

Docket: 2010-1715(IT)I

BETWEEN:

LOUISE TAYLOR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 5 - 6, 2010, at Toronto, Ontario

Before: The Honourable Justice Valerie Miller

Appearances:

Agent for the Appellant: Peter Davey
Counsel for the Respondent: Christian Cheong
Diana Aird

JUDGMENT

The appeal for the 2006 taxation year is allowed and the reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled to deduct expenses in the amount of \$7,261.62.

Signed at Ottawa, Canada, this 27th day of October 2010.

“V.A. Miller”

V.A. Miller, J.

Citation: 2010TCC526
Date: 20101027
Docket: 2010-1715(IT)I

BETWEEN:

LOUISE TAYLOR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Delivered orally from the bench on October 6, 2010, in Toronto, Ontario.)

V.A. Miller, J.

[1] The issue in this appeal is whether the Minister of National Revenue (the “Minister”) was correct to disallow the deduction of business expenses in the amount of \$20,131 for the 2006 taxation year.

[2] The Appellant operates B & M Distribution Services (“B & M”) a sole proprietorship. B & M is a distributor of cake boxes and cake boards.

[3] The Appellant did not appear at the hearing of this appeal. She was represented by Peter Davey who is her bookkeeper. It was his evidence that he was hired by the Appellant in August 2006. Prior to that time, the Appellant did her own books using the bank statements and he had to start from scratch to produce the books. I gather from the evidence that the Appellant started her business in 2005.

[4] In 2006, the Appellant claimed “purchase expenses” in the amount of \$197,520. The Minister disallowed “purchase expenses” of \$14,771 on the basis that they were unsupported by documentation. The amount of \$1,813 was disallowed on the basis that it was a duplicated entry in the Appellant’s books. The Minister also disallowed the deduction of \$392 which was claimed as an advertising expense but which was actually the cost of the Appellant’s Christmas gift for her mother. Motor

vehicle and travel expenses in the amount of \$2,085.45 and \$934 respectively were also disallowed.

[5] Mr. Davey stated that the only amounts which were now at issue were the following:

- (a) three invoices from McNairn Packaging which totalled \$3,169.87
- (b) five invoices from ERP which totalled \$7,542.07
- (c) the amount of \$1,472.70

[6] It was Mr. Davey's evidence that the Appellant often paid for some of her purchases by cash. She gave a debit card to one of her suppliers who used the card to take the purchase price of the goods out of the Appellant's bank account. In doing so, the supplier rounded up the amount he withdrew from the Appellant's account. As a result, the invoices do not always exactly match the withdrawals from the bank account.

[7] During the period, the Appellant had two main suppliers, McNairn Packaging ("McNairn") and Les Emballages Rapide Plus B.L. Inc. ("ERP").

The McNairn Invoices

[8] The Minister disallowed the following amounts which the Appellant had claimed as "purchase expenses". They were disallowed on the basis that the Appellant was not able to produce invoices and proof of payment to show that the expenses were actually incurred.

Description	Amount
July inventory purchases	\$6,300
May inventory purchases	2,900
June inventory purchases	2,600
Cash purchases	1,500
	1,472

[9] Mr. Davey presented three invoices from McNairn Packaging to B & M. The invoices showed that the product purchased totalled \$3,196.87 and it was paid for by a post-dated cheque dated 30 days after the purchase. The product was shipped to the

Appellant on June 7 and 8. Exhibit A2, the Appellant's bank statement for the period ending July 31, 2006, showed that cheque #150 for the amount of \$3,169.87 was marked NSF on July 7. It was Mr. Davey's evidence that these invoices were paid by cash. He submitted exhibit A4 to support his evidence.

[10] The problem that I have with the Appellant's position is that I do not know that the amount of \$3,196.87 forms part of the July inventory purchases. I have no evidence to show that this amount of \$3,196.87 was not already allowed by the Minister. The invoices show that the inventory was purchased in June and not July. Exhibit A4 is a document that was produced by Mr. Davey for B & M. It bears the title, Vendor Balance Detail, and it lists the amounts in the Accounts Payable to McNairn Packaging and when and how these amounts were paid for the period May 5, 2006 to October 30, 2008. This exhibit shows that the amount of \$3,169.88 was paid by debit to McNairn on June 14, 2006. The date next to the invoices on exhibit A4 is June 26, 2006.

[11] There is no evidence which allows me to conclude that the amount of these invoices is included in the July inventory purchase which was disallowed. In fact, even Mr. Davey's testimony was not definitive. He stated that the amount of \$3,196.87 **may** be contained in the \$6,300.00.

ERP Invoices

[12] Exhibit A3 consists of invoices for product purchased from ERP as follows:

March 9, 2006	\$ 583.70
May 2, 2006	2,129.17
May 24, 2006	1,722.04
August 16, 2006	2,826.71
January 25, 2007	280.45

It was Mr. Davey's evidence that these were amounts paid to ERP in cash for product purchased by the Appellant. According to Mr. Davey, ERP had the Appellant's debit card. He also submitted a letter dated October 4, 2010, (exhibit A5), from ERP which confirmed that all invoices from ERP to B & M have been paid.

[13] I have reviewed exhibit R-1 and I have concluded that the amounts of these invoices were not already allowed by the Minister. In particular, at Tab 4 there is a letter from the Appeals Officer who had carriage of this file. She listed the invoices which have been submitted as exhibit A3 and she stated that "if these invoices are to be considered in addition to the amount requested in the Notice of Objection, please

provide proof of payment for these invoice.” I have also concluded that these were expenses incurred and paid by the Appellant in 2006.

The Amount of \$1472

[14] Mr. Davey stated that there was a cheque for \$1,560 on the Appellant’s books. The cheque was never cashed and he reversed the amount. The amount of \$1,471.70 was the amount of the cheque less GST. When his client was being audited, the auditor disallowed the amount of \$1,471.70 as an unsubstantiated purchase.

[15] Mr. Davey was unable to produce any document to show that he had reversed the entry of the cheque. In fact, he did not show me any document that would allow me to conclude that there was such a cheque or that he had reversed any amounts.

[16] The onus in an appeal is on the Appellant to show that the Minister’s assessment is incorrect. In this appeal, the Appellant, through her representative, has not given any reliable proof to show that the amount of \$1,472 represented a cheque that was reversed in its books. The amount of \$1,472 plus GST does not equate to the amount of \$1,560.

[17] In conclusion, the appeal is allowed and the Appellant is entitled to deduct expenses in the amount of \$7,261.62. I have not allowed a deduction for the amount of \$280.45 as it was an expense which was incurred in 2007.

Signed at Ottawa, Canada, this 27th day of October 2010.

“V.A. Miller”

V.A. Miller, J.

CITATION: 2010TCC526

COURT FILE NO.: 2010-1715(IT)I

STYLE OF CAUSE: LOUISE TAYLOR AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 5 - 6, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller

DATE OF JUDGMENT: October 27, 2010

APPEARANCES:

Agent for the Appellant:	Peter Davey
Counsel for the Respondent:	Christian Cheong Diana Aird

COUNSEL OF RECORD:

For the Appellant:

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