Docket: 2007-3170(IT)G

BETWEEN:

GORDON LERICHE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 2, 3 and 4, 2009, at Toronto, Ontario,
and on November 10, 2009, at Ottawa, Ontario.

Before: The Honourable Justice Steven K. D'Arcy

Appearances:

Counsel for the Appellant:	Jeffrey Radnoff
Counsel for the Respondent:	Suzanne M. Bruce

AMENDED JUDGMENT

The appeal with respect to the reassessment made under the *Income Tax Act* (the "*Act*") for the 2003 taxation year is allowed, with costs to the Appellant. The reassessment, dated December 28, 2005, is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant was entitled to deduct $77,630 under paragraph 8(1)(*f*) of the *Act* when determining his taxable income for the 2003 taxation year.

Signed at Antigonish, Nova Scotia, this **23rd** day of August 2010.

"S. D'Arcy"

D'Arcy J.

Citation: 2010 TCC 416
Date: 20100823
Docket: 2007-3170(IT)G

BETWEEN:

GORDON LERICHE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR JUDGMENT

D'Arcy J.

[1] The issue in this appeal is the deductibility under paragraph 8(1)(*f*) of the *Income Tax Act* (the "*Act*") of certain expenses incurred by the Appellant, a commission salesperson.

[2] The Appellant is a successful insurance specialist with CIBC Wood Gundy, who began selling insurance over 40 years ago. He holds a university degree from Sir George Williams University (now Concordia University) and has several professional designations (chartered life underwriter (CLU), certified financial planner (CFP), chartered financial consultant (CH.F.C.), and trust and estates practitioner (TEP)).

[3] The Appellant began his career selling life insurance with London Life in Montreal in 1969. He operated independent brokerage firms between 1975 and 1990, at which time he joined employee benefits firm KRG Insurance. In 1998, he was recruited by Midland Walwyn. Merrill Lynch acquired Midland Walwyn in late 1998 and then subsequently sold the retail operations, in late 2001, to the Appellant's current employer, CIBC Wood Gundy.

[4] By 2003, the Appellant's duties at CIBC Wood Gundy were substantial. He was responsible for providing estate-planning advice to CIBC Woody Gundy clients serviced by its branches in Simcoe, St. Catharines, Hamilton, Burlington, and Mississauga (two branches). He also provided estate-planning support to the 67 CIBC investment advisors located at those branches.

[5] In addition, the Appellant managed seven or eight other estate-planning specialists who were located at CIBC Wood Gundy branches in London, Toronto (three branches), Mississauga, Barrie, and Brampton.

[6] The Appellant and three assistants carried on his operations from the CIBC Woody Gundy offices in Mississauga.

[7] It was the Respondent's position that CIBC Wood Gundy employed the three assistants. The Appellant testified that CIBC Wood Gundy employed one of the assistants (Ms. Stevens) and he employed the other two (Ms. Werner and his spouse, Mrs. LeRiche). I accept the testimony of the Appellant. The Appellant employed Ms. Werner and Mrs. LeRiche; CIBC Wood Gundy merely administered the payroll on behalf of the Appellant.[1]

[8] It appears that by reporting on Mr. LeRiche's T4 his income net of the amounts paid to Ms Werner and Mrs. LeRiche, CIBC Wood Gundy understated the Appellant's gross commission income by the amounts paid to Ms. Werner and Mrs. LeRiche.[2] As I will discuss below, that error does not affect my decision.

[9] When filing his income tax return for the 2003 taxation year, the Appellant reported commission income of $119,957.07 and employment expense deductions of $108,193.30.[3]

[10] The Minister of National Revenue (the “Minister”) reassessed the Appellant on December 28, 2005. In reassessing the Appellant, the Minister reduced the amount of deductible employment expenses to $34,526. The Minister confirmed the reassessment in a Notice of Confirmation dated April 18, 2007. The Appellant has appealed this Notice of Confirmation.

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1 Ms. Power, a CIBC World Markets Inc. investment advisor, testified that a similar structure was used to pay her assistants (she employed one of the assistants; CIBC employed the other two and administered the payroll for all three).

2 See Tab 2 of Exhibit R-1.

3 Exhibit R-1, pages 2 and 36.

[11] At the hearing, the Appellant filed over 140 documents supporting the deduction of most of the items claimed on his tax return. Through examination-in-chief and cross-examination, the witnesses, over three days, reviewed nearly all of the exhibits in excruciating detail.

The Law

[12] Because of subsection 8(2) of the *Act*, an employee can only make deductions from his/her employment income if the deduction is expressly permitted under section 8.[4]

[13] Paragraph 8(1)(*f*) allows the deduction of certain expenses by commission salespersons. That provision reads as follows:

> 8(1)(*f*) where the taxpayer was employed in the year in connection with the selling of property or negotiating of contracts for the taxpayer's employer, and
>
> (i) under the contract of employment was required to pay the taxpayer's own expenses,
>
> (ii) was ordinarily required to carry on the duties of the employment away from the employer's place of business,
>
> (iii) was remunerated in whole or part by commissions or other similar amounts fixed by reference to the volume of the sales made or the contracts negotiated, and
>
> (iv) was not in receipt of an allowance for travel expenses in respect of the taxation year that was, by virtue of subparagraph 6(1)(*b*)(v), not included in computing the taxpayer's income,
>
> amounts expended by the taxpayer in the year for the purpose of earning the income from the employment (not exceeding the commissions or other similar amounts referred to in subparagraph 8(1)(f)(iii) and received by the taxpayer in the year) to the extent that those amounts were not
>
> (v) outlays, losses or replacements of capital or payments on account of capital, except as described in paragraph 8(1)(*j*),
>
> (vi) outlays or expenses that would, by virtue of paragraph 18(1)(*l*), not be deductible in computing the taxpayer's income for the year if the employment were a business carried on by the taxpayer, or

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4 *Gifford v. Canada*, 2004 SCC 15, [2004] 1 S.C.R. 411.

> (vii) amounts the payment of which reduced the amount that would otherwise be included in computing the taxpayer's income for the year because of paragraph 6(1)(*e*);

[14] The provision allows the deduction of qualifying expenditures where the following five conditions are satisfied:

1. The taxpayer was employed in the year in connection with the selling of property or negotiating of contracts for his/her employer.

2. The taxpayer was required, under the contract of employment, to pay his/her own expenses.

3. The taxpayer was ordinarily required to carry on the duties of the employment away from the employer's place of business.

4. The taxpayer was remunerated, in whole or in part, by commissions.

5. The taxpayer was not in receipt of a non-taxable subparagraph 6(1)(*b*)(v) travel allowance.

[15] The Respondent's counsel noted during her closing argument that the Appellant satisfied all of the five conditions during the 2003 taxation year. The *Declaration of Conditions of Employment* form, which was completed by the Appellant's employer and filed by the Respondent, supports such a conclusion.[5] The form indicates that the Appellant was required to pay his own expenses, work away from his employer's place of business, pay expenses for which he did not receive any allowance or repayment (supplies, computer equipment, staff expenses), use a portion of his home for an office, pay for an assistant, and pay for supplies that he used directly in his work. The form also shows that CIBC Wood Gundy paid the Appellant a commission according to the volume of sales made or contracts negotiated.

[16] It is clear from the evidence that the Appellant satisfied all of the conditions of paragraph 8(1)(*f*). I must now consider whether the expenses at issue qualify for deduction under paragraph 8(1)(*f*).

[17] An expense will only qualify for deduction under paragraph 8(1)(*f*) if the expense represents an amount expended by the taxpayer in the year for the purpose of earning income from the employment and the expense was

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[5] Exhibit R-1, Tab 5.

- not an outlay, loss or replacement of capital or payment on account of capital (except for motor vehicle and aircraft costs deductible under paragraph 8(1)(*j*));
- not an outlay or expense that is not deductible by virtue of paragraph 18(1)(*l*) (expenses in respect of recreational facilities and club dues);
- not an amount described in paragraph 8(1)(*f*)(vii) in respect of paragraph 6(1)(*e*) standby charges for an automobile;
- reasonable in the circumstances.[6]

[18] Paragraph 8(1)(*f*) limits the total amount that may be deducted to the amount of commission income received in the year.

[19] When determining whether an expense qualifies for deduction under paragraph 8(1)(*f*), one must first consider the purpose test contained in that paragraph: was the amount expended by the taxpayer for the purpose of earning income from the employment?

[20] The courts have consistently recognized that the purpose test in paragraph 8(1)(*f*) is similar to the purpose test in paragraph 18(1)(*a*): whether an outlay or expense was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property. As the Federal Court of Appeal noted in *Verrier v. M.N.R*:[7]

> ...The legislative objective is apparent. A taxpayer entirely dependent on commissions directly related to sales volume and not entitled to claim his expenses from his employer is, in many respects relevant to the scheme of the *Income Tax Act*, more comparable to a self-employed person than to a conventional salaried employee.

[21] This does not mean that the tests used to determine the deductibility of expenses by a qualifying commission employee are identical to the tests used to determine the deductibility of business expenses. As the Supreme Court of Canada

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6 Section 67; the outlay or expense is only deductible to the extent that it was reasonable in the circumstances.

7 *Verrier v. M.N.R.*, 1990 CarswellNat 259, at para.9, [1990] 1 C.T.C. 313 (F.C.A.). See also *Gifford*, *supra*; *Ross v. The Queen*, 2005 TCC 286, 2005 DTC 663; *Paes v. The Queen*, 2007 TCC 311, 2007 DTC 837.

noted in its decision in *Symes*,[8] it is subsection 9(1) that authorizes the deduction of business expenses; the provisions of subsection 18(1) are limiting provisions only.[9]

[22] In contrast, paragraph 8(1)(*f*) is the provision that authorizes the deduction of certain expenses of a commission salesperson. The paragraph does not contain a profit test; the sole test is the paragraph 8(1)(*f*) purpose test: were the amounts expended by the taxpayer in the year for the purpose of earning income from the employment?

[23] While, theoretically, there may be differences in the determination of the deductibility of business expenses and the expenses of a commission salesperson, practically speaking, the differences are not significant.

[24] When determining if an expense satisfies the purpose test in paragraph 8(1)(*f*), the Court is guided by the following words of Justice Iacobucci in *Symes*:[10]

> As in other areas of law where purpose or intention behind actions is to be ascertained, it must not be supposed that in responding to this question, courts will be guided only by a taxpayer's statements, *ex post facto* or otherwise, as to the subjective purpose of a particular expenditure. Courts will, instead, look for objective manifestations of purpose, and purpose is ultimately a question of fact to be decided with due regard for all of the circumstances. For these reasons, it is not possible to set forth a fixed list of circumstances which will tend to prove objectively an income gaining or producing purpose. . .

[25] The first step when applying the paragraph 8(1)(*f*) purpose test is to identify any expenditures that constitute personal expenses. In most instances, if the expense in issue was not a personal expense then the determination is made that the expense was incurred to earn commission income. However, this will not always be the case. For example, in the present case, the Appellant incurred non-personal expenses for the benefit of other employees of CIBC Wood Gundy. The Appellant did not incur such expenses for the purpose of earning income from his employment.

[26] In assessing the Appellant, the Minister identified sixteen expense categories and denied all or a portion of the amounts claimed by the Appellant in six of the categories. The deduction of the expense was denied for one or more of the following reasons: the expense was not incurred for the purpose of earning income from the

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8 *Symes v. Canada*, [1993] S.C.J. No. 131 (QL), [1993] 4 S.C.R. 695 (S.C.C.).

9 Although the Supreme Court also noted that the logic of this is clouded by the fact that it is generally not clear what kinds of expenses would be deductible under subsection 9(1), yet prohibited by paragraph 18(1)(*a*) or (*b*). *Symes*, *supra*, at para. 35.

10 *Symes*, *supra*, at para. 68.

employment, the expense was incurred on account of capital, or the expense was not reasonable in the circumstances.

[27] I will now consider each of the six expense categories at issue.

Advertising and Promotion

[28] The amount at issue is $7,610, calculated as follows:

Amount claimed by Appellant	$12,647[11]
Less:	
Amount allowed after audit	(2,989)[12]
Amount consented to by Respondent during hearing	(2,048)[13]
Amount at issue	$7,610

[29] The Appellant filed approximately 100 receipts to support the deduction of $6,657.02 of the expenses disallowed by the Minister.[14] Counsel for the Appellant provided the Court with a spreadsheet that grouped the receipts by expense categories that were referred to as "relationships." The categories were investment advisors (the largest group), clients, clients and prospects, colleagues, HO Staff, insurer supplier, office staff, prospects, staff, staff and clients, and strategic alliances.[15]

[30] During the course of the hearing, the Respondent consented to the deduction of $2,047.70[16] of the expenses noted on the spreadsheet. This represented the total of the receipts provided in respect of the promotional expenses incurred in respect of clients, prospects, and strategic alliances.

[31] It was the position of the Respondent that the remaining expenses listed on the spreadsheet ($4,609)[17] were not deductible. These were expenses primarily incurred in respect of investment advisors and staff. The Respondent denied the deductions on the basis that the Appellant could "only claim for advertising and promotion expenses for items given to his clients and prospective clients. Gifts to staff, sales associates, colleagues, and family members are not allowable. The investment

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11 Reply to Notice of Appeal, paragraph 7.
12 *Ibid*.
13 Exhibit R-3. The amount shown in Exhibit R-3 for advertising and promotion includes $77.18 that was not included in the Appellant's spreadsheet.
14 Exhibits A-1 and A-6.
15 Exhibit A-6.
16 Footnote 13, *supra*.
17 $6,657 minus $2,048.

advisors with whom he shares the commissions are all employees of CIBC World Markets, like himself, and cannot be considered his clients."[18] Counsel for the Respondent argued that it was not reasonable for the Appellant to deduct expenses for his staff and/or the investment advisors. She argued that it was not reasonable for the Appellant to incur promotional expenses with respect to the investment advisors, since they could only refer clients to CIBC insurance advisors.

[32] The evidence provided during the hearing does not support the Respondent's position.

[33] The CIBC investment advisors frequently referred clients to the Appellant. They were an important source of business for the Appellant. The CIBC investment advisors may have been required to refer clients to CIBC insurance advisors; however, the Appellant was not the only insurance advisor employed by CIBC. He competed with other CIBC insurance advisors for the investment advisors' business. In addition, the Appellant noted that most of the CIBC investment advisors had not, in the past, dealt with estate planning advisors. As a result, it was important for him to meet with the investment advisors to explain to them the services and products he could provide to their clients.

[34] During her testimony, Ms. Power, a CIBC investment advisor, noted that it was important for the Appellant to sell himself to the investment advisors, to inform them of the insurance products he sold and his ability to service their clients.

[35] With respect to the Appellant's staff, it is clear from the evidence, particularly the Appellant's testimony, that they were an important part of his operations. They ran his office, dealt with his clients, and performed numerous administrative tasks.

[36] After considering the evidence, particularly the testimony of the Appellant and Ms. Power, it is clear to me that the Appellant incurred the expenses listed in Exhibit A-6 for the purpose of producing commission income in the course of his employment. The expenses incurred with respect to the CIBC investment advisors and the Appellant's staff were incurred to maintain and increase the Appellant's commission income; they thus satisfy the paragraph 8(1)(*f*) purpose test. The amounts noted were deductible since they were reasonable and were not capital expenditures. In summary, the Appellant was entitled to deduct $4,609 of the amount at issue.

Lodging

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[18] Exhibit R-1, at page 86.

[37] The amount at issue is $2,481,[19] being the difference between the amount claimed by the Appellant ($3,509) and the amount allowed during the audit. The Appellant provided receipts[20] and testimony to support his position that $1,639.44 of the amount at issue was deductible.

[38] I agree with counsel for the Respondent that the lodging expenses at the Marriott and Holiday Inn in Montreal were primarily personal expenditures. The deductibility of the expense relating to the Westin Prince is discussed under the Education heading.

[39] The remaining item was a lodging expense at the Westin Harbour Castle in Toronto. The Appellant incurred that expense of $332.64 while attending a CIBC national business conference. As a result, it was incurred in the course of his estate-planning operations and was deductible under paragraph 8(1)(*f*).

Supplies

[40] The amount at issue is $12,895, which was the amount claimed by the Appellant on his income tax return.[21]

[41] During her closing argument, the Respondent's counsel argued that the expenses were not deductible since CIBC Wood Gundy provided the Appellant with supplies and the Appellant chose to purchase duplicate and supplemental supplies, as he did not like those provided by CIBC Wood Gundy. In the alternative, she argued that a number of the expenditures were on account of capital.

[42] The Appellant provided receipts for $10,401 of the expenditures at issue.[22] The receipts related to approximately 35 expenditures, a number of which were amounts under $100. During his testimony, the Appellant discussed the nature of, and reasons for incurring, each of the expenses.

[43] As noted previously, the application of the paragraph 8(1)(*f*) purpose test must be based on objective factors. As the same time, the Court must not second-guess the business judgment of the taxpayer. As former Chief Justice Bowman noted in *Nichol*,[23] the Court should not use the benefit of 20-20 hindsight to substitute its judgment for the taxpayer's business judgment. The Appellant decided that supplies

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19 Reply to Notice of Appeal, paragraph 7.
20 Exhibit A-2, and Exhibit A-8, page 1.
21 Reply to Notice of Appeal, paragraph 7.
22 Exhibit A-2 and Exhibit A-8, pages 4 to 6.
23 *Nichol v. The Queen*, 93 DTC 1216, at p. 1219.

in addition to those provided by CIBC Wood Gundy were required to effectively carry on his operations. That decision was a business decision. It does not represent an unreasonable error in judgment that would cause the Court to question the business judgment of the Appellant.

[44] After reviewing each of the invoices and considering the testimony of the Appellant, I have concluded that each of the expenditures, with the exception of two personal expenditures totalling $441.60,[24] was incurred by the Appellant for the purpose of gaining or producing commission income in the course of his employment.

[45] However, I have concluded that expenses totalling $4,453 relating to computer software, a laser printer, computer equipment and a projector were on account of capital and thus not deductible under paragraph 8(1)(*f*).

[46] In summary, the Appellant was entitled to deduct $5,506 in respect of the expenses listed on the last pages of Exhibit A-8 under the heading Supplies.

Education Expenses

[47] The amount at issue is $10,642, that is, the difference between the amount claimed by the Appellant ($11,035)[25] and the amount consented to by the Respondent during the hearing ($393).[26]

[48] The amounts at issue in respect of education expenses can be grouped into the following categories:

- Personal development for the Appellant (Strategic Coach and Corporate Vision) - $8,079[27]
- Books and CD's - $362[28]
- Fees paid to professional organizations (includes seminars and computer training) - $2,512[29]

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[24] An alarm system for the Appellant's home and a $97 gift.

[25] Reply to Notice of Appeal, paragraph 7.

[26] Exhibit R-3.

[27] Exhibit A-2, Tabs 2, 5, 13 and 17. The amount includes $469 in respect of the Westin Prince expense referred to under the Lodging heading.

[28] Exhibit A-2, Tabs 3, 7, 11, 49 and 50.

[29] Exhibit A-8; the Appellant provided documentary evidence and testimony to support the deduction of $10,887 of training/education expenses.

[49] The first issue I must consider is whether any of the expenditures were made on account of capital.

[50] This Court has noted in the past[30] that the general principles to be applied in considering whether education expenses are capital in nature or not are correctly described in Interpretation Bulletin IT-357R2.[31] The following paragraph of the Bulletin summarizes the principles:

> Training costs are not deductible as current expenses if they are capital expenditures. They are considered to be capital in nature where the training results in a lasting benefit to the taxpayer, i.e., where a new skill or qualification is acquired. Where, on the other hand, the training is taken merely to maintain, update or upgrade an already existing skill or qualification, the related costs are not considered to be capital in nature.

[51] After considering the testimony of the Appellant and the documentary evidence before the Court, I have reached the following conclusions with respect to the amounts at issue:

- The Appellant took the personal development courses in an attempt to learn new systems and skills that would improve his presentation, time management and speaking skills. These courses resulted in the Appellant acquiring skills that had a lasting benefit. The related expenditures constituted capital expenditures and were not deductible.
- The remaining expenses were incurred to maintain, update or upgrade an existing skill of the Appellant or his staff, or were promotional expenditures. The books and CD's were acquired either to improve the Appellant's general business skills or as gifts for clients. The amounts paid to the professional organizations related to computer training taken and various seminars attended by the Appellant and his staff to improve their knowledge of the issues relating to planning for the elderly. None of the expenditures were made on account of capital and all were incurred for the purpose of earning commission income from the Appellant's employment. These expenditures were deductible by the Appellant.

[52] In summary, I find that the Appellant was entitled to deduct $2,874 of the amount at issue.

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30 See *Setchell v. The Queen*, 2006 TCC 37, 2006 DTC 2279; *Douthwright v. The Queen*, 2007 TCC 560, 2007 DTC 1614.

31 Canada Revenue Agency, Interpretation Bulletin IT-357R2, "*Expenses of Training*" (6 November 1989).

Equipment Leases

[53] The amount at issue is $16,819, namely, the difference between the amount claimed by the Appellant ($25,417)[32] and the amount consented to by the Respondent during the hearing ($8,598).[33]

[54] The amount at issue relates to the leasing by the Appellant of various computers, servers, audio-visual equipment, cameras, printers, and electronic organizers.

[55] On reassessment, the Minister denied the amount deducted in respect of all lease payments. During the hearing, the Respondent consented to the deduction of lease payments totalling $8,598 relating to the lease produced as Tab 4 of Exhibit A-3. During her closing argument, counsel for the Respondent argued that the lease payments in respect of the remaining leases were not deductible as they related to payments for duplicate equipment, were not reasonable, and were not incurred to earn commission income.

[56] I do not accept that argument. I believe counsel is, under the guise of a reasonableness test, once again asking me to substitute my own judgment for the business judgment of the Appellant. As noted previously, this is not the role of the Court unless there is an unreasonable error of judgment. There is no such error in the present appeal.

[57] The Appellant provided copies of the relevant lease agreements[34] and, during his testimony, described the leased equipment, noted the person who used it and explained the reason for leasing each piece of equipment.

[58] The Appellant confirmed that CIBC provided some equipment (desktop computer, telephone, and access to a network printer); however, he testified that the equipment did not satisfy his needs and the needs of his employees. As a result, he leased the additional equipment. The additional leased equipment included laptop computers, local printers, projectors, screens, fax machines, and servers.

[59] After reviewing the evidence, I have reached the following conclusions with respect to the leases at issue:

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32 Reply to Notice of Appeal, paragraph 7.

33 Exhibit R-3.

34 Exhibit A-3, Analysis of Equipment Lease Expenses (“Exhibit A-3”).

- The lease at Tab 1 of Exhibit A-3: No additional amount was deductible by the Appellant in respect of this lease. There is no evidence that the Appellant used the leased equipment in his operations; other CIBC employees, who had previously worked with the Appellant, used most of the equipment.

- The lease at Tab 2 of Exhibit A-3: The Appellant was entitled to deduct two-thirds of the lease payments made in the taxation year. On the basis of the testimony of the Appellant, I have concluded that the Appellant used approximately two-thirds of the leased equipment in his operations and other CIBC employees used the remaining equipment.

- The lease at Tab 3 of Exhibit A-3: The Appellant was entitled to deduct 60% of the lease payments. The Appellant used most of the leased equipment in his operations. However, there was significant personal use of a camera, and a CIBC employee who did not work with the Appellant in 2003 used one of the printers.

- The lease at Tab 5 of Exhibit A-3: The Appellant was entitled to deduct 40% of the lease payments. The Appellant identified three of the leased items as being equipment used in his operations. This equipment constituted approximately 40% of the equipment noted on the lease.

[60] On the basis of the foregoing, I have concluded that the Appellant was entitled to deduct $9,464 of the amount at issue in respect of the leased equipment.

Staff Expenses (also referred to as Other Travel Expenses)

[61] The amount at issue is $7,403, being the amount claimed by the Appellant ($12,178)[35] less the amount consented to by the Respondent during the hearing ($4,775).[36]

[62] This expense category related to expenses incurred in respect of the Appellant's three assistants, Ms. Stevens, Ms. Werner, and Mrs. LeRiche.

[63] Expenses totalling $2,976.84 were incurred by Ms. Stevens and Ms. Werner for cellphones, cradles for the phones, and highway tolls; this amount also includes miscellaneous out-of-pocket expenses. It was determined during the hearing that the $2,976.84 had been deducted twice: once as a staff expense and once as "salary or

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35 Reply to Notice of Appeal, paragraph 7.

36 Exhibit R-3.

wages paid to an assistant." The Minister allowed the deduction for "salary or wages paid to an assistant." In short, no additional amount was deductible in respect of the $2,976.84 paid to Ms. Stevens and Ms. Werner.

[64] The remaining amounts deducted as staff expenses related to car allowances provided by the Appellant to his staff. The allowances were based upon an estimate of kilometres driven by each staff member while carrying out her duties. During the hearing, the Respondent consented to the deduction of the allowance paid to Ms. Stevens on the basis that the allowance was a reasonable travel expense. However, the Respondent continued to take the position that the allowances paid to Ms. Werner and Mrs. LeRiche were not deductible.

[65] In her argument, counsel for the Respondent appeared to contend that the amounts were not reasonable since Ms. Werner and Mrs. LeRiche did not maintain mileage logs.

[66] I fail to see why the Appellant's deduction should be denied merely because his employees did not maintain mileage logs. Deductibility is dependent upon the purpose test in paragraph 8(1)(*f*) and a determination of whether the amounts paid as allowances were reasonable.

[67] Ms. Stevens, Ms. Werner, and Mrs. LeRiche each testified during the hearing. They explained the nature of their duties and of the use of their vehicles when performing their duties. On the basis of this evidence, I have concluded that the Appellant incurred the expense with respect to the allowances for the purpose of earning commission income and that the allowances were reasonable. The Appellant was entitled to deduct the allowances paid to Ms. Werner and Mrs. LeRiche.

[68] In summary, the appellant was entitled to deduct $4,426 of the amount at issue.[37]

Summary

[69] In determining his income for the 2003 taxation year, the Appellant was entitled to deduct **$77,630** under paragraph 8(1)(*f*). The **$77,630** is based upon the following:

Amount allowed by Minister	$34,526
Amount consented to by Respondent during hearing	15,892

[37] Amount at issue ($7,403) minus the amount deducted twice ($2,977).

Amounts allowed by Court	
Advertising and Promotion	$4,609
Lodging	333
Supplies	5,506
Education Expenses	2,874
Equipment Leases	9,464
Staff Expenses	4,426
Total amount allowed by Court	27,212
Total amount deductible under paragraph 8(1)(*f*)	**$77,630**

[70] The amount deductible, $77,630, is less than the total commission income of $119,957.07 reported by the Appellant and thus is fully deductible under paragraph 8(1)(*f*). This would also be the result if the Appellant's commission income were calculated as his gross commission income before the deduction of the amounts paid to Ms. Werner and Mrs. LeRiche.[38]

Conclusion

[71] For the foregoing reasons, the appeal with respect to the reassessment made under the *Income Tax Act* for the 2003 taxation year is allowed, with costs to the Appellant. The reassessment dated December 28, 2005 is referred back to the Minister for reconsideration and reassessment on the basis that the Appellant was entitled to deduct $77,630 under paragraph 8(1)(*f*) when determining his taxable income for the 2003 taxation year.

Signed at Antigonish, Nova Scotia, this **23rd** day of August 2010.

"S. D'Arcy"

D'Arcy J.

[38] See Tab 2 of Exhibit R-1.

CITATION:	2010 TCC 416
COURT FILE NO.:	2007-3170(IT)G
STYLE OF CAUSE:	LERICHE v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario Ottawa, Ontario
DATE OF HEARING:	September 2, 3, and 4, 2009 November 10, 2009
AMENDED REASONS FOR JUDGMENT BY:	The Honourable Justice Steven K. D'Arcy
DATE OF **AMENDED** JUDGMENT:	August **23**, 2010

APPEARANCES:

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Counsel for the Respondent:	Suzanne M. Bruce

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