

Bruno v The Queen, 2012 TCC 316

Paying Child-employees With Luxury Good Purchases

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At issue in this case was whether wages paid by mother-employer to her children for work performed in her business, but paid for through the purchase of luxury goods would be deductible as employment expense to the business?

The Court held that so long as the outlay was for the purpose of gaining or producing income from a business, it would be deductible even when there is a personal benefit to the taxpayer. Specifically, reasonable wages earned by children of the employer for work performed could be paid by purchase of luxury good purchases for equivalent amounts.

FACTS

The taxpayer operated a business and employed her children (15-16 and 13-14y/o) in the business, paying them \$10-12 per hour for work performed. She did not pay the children in money, but rather paid them equivalent to the wages earned by purchasing them luxury goods. She had veto power over the purchases, and kept detailed records of such purchases. She would not make luxury purchases for the children unless they had earned enough money to pay for them.

The Crown did not argue that the amount of the wages was unreasonable (Court assumed that amounts were reasonable), but rather argued that the children did not have sufficient power of control over the amounts/purchases and that they are personal and living expenditures prohibited by ITA paragraph 18(1)(h).

ANALYSIS

The Court stated that the legal principle applicable was stated in [Symes v The Queen, 94 DTC 6001](#), where the SCC clarified the interplay between paragraphs 18(1)(a) and 18(1)(h), with the majority of the SCC finding that if an expense was incurred for the purpose of gaining or producing income, then even though it may also be characterizable as providing a personal benefit to the taxpayer, the deduction would not be prohibited by paragraph 18(1)(h).

Justice Woods then stated that if children are owed wages in reasonable amounts, a deduction may be claimed in the goods are paid in the form of purchasing luxury personal items chosen by the children.

The Crown's argument based on [Bradley v The Queen, 2006 TCC 500](#), that the deduction should not be allowed in this case because of the mother's veto power, which denies the children the ability to spend the funds at their absolute discretion, was rejected by Woods J. The Court saw nothing wrong with parents having veto power over children's' purchases.

The Court, however, only allowed a deduction of 50% of the amounts claimed due to the inability to determine from the evidence whether all of the items were purchases for the children's benefit or whether they were luxury items.