

# Allowable deductions for businesses in the wind up phase

September 12, 2019

## Summary

The taxpayer practiced as a lawyer for 27 years before ultimately retiring from the profession in 2013. In preparation for retirement, the taxpayer moved the records of her client files from her traditional business office into a storage facility and incurred monthly storage fees. During the 2015 taxation year, the taxpayer deducted storage fees as a **business expense by virtue of article 18(1)(a) of the Income Tax Act (Act)**. The Minister of National Revenue (CRA) disallowed the deduction, claiming that the taxpayer did not incur these expenses in the course of earning business income.

## Arguments

Only expenses incurred for the purposes of earning income are deductible under the Act. Furthermore, the CRA states that “being a lawyer is not, in and of itself, a business”<sup>1</sup> and that expenses incurred by a lawyer not engaged in private practice, but rather as in-house corporate counsel, are therefore not deductible as business expenses.

In rebuttal, the taxpayer argued that the requirement to maintain records of her closed files is necessary to comply with the standard and acceptable business practice laid out by her profession, which recommend that client records be kept for a period of 3 to 25 years post-closing. Furthermore, the taxpayer argues that file maintenance or storage “is an inherent risk of the profession” and is necessary to the practice of law. She claims that failing to properly store files would have resulted in sanctions and may have led to her possible disbarment.

## Analysis and Decision

The court sided with the taxpayer, who was accruing “run off” expenses relating to file retention, accessibility and future storage obligations, which were necessary in the context of winding up her professional practice. In other words, the continuing services of record keeping and file storage provided by the taxpayer in 2015 were connected to the income she earned in previous years and is consistent with the notion of

“unavoidable expenses necessarily expended in future years referable to previous income” as discussed in Poulin<sup>2</sup>.

## Takeaway:

CRA denies a deduction pursuant to subsection 18(1)(a) of the Act based on the premise that no income was being generated from these storage costs. The court rightfully disagreed, as costs incurred as a consequence of carrying on a business are deductible even if they are in the wind-up phase, as these costs accrued as a result of the income earning process.

<sup>1</sup>Jamieson (1996), 96 D.T.C 6477

<sup>2</sup>Langille v. R. (2009), 2009 TCC 398 and Raegele v. R. (2002), [2002] 2 C.T.C. 2955

By

[Alessandro Cotugno, Joseph \(Hovsep\) Takhmizdjian](#)

Expertise

[Tax](#)

---

## BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

## BLG Offices

### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

### Montréal

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

### Toronto

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2025 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.