

Docket: 2018-2162(IT)I

BETWEEN:

MELANIE LAGACE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 29, 2019.

Before: The Honourable Justice Patrick Boyle

Appearances:

Agent for the Appellant: James A. Deacur

Counsel for the Respondent: Michael Ding

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2015 taxation year is allowed in part, without costs, in accordance with the attached reasons for judgment.

Signed at Ottawa, Ontario, this 5th day of November 2019.

“Patrick Boyle”

Boyle J.

Citation: 2019 TCC 249

Date: 20191105

Docket: 2018-2162(IT)I

BETWEEN:

MELANIE LAGACE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Boyle J.

[1] In 2015 Mrs. Lagace was employed as the Canadian Country Manager overseeing the Canadian sales force and operations of a large multinational manufacturer of dental instruments and products headquartered in Chicago. She has appealed to this Court on certain disallowed employee expenses relating to:

1. Hiring her husband Ronald Lagace as her assistant;
2. An accountant/bookkeeper's bill;
3. Automobile related expenses; and
4. Supplies used in the course of her employment.

[2] The Appellant elected to have her appeal heard under the Court's informal procedure and limited her claim to the maximum amount permitted under that procedure.

[3] As Country Manager for a Chicago based company that did not have a Canadian office with sale representatives, dealers and customers throughout Canada, the Appellant travelled extensively and regularly throughout the year.

[4] In 2015 Mrs. Lagace's employment income was just under \$200,000, against which she claimed employment related expenses of over \$80,000, almost half of that being in respect of her husband's assistant role. Mrs. Lagace was not paid on a commission basis.

[5] Her employer provided a T2200 form for 2015 as is generally required for employment related expenses. The Appellant also put in evidence a December 2014 letter from her employer that accompanied a revised T2200 form for 2012. The 2015 T2200 provides that she is required to incur expenses for her travel throughout Canada and that she spends 80% of her time away from her home office. She was provided with a car allowance and was reimbursed for employment related mileage. It also indicates that she charged almost \$100,000 of her travel expenses directly to her employer by credit card or in a similar fashion and had been reimbursed more than \$8,000 for out-of-pocket travel expenses upon proof of payment. The form also indicates that her employment contract required her to employ an assistant and to pay for her work related supplies.

[6] The letter from the Corporate Controller that accompanied the 2012 T2200 states that Mrs. Lagace "is responsible for overseeing the activities of a number of sales representatives. If she believes she requires an administrator or other assistance to perform her duties, this is her decision. We do not, as company policy, fund the expense of engaging an assistant. We have amended the T2200 (copy attached) to reflect that Melanie Lagace employs someone to assist her with her job duties. At part 9, we have changed "paid for a substitute or assistant" from "No" to "Yes"." (emphasis added)

[7] That letter also states that "the company pays for any costs associated with travel, meals and entertainment. These amounts have not been included in her T4 as they were paid directly by us. It should be noted that any other costs other than the amounts declared in Box 6 [travel] and Box 5 (auto contribution) are her responsibility." (emphasis added)

[8] There was no suggestion in evidence that things were otherwise in 2015, nor any further explanation from her employer, nor any explanation by her or her husband that qualified or conflicted with this letter.

Paying for Expense of Assistant

[9] Subparagraph 8(1)(i)(ii) of the *Income Tax Act* permits a deduction for "salary" paid to an assistant if that payment was required by the taxpayer's contract

of employment. The term “salary” is defined in subsection 248(1) as income from an office or employment. Mrs. Lagace’s claim cannot succeed as her husband was not her employee. He charged her an hourly fee for service, reported it as professional income claiming almost 75% in expenses, and remitted GST/HST on it. There were no withholdings on the amounts paid to him for income tax, CPP or EI.

[10] There are further problems with this claim:

1. Mrs. Lagace was not required to hire an assistant. This Court in *Blott v. The Queen*, 2018 TCC 1, held that this was a statutory requirement in paragraphs 14 through 17 and the cases referred to therein.

2. Mrs. Lagace never paid the amount claimed to her husband. They simply had a single joint account from which either could withdraw and to which either could have deposits made. That is not considered payment in normal circumstances. This is also explained by Justice C. Miller in *Blott* at paragraphs 11 and 13.

3. I am not at all persuaded on the evidence that the activities performed by Mr. Lagace at an hourly rate of \$75 for clerical, secretarial and Excel/Powerpoint presentations prepared from information and data from Mrs. Lagace, her employer or her sales representatives, and driving her to and from the airport is anywhere close to the range of reasonable. Mrs. Lagace said she required her husband’s services because she did not have any formal schooling or training yet nearly all nine categories of services provided by him were clerical, administrative, secretarial or driving her or her packages.

4. Mr. Lagace could not explain the hours charged in total in 2015 with the hours he set out in his quarterly accounting and billing to his wife. He could only account for a very small fraction of the hours charged from his monthly records.

I would also note the fact that Mr. Lagace claimed almost three-quarters of the amount as his expenses of earning that income, and Mrs. Lagace could not describe what expenses he may have incurred in doing work for her and was sure this was a mistake.

Accounting Fees

[11] Paragraph 8(1)(i) does not permit the deduction by an employee of accounting or bookkeeping expenses. While such amounts may be deductible under paragraph 8(1)(f), that section only applies to employees paid at least in part by commission and cannot help Mrs. Lagace. For that reason, her appeal in respect of the \$4,850.00 claimed as paid to Sean Scott Reid cannot succeed.

[12] Again, I have other concerns with her claim:

1. Mrs. Lagace described the services as being those of sorting through her expenses paper work regularly throughout the year. This allowed her to file her tax return. Such bookkeeping/accounting expenses are not deductible by an employee.
2. The brief services description in the account does not appear to accord with Mrs. Lagace's description of the services. It describes "services as directed agreed to reconstruct 2015 financial records...in accordance with terms of engagement letter." (emphasis added)
3. The bill is dated December 31, 2015. Employees are generally only entitled to deduct expenses on a paid basis.
4. There is no GST/HST charged on this bill nor is there a GST/HST registration number on it.

Automobile Expenses

[13] The disputed automobile expenses are related to fuel, repair and maintenance, and parking and tolls. A portion of her repair and maintenance claim and all of her parking was allowed on objection. In her testimony Mrs. Lagace estimated that 90% of the use of her car was for employment purposes and very little of the use of her husband's car related to her employment.

Fuel:

[14] There is insufficient evidence to permit anything further for fuel costs. They are not substantiated with receipts. Her log is unreliable if not inaccurate, the distances travelled are not correct, it is unclear to the taxpayer and the Court when her spreadsheet program used miles and when it used kilometres. The distances in her log differ from those her employer used in reimbursing her work-related

mileage. It is not possible to determine the difference if any between her operating costs and the mileage reimbursed by her employer.

Repair and Maintenance:

The only disallowed item being pursued is a claim for about \$3,000 for an Extended Service Plan purchased from her Ford dealer when she purchased her car in 2015. The Ford Service Contract Application Form in evidence does not specify what services are provided and none of the boxes for the available plans are ticked as the chosen plan. I do not know what services are provided under Base Care, Extra Care or Premium Care plans, or if it was even one of these three that was chosen. I do not know what portion may be regarded as regular maintenance and what is more of an extended warranty. Paying \$3,000 for a five year 100,000 kilometre extended service package seems odd for someone driving almost 50,000 kilometres annually. That would only be two years' coverage of whatever service or warranty is provided. This was not explained. In the circumstances, I accept that one half of this is 90% deductible, for a deduction of \$1,350.

Toll Charges:

[15] Mrs. Lagace claimed in her appeal \$3,671 in Highway 407 toll charges. The 2015 407 bills in evidence totalled \$4,197. The difference has not been explained. Mrs. Lagace testified that virtually all of the 407 travel was employment/work related as the 407 did not really factor into their personal life living in Uxbridge. In the circumstances, I will allow 90% of the \$4,197 being, \$3,780, as a deduction.

Supplies:

[16] Mrs. Lagace submitted a schedule with accompanying receipts for her 2015 expenses on supplies which, after accounting for one duplication that appears inadvertent, total \$1,860. This amount should be deductible.

Conclusions

1. Nothing is allowed in respect of the assistant expenses claimed;
2. Nothing is allowed in respect of the accountant/bookkeeper expense claimed;

3. A deduction of \$1,350 for the extended services plan and \$3,780 in respect of the 407 toll charges is allowed which totals \$5,130 in respect of her automobile expenses; and

4. A deduction of \$1,860 is allowed in respect of her 2015 office supplies expenses claimed.

Signed at Ottawa, Ontario, this 5th day of November 2019.

“Patrick Boyle”

Boyle J.

CITATION: 2019 TCC 249

COURT FILE NO.: 2018-2162(IT)I

STYLE OF CAUSE: MELANIE LAGACE v. THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATES OF HEARING: October 29, 2019

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: November 5, 2019

APPEARANCES:

Agent for the Appellant: James A. Deacur

Counsel for the Respondent: Michael Ding

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