

Docket: 2004-99(IT)G

BETWEEN:

YVON RENAUD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

---

Appeals heard on April 3 and 4, 2006, at Quebec City, Quebec.  
Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Counsel for the Appellant:

Louis Sirois

Counsel for the Respondent:

Simon-Nicolas Crépin

---

JUDGMENT

The appeals from the determination of loss for the 1998 taxation year and the assessments for the 1999 and 2000 taxation years, made under the *Income Tax Act*, are allowed and the determination and assessments are referred back to the Minister of National Revenue (the "Minister") for reconsideration, redetermination and reassessment so as to include in the calculation of the appellant's losses for 1998 wages in the amount of \$9,725, and, in the calculation of his income for 1999, the deduction of trustee's fees of \$10,330.70. As for the other items at issue for 1998 to 2000, they were correctly established in fact and in law by the Minister. It is so held in accordance with the attached Reasons for Judgment.

Costs are awarded to the respondent.

Signed at Ottawa, Canada, this 20th day of June 2006.

"Louise Lamarre Proulx"

---

Lamarre Proulx J.

Translation certified true  
on this 29th day of February 2008.

Erich Klein, Revisor

Citation: 2006TCC354

Date: 20060620

Docket: 2004-99(IT)G

BETWEEN:

YVON RENAUD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

### **REASONS FOR JUDGMENT**

Lamarre Proulx J.

[1] These appeals are for the 1998, 1999 and 2000 taxation years. For 1998, the assessment was a nil assessment. There was a determination of loss for 1998 by the Minister of National Revenue (the "Minister"), dated November 20, 2002. The appeal for 1998 is from this determination. For the two other years, the appeals are from assessments.

[2] The issue for 1998 is whether the amount of the business loss as reported by the taxpayer in his income tax return for that year can be modified by the Minister in a reassessment for that same year issued in 2002 when the appellant filed a proposal during 1998.

[3] In addition to this issue, there are two other elements to consider for 1998, namely, a salary amount and a capital gain amount. At the beginning of the hearing, the parties agreed to the reduction of the salary amount from \$14,625 to \$9,725 and the appellant no longer challenged the capital gain calculation. In both cases, this will apply as long as the proposal does not prevent the Minister from recalculating the amount of the business's losses.

[4] Regarding the proposal, the notice of intention was filed on December 21, 1998, and a certificate of full performance was issued on February 9, 2001.

[5] For 1999, there are three issues: (1) the adjusted cost base ("ACB") of a building; (2) the deduction of a property tax amount paid during 1999; and (3) trustee's fees of \$13,860.

[6] As for 2000, the issue is the ACB of three buildings and the consequential effect of the losses incurred during 1998.

[7] For the 1998 taxation year, in both the original assessment and the reassessment, the Minister made a nil assessment. In a recalculation of the business income, the loss was reduced from \$71,305 to \$48,467—a reduction of \$22,838. This assessment was issued in 2002, that is, after the year of the proposal, which was made in 1998.

[8] Let us now address the issue of the ACB of the four buildings. The appellant is the owner of a number of rental buildings. The parties agreed on the ACB of some of the buildings but not those on Champfleury Street, Maufile Street, at 352 and 360 Caron Street and on Hébert Street. The year in question for the first three buildings is 2000 and for the last, 1999, the year in which it was disposed of.

[9] The testimony on this issue was lengthy. Serge Lavoie, CGA, was the appellant's accountant during the years in question. He prepared the appellant's tax returns and participated in making the proposal. He was not called to testify.

[10] To establish ACBs that were different than those established by the original accountant and those established by the Minister's auditor, on February 17, 2004, on the advice of his counsel, the appellant turned to Paule McNichol, CA.

[11] At the start of the accountant's testimony, counsel for the appellant wanted to have her testify as an expert. But the procedure required under section 145 of the *Tax Court of Canada Rules (General Procedure)* was not followed. Ms. McNichol testified as an accountant who had done a new analysis of the entries in the appellant's books.

[12] She stated that she first established new ACBs by analyzing the accounts. Since the Canada Revenue Agency (CRA) auditor was not satisfied and asked a few questions, the accountant tried to corroborate her new ACBs through the analysis of the proofs of payment and through the classification of invoices. The result of these analyses is presented in Exhibit A-24. Depending on the method used, the results are different.

[13] The following are the differences calculated, on the basis of the analysis of the accounts, with respect to the ACBs established by the Minister's auditor: Champfleury building, \$66,818.99; Maufils Street building, \$46,569; 352 Caron Street, \$26,038.91; 360 Caron Street, \$38,373.46; Hébert Street building, \$18,922.39.

[14] Ms. McNichol made reference to the allocation between land and building in the case of the Caron Street property. She accepts that proposed by the auditor in Exhibit A-35. In fact, the appellant's accountant accepts all the land values established by the auditor.

[15] In cross-examination, counsel for the respondent asked whether she had had any discussions with Serge Lavoie, the accountant for the business at the time of the events in question, regarding his way of establishing the business's accounts. She had not. She had asked him to send her certain documents, and that is all.

[16] The accountant admitted that some invoices were included twice in her proposal. But, she said, these were very rare instances.

[17] Yvon Renaud explained that he had acquired properties that were eligible for Quebec City's *Programme de revitalisation des vieux quartiers* (Old Neighbourhood Revitalization Program). The appellant said the program provided grant payments for half the cost of renovations. The first instalment was paid after 50% of the work was done, and the second, upon completion of the work, and after verification by an architect and the city.

[18] In cross-examination, counsel for the respondent asked the appellant: [TRANSLATION] "Where did you get the funding required to make up the 50% difference between the grant and the cost of the work to be done, given your tax returns for 1998 and 1999, which show that your income was very low?" His response was: "The work can be done at a lower cost; the price is a base price, to begin with. It's up to the owner to arrange to get it done at a lower cost. There was also the possibility of taking out a mortgage on the building itself."

[19] Isabelle Pouliot is now an appeals officer at the CRA. At the time in question, she was an auditor. Her audit of this case began October 24, 2001. She had the business's financial statements, which merely indicated costs by building. She asked the appellant's accountant, Mr. Lavoie, to show her the usual procedure with respect to capital asset items. She explained that to establish an ACB, the

contracts and supporting documents that justify capitalization are required. In the books of account, nothing had been capitalized regarding the renovations. There was only a figure as is found on the financial statements.

[20] For the buildings for which grants were paid, the auditor accepted that there had been renovations that could be capitalized whose amount was the same as that of the grant. Usually, a grant reduces the ACB. If the auditor had not accepted that there had been work done for an amount that was the same as the grant, the ACB would have been reduced by the amount of the grant. Actually, she did not even have the supporting documents for these costs because the accountant had not considered them to be capitalizable costs. According to the auditor, this means that the accountant had included these costs in current expenses. She explained that from the invoices the accountant submitted it was not possible to determine whether they had already been taken into account by the then accountant in the current expenses for any one of the appellant's buildings.

[21] The auditor explained the second issue herein. The amount of property tax refused for 1999 is \$31,581. This amount had been included in accounts payable the preceding year. In 1999, there was an adjusting entry regarding this account payable. She used the in-house accountant's entries because they were acceptable under accounting rules.

[22] Ms. McNichol, the appellant's accountant, admitted that in 1998 there was indeed an overvaluation of the expenses, but she maintains that for 1999 the expense was claimed at its actual value and the adjusting entry should be ignored. She stated that the adjusting entry was a mistake because the appellant calculated his income on a cash basis.

[23] The third issue for 1999 is the payment of the trustee's fees with respect to the proposal. It was admitted that the trustee's fees were not \$13,000 but rather \$10,330.70. The Minister's position was that the amount did not constitute fees but was a dividend on a proposal.

#### Analysis and conclusion

[24] Section 4.1 of the *Bankruptcy and Insolvency Act* states that that Act is binding on Her Majesty in right of Canada or a province.

[25] Counsel for the appellant argues that once the proposal is accepted and executed, the Minister no longer has the power to change the assessment for the year of the proposal and cannot, therefore, reduce the loss claimed for that year.

[26] With respect, I am of the opinion that two different situations are being confused: on the one hand, debt for the period covered by the proposal, and on the other hand, the calculation of losses that may be carried forward to subsequent years.

[27] It is as a creditor that the Minister is bound by the *Bankruptcy and Insolvency Act*. Under the circumstances of this case, the change in the calculation of the losses as initially reported had no impact on the amount of the assessment for 1998. It was nil and remained nil. The amount of losses was reduced from \$71,305 to \$48,467.

[28] Losses may, according to the *Income Tax Act* (the "Act"), be carried over to subsequent years, and the taxpayer wishes to rely on the provisions that so state. In my view, in the same way as, in the calculation of undepreciated capital cost, he can recalculate the undepreciated cost for amortization purposes in subsequent years, although he cannot amend the assessments for statute-barred years, the Minister, while he cannot amend the assessment he made as a creditor, can recalculate the amount of the loss inasmuch as this amount affects the assessments for subsequent years. See *Coastal Construction and Excavating Ltd. v. Canada*, [1996] T.C.J. No. 1102 (QL), *Gaouette v. Canada*, [2002] T.C.J. No. 168 (QL), at paragraphs 20 to 22, *New St. James Limited v. M.N.R.*, 64 DTC 121 and *Aallcann Wood Suppliers Inc. v. The Queen*, 94 DTC 1475.

[29] This is not a modification of the amount of the assessment for 1998, which would lead to the application of the *Bankruptcy and Insolvency Act*, but rather a modification to the calculation of losses that can be carried forward and that affect subsequent assessments. Therefore it is a case of applying the Act.

[30] As for the ACB of the buildings in question, we cannot say with any confidence that on the balance of probabilities the expenses the accountant took into consideration with respect to the proposed new capital costs had not already been included in the current expenses claimed over the years. The testimony of the accountant for those years regarding his accounting methods would have been useful for determining capital costs, because otherwise how can it be concluded that he did not take the expenses into consideration? If they were not capitalized by that accountant, one can only think that it was because they were included in the

calculation of income as current expenses. I therefore cannot be certain enough to accept the conclusions of the new accountant.

[31] In my view, the analysis by the Minister's auditor was done to the best of her ability under the circumstances and she even showed some practical generosity by not deducting the amount of the grants from the capital cost despite the absence of an account showing expenses capitalized by the then accountant.

[32] As for the property taxes, counsel for the appellant submits that he is simply claiming taxes paid in 1999, and that the adjusting entries by the then accountant should not be taken into account.

[33] For 1999, the property tax amount allowed was \$9,149, which left a difference of \$31,581. For 1998, the property tax amount claimed was \$74,833 and included the \$31,581. This was admitted by the appellant.

[34] I find the appellant's attitude strange regarding this last point. He does not ask for a correction of the calculation of expenses for 1998, but claims the same expense for the following year. He wants to deduct the same expense two years in a row. I see no reason not to follow the then accountant's approach. That was the accounting method he adopted and it is an acceptable method.

[35] As for the trustee's fees, it seems to me that they were incurred for the purposes of the business. It was for the purposes of his business that the appellant made the proposal. This is quite clearly a business context.

[36] The appeals are allowed so that there may be included in the calculation of losses for 1998 wages in the amount of \$9,725 and, in the calculation of income for 1999, the deduction of trustee's fees of \$10,330.70. As for the other items at



issue for 1998 to 2000, they were properly established in fact and in law by the Minister. Costs are awarded to the respondent.

Signed at Ottawa, Canada, this 20th day of June 2006.

"Louise Lamarre Proulx"

---

Lamarre Proulx J.

Translation certified true  
on this 29th day of February 2008.

Erich Klein, Revisor

CITATION: 2006TCC354

COURT FILE No.: 2004-99(IT)G

STYLE OF CAUSE: YVON RENAUD v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Quebec City, Quebec

DATE OF HEARING: April 3 and 4, 2006

REASONS FOR JUDGMENT BY: The Honourable Justice Louise Lamarre Proulx

DATE OF JUDGMENT: June 20, 2006

APPEARANCES:

Counsel for the Appellant: Louis Sirois  
Counsel for the Respondent: Simon-Nicolas Crépin

COUNSEL OF RECORD:

For the Appellant:

Name: Louis Sirois

Firm: Barbeau & Associés  
Quebec City, Quebec

For the Respondent: John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada