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## Gift Certificate Deductions

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Tax Forum

Gift Certificate Deductions

How much can you claim for the gift of entertainment?

FROM: [NOV-DEC 2006 ISSUE](#) | BY [DON GOODISON](#)

Several months ago I was at a business lunch when one of the attendees mentioned that if we had all bought each other gift certificates from the restaurant, we could have deducted the full cost of the meal rather than only 50 per cent. Needless to say I was skeptical, but later I came across a Tax Court of Canada case, *Mark Stapley v. Her Majesty the Queen, 2005*, in which the court held that the full cost of gift certificates to restaurants and other events could be deducted. I was somewhat surprised by the decision, and I guess the Minister was as well, because it was quickly appealed to the Federal Court of Appeal. In *Her Majesty the Queen v. Mark Stapley, 2006*, the court was asked to find that the Tax Court judge had erred in his decision.

The facts are quite straightforward. Stapley was a self-employed real estate agent who regularly gave gift certificates for food, sporting events, and concerts to his customers in an effort to encourage more business. Stapley did not consume any of the food or attend any of the events himself, so he deducted the full amount of the expenditures: \$20,125 in 2000, \$14,208 in 2001, and \$19,145 in 2002. The Minister reassessed, disallowing 50 per cent of these expenditures pursuant to subsection 67.1(1) of the *Income Tax Act*.

Subsection 67.1(1) states:

(1) Expenses for food, etc

For the purposes of this Act, other than sections 62, 63, 118.01 and 118.2, an amount paid or payable in respect of the human consumption of food or beverages or the enjoyment of entertainment is deemed to be 50% of the lesser of

- (a) the amount actually paid or payable in respect thereof, and
- (b) an amount in respect thereof that would be reasonable in the circumstances.

Stapley argued that the expenses claimed were not "in respect of the human consumption of food."

The Tax Court, in allowing Stapley's appeal, held that the certificates represented a reduction in, or a rebate of, his real estate commission, and were a form of discount for the purpose of earning income. The court was swayed by the following facts:

- The clients who received the certificates could use them in any way they wished.
- Stapley did not participate in the consumption of the food or enjoyment of the entertainment.
- Stapley purchased whatever he thought would bring him business.

For those reasons, the court held that the outlays were for business purposes only. The Minister then appealed to the Federal Court of Appeal, arguing that nothing in subsection 67.1(1) limited the application of the provision to situations in which the taxpayer participated. Counsel pointed out that the French version of 67.1(1) indicates that the provision applies if *any person* participates in the consumption of food or enjoyment of entertainment.

The Crown's appeal was allowed. The court reluctantly held that the provisions of 67.1(1) included Stapley's expenditures. The court looked at the purpose of the 50 per cent limitation, which was enunciated in the 1994 Budget Supplementary Information when the deduction was reduced to 50 per cent from 80 per cent:

*"The government believes the tax system will be made fairer, and will better reflect the personal consumption element."*

While the court agreed that the expenses Stapley claimed were not personal or living expenses under the guise of business ones, and therefore were not an abuse at which 67.1(1) was aimed, it noted that had Stapley given books, flowers, or cash instead of certificates for food and entertainment, they would have been fully deductible. Unfortunately, the statute dictated the decision, and regardless of the purpose of the expenses, they were also "in respect of the human consumption of food or beverages or the enjoyment of entertainment," and were caught by subsection 67.1(1).

I am thankful I didn't rush out and buy a bunch of restaurant gift certificates to give to clients. However, I do wonder why the deduction is reduced to 50 per cent when there is no personal element in the consumption of food. Surely if you aren't part of the meal, you aren't claiming your personal living expenses. Unfortunately, as with many of the Act's provisions, the sledgehammer-to-kill-a-fly approach was used to eliminate the potential for abuse.

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