because of her employment as a minister, then she will satisfy the condition in subparagraph (iii) related to the occupancy of the house. In *Attorney General of Canada* v. *Hoefele, et al.*, 95 DTC 5602, Justice Linden, writing on behalf of the majority of the Justices of the Federal Court of Appeal, stated that:

> …What must be determined is whether those portions of the mortgage loans taken out by the taxpayers in respect of the Toronto homes, and to which the interest subsidy was directed, came about 'because of', 'as a consequence of' or 'by virtue of' employment.
>
> In resolving this question, one must first note that subsection 80.4(1), whether in its older or newly amended form, requires a close connection between the loan or debt and employment, a connection much closer than that required by paragraph 6(1)(a) as between benefit and employment. In the latter, a benefit may arise if it is received merely 'in respect of' employment. The phrase 'in respect of' connotes only the slightest relation between two subjects and is intended to convey very wide scope. In *Nowegijick* v. *The Queen*, the Supreme Court of Canada stated the following concerning the words 'in respect of':
>
> > The words 'in respect of' are, in my opinion, words of the widest possible scope. They import such meanings as 'in relations to', 'with reference to' or 'in connection with'. The phrase 'in respect of' is probably the widest of any expression intended to convey some connection between two related subject matters. [FOOTNOTE 19 : 1 S.C.R. 29 at 39 per Dickson, J. See also Linden, J.A. in Blanchard.]
>
> On the other hand, the phrases used in the amended subsection 80.4(1), '***because of***', or 'as a consequence of', as well as in the original version, 'by virtue of', ***require a strong causal connection***. I find little or no difference between the meanings of the phrases 'because of', 'as a consequence of' and 'by virtue of'. ***Each phrase implies a need for a strong causal relation between subject matters***, not merely a slight linkage between them.

(emphasis added)

[20] It therefore seems to me that the phrase "because of" as used in subparagraph 8(1)(c)(iii) of the *Act* "implies a need for a strong causal relation between" the occupation of the residence and the employment of the Appellant. Merely residing in a house while being employed would not be sufficient. There is no strong causal connection in this case between the occupation of the house by the Appellant and her employment as a minister as the house was not provided by her employer but was simply a house in which the Appellant and her spouse chose to reside. It appears that she was simply living in this house while she was employed as a minister and therefore she was not occupying this house because of her employment as a minister.

[21] The Appellant's agent had referred to an earlier version of form T1223 E (04) published by the Canada Revenue Agency which, in the paragraph identified as (A) in Part C, implies that a person who received a housing allowance may simply claim a deduction for such an allowance. The calculations required in relation to the deduction that may be claimed under subparagraph 8(1)(c)(iv) of the *Act* are set out in the part following paragraph (B) of Part C of this form. It is unfortunate that the form was not clearer but the form cannot change the requirements of the *Act*. This form was changed in 2005 to delete the reference to the receipt of an allowance in paragraph (A) in Part C.

[22] It also seems to me that having limited the amount that a person may claim pursuant to subparagraph (iv) if that person owns or is renting a residence and his or her spouse is also claiming a deduction in relation to the same residence, it would not have been the intention of Parliament that such a person could then avoid the limitations imposed by subparagraph (iv) by simply claiming an amount under subparagraph (iii).

[23] As a result the deduction that the Appellant may claim is to be determined pursuant to subparagraph 8(1)(c)(iv) of the *Act* and is limited to $495.

[24] The appeal is allowed, without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled, in computing her income for 2008, to a deduction under paragraph 8(1)(c) of the *Act* in the amount of $495.

Signed at Halifax, Nova Scotia, this 4th day of February, 2011.

"Wyman W. Webb"

Webb, J.

CITATION:	2011TCC66
COURT FILE NO.:	2010-2677(IT)I
STYLE OF CAUSE:	LAURA T. WILLIAMS AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	January 20, 2011
REASONS FOR JUDGMENT BY:	The Honourable Justice Wyman W. Webb
DATE OF JUDGMENT:	February 4, 2011

APPEARANCES:

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