

BETWEEN:

ROBERT W. TIEDE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on common evidence with *Myrna D. Tiede* (2010-30(IT)I) on  
December 1 and 3, 2010 at Winnipeg, Manitoba and  
on January 14, 2011 by videoconference

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Laura Perron (student-at-law)  
Penny Piper

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**JUDGMENT**

The appeal with respect to assessments made under the *Income Tax Act* for the 2003, 2004 and 2005 taxation years is allowed, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that:

1. for the 2003 taxation year, the appellant is entitled to deduct a business loss based on (a) deductions on current account in the amount of \$2,022.49, (b) capital cost additions in respect of Class 12 property in the amount of \$674.56, and (c) eligible capital expenditures in the amount of \$2,725.48. Appropriate adjustments

should be made to reflect that the business ceased in September 2003;

2. for the 2004 taxation year, the appellant is entitled to an additional deduction in respect of a rental loss in the amount of \$132.83; and
3. for the 2005 taxation year, the appellant is entitled to an additional deduction in respect of a rental loss in the amount of \$425.20.

The parties shall bear their own costs.

Signed at Ottawa, Canada this 10<sup>th</sup> day of February 2011.

“J. M. Woods”

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Woods J.

BETWEEN:

MYRNA D. TIEDE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on common evidence with *Robert W. Tiede* (2010-29(IT)I)  
on December 1 and 3, 2010 at Winnipeg, Manitoba and  
on January 14, 2011 by videoconference  
By: The Honourable Justice Judith Woods

Appearances:

Agent for the Appellant: Robert W. Tiede

Counsel for the Respondent: Laura Perron (student-at-law)  
Penny Piper

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**JUDGMENT**

The appeal with respect to assessments made under the *Income Tax Act* for the 2004 and 2005 taxation years is allowed, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the appellant is entitled to additional deductions in the amounts of \$132.83 and \$425.20 for the 2004 and 2005 taxation years, respectively.

The parties shall bear their own costs.

Signed at Ottawa, Canada this 10<sup>th</sup> day of February 2011.

“J. M. Woods”

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Woods J.

Citation: 2011 TCC 84  
Date: 20110210  
Dockets: 2010-29(IT)I  
2010-30(IT)I

BETWEEN:

ROBERT W. TIEDE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

AND BETWEEN:

MYRNA D. TIEDE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

#### **Woods J.**

[1] Robert and Myrna Tiede appeal in respect of assessments made under the *Income Tax Act*. The appeals relate to deductions claimed by the appellants in relation to a rental property and to deductions claimed by Mr. Tiede as expenses of a photography business.

[2] Mr. Tiede's appeal relates to the 2003, 2004 and 2005 taxation years. Mrs. Tiede's appeal relates to the 2004 and 2005 taxation years.

Photography activity

[3] Prior to the taxation years at issue, Mr. Tiede was employed by Atomic Energy of Canada Ltd. (AECL) in Pinawa, Manitoba. In February 2003, AECL announced that it was laying off staff at that location and Mr. Tiede's employment was terminated effective early June 2003.

[4] Shortly after the layoff announcement was made in February 2003, Mr. Tiede concluded that his days at AECL were numbered and he decided to pursue self-employment in the field of photography. He had been keenly interested in photography as a hobby for many years.

[5] Business plans were immediately commenced in February 2003. The area of photography that Mr. Tiede chose involved significant preliminary work because he did not have the equipment or the training in that particular field – digital imaging. In addition, extensive renovations were required to Mr. Tiede's basement to accommodate the photography equipment.

[6] The preliminary activities were actively pursued beginning in February 2003. The plans were interrupted, however, in September 2003 when AECL offered to cancel Mr. Tiede's layoff. Mr. Tiede accepted their offer and he has been employed by AECL since that time.

[7] Subsequent to his re-employment, Mr. Tiede continued with the photography activity but at a much different pace and not with the expectation that products or services would be brought to market in the near future. Even now, Mr. Tiede continues to take photographs on semi-annual trips but he has no definite timeframe for when he might be in a position to sell them.

[8] In the 2003, 2004 and 2005 taxation years, Mr. Tiede claimed deductions as business expenses in the aggregate of \$11,135.11, \$4,121.11, and \$8,941.33, respectively. In this period, no revenues were generated except for \$43.15 for passport photos which Mr. Tiede undertook in order to earn some revenue at the suggestion of his accountant.

[9] The respondent submits that the assessments correctly disallowed the losses claimed by Mr. Tiede because the business never reached the commencement stage. Alternatively, the respondent submits that there are specific provisions of the *Act* that disallow many of the expenses in any event.

[10] I will deal with each of these issues separately.

[11] As for whether the business commenced at all, the conclusion that I have reached is that a business did commence early in February 2003. However, I am not satisfied that the business continued throughout the relevant taxation years. In my view, the business ceased to exist in September 2003 when Mr. Tiede decided to return to AECL.

[12] The decision of Bowman J. (as he then was) in *Gartry v. The Queen*, 94 DTC 1947 (TCC) provides a useful description of the test that should be applied in determining whether a business has commenced. At page 1949, he stated:

[...] In determining when a business has commenced, it is not realistic to fix the time either at the moment when money starts being earned from the trading or manufacturing operation or the provision of services or, at the other extreme, when the intention to start the business is first formed. Each case turns on its own facts, but where a taxpayer has taken significant and essential steps that are necessary to the carrying on of the business it is fair to conclude that the business has started. [...]

[13] In this case, I am satisfied that Mr. Tiede took significant steps early on towards bringing products and services to market within a reasonable timeframe. Early in 2003, he developed plans for the photography business and throughout the spring and summer he actively pursued these plans by buying equipment, undertaking training, and beginning renovations to his basement. If events had not unfolded as they did with AECL, I expect that Mr. Tiede would have been in a position to market photography products and services in a relatively short period of time. As a matter of common sense, Mr. Tiede should be able to deduct reasonable business expenses during the period that the business was being actively pursued.

[14] The situation changed significantly, however, when Mr. Tiede decided to go back to AECL. No longer did he have a definite plan to bring products or services to market within a relatively short period of time. The activity from that point bore more characteristics of a personal endeavour (a hobby) than a commercial pursuit.

[15] Mr. Tiede submits that the nature of his plans did not change; he continued to pursue the activity with the goal of eventually selling photography products and services. He submits it was only the time frame to bring it to market that changed.

[16] I cannot agree with this characterization. Almost eight years have passed since this business plan was first developed and Mr. Tiede's plans still remain in the formative stages. As a matter of common sense, the nature of the undertaking

changed fundamentally from being an active business to a personal endeavour in the fall of 2003. I would note that photography has been a long-time pastime of Mr. Tiede and the activity involved pleasurable aspects beyond picture-taking (i.e., trips to vacation destinations or to relatives).

[17] In the circumstances, expenditures that were claimed for 2003 that are reasonably attributable to the period up to the time AECL offered to take Mr. Tiede back (mid-September) will be allowed to the extent that they are otherwise deductible under the *Act*. No deductions will be allowed for expenditures after this time.

[18] The expenditures claimed by Mr. Tiede for 2003 are listed in Schedule A to the reply. They are reproduced below.

	2003
Advertising	\$ 116.27
Delivery, Freight	18.95
Meals and Entertainment	144.80
Office	546.33
Supplies	908.13
Travel	2,770.22
Telephone and Utilities	432.81
Professional Development	629.15
Portfolio Development	4,038.01
Capital Cost Allowance	1,530.44
Total Expenses	\$ 11,135.11

[19] I now turn to whether these claims satisfy the other requirements of the *Act*.

[20] Starting with portfolio development in the amount of \$4,038.01, this claim will be disallowed in its entirety. This item relates to photographs taken in years prior to 2003 and Mr. Tiede was not certain how the amount was calculated by the accountant. I am not satisfied by the evidence that the prior photographs actually became business assets, and in any event there was insufficient proof as to the cost or value of this property.

[21] As for travel, in the summer of 2003 Mr. Tiede and his wife took three trips: an Alaskan cruise, a trip to Calgary, and a trip to Waterton Park. On the Alaskan cruise, Mr. Tiede was enrolled in a photography course and on the other trips he spent time taking photographs.

[22] The deduction for the cost of the trips to Calgary and Waterton Park will be disallowed in their entirety as personal expenses which were not incurred in the course of the business. Even though a business had commenced, I am not satisfied that these trips were connected to it.

[23] Mr. Tiede had a long history of taking photographs on vacations and I am not satisfied that these trips were any different. Mr. Tiede testified that the photographs would be part of his stock photos for sale. However, I am not satisfied that the business plans had advanced to the stage that these photographs became part of the business assets. These photographs, like photos taken in prior years, remained Mr. Tiede's personal assets that might at some point in the future become business assets.

[24] As for the Alaskan cruise, I am satisfied that the cost of tuition for the photography course is a business expense (\$2,175.48), but I am not satisfied that the travel costs qualify as such. The problem is that there was no evidence as to whether it was necessary for Mr. Tiede to take this training in a vacation-type setting. I propose to allow 50 percent of the cost of room and board on the cruise (\$550). This recognizes that Mr. Tiede would have incurred some travel costs regardless of where the course was offered. No other expenses in relation to the Alaskan cruise will be allowed.

[25] The Alaskan cruise expenses should not be allowed on current account, however. The training provided by the photography course is a capital item, and the expenses (\$2,725.48) should be treated as eligible capital expenditures.

[26] Regarding the meal expenses, I am not satisfied that they were incurred primarily for business purposes. They will be disallowed as personal expenses.

[27] Regarding capital cost allowance (CCA), capital cost additions to Class 12 in the amount of \$674.56 should be allowed in accordance with the receipts provided (Exhibit A-30).

[28] The other expenses claimed for the 2003 taxation year will be allowed. As a result, for the 2003 taxation year Mr. Tiede will be entitled to deduct a business loss based on: deductions on current account in the amount of \$2,022.49, capital cost additions in respect of Class 12 property in the amount of \$674.56, and eligible capital expenditures in the amount of \$2,725.48. Appropriate adjustments should be made to reflect that the business ceased in September 2003.



Rental property

[29] In the 2004 and 2005 taxation years, Mr. and Mrs. Tiede claimed losses in connection with a bungalow that was purchased in May 2004 and used as a rental property. The main floor was rented to the Tiedes' two children and the basement was occupied beginning August 2004 by two tenants who were not related to the Tiedes.

[30] The children's rent was \$625 per month for the main floor and the basement tenants paid \$595 per month. The respondent accepts that the rents are fair market value.

[31] In their tax returns for 2004 and 2005, Mr. and Mrs. Tiede claimed aggregate rental losses in the amounts of \$6,143.96 and \$7,404.70, respectively. The losses were allocated equally between them.

[32] Some of the expenditures claimed were disallowed by the Minister, with the result that the aggregate annual losses were reduced to \$965.54 and \$96.16, respectively. Mrs. Tiede was also allowed an additional deduction of \$52.

[33] A breakdown of the amounts claimed by the appellants and allowed by the Minister is set out in a schedule to the replies. It is not necessary to reproduce it in these reasons.

[34] There are three items in dispute: (1) office expenses, (2) management and administration fees, and (3) maintenance and repairs.

[35] I would also mention certain adjustments that were made by the Minister that are no longer in dispute: (1) the appellants concede the disallowance of a deduction for travel expenses, (2) the respondent concedes the capital cost of a vacuum cleaner and appliances, and (3) the appellants concede that the cost and legal fees for the land portion of the property does not qualify for capital cost allowance.

[36] Turning to the amounts in dispute, as for office expenses, the amounts claimed were \$265.65 in 2004 and \$517.40 in 2005. These amounts do not actually represent office expenses as indicated in the tax returns. They are cable and internet charges in respect of the rental property paid by the appellants. The deductions will be allowed.

[37] As for maintenance and repairs, the majority of expenses relate to the costs of painting the rental property. This was a project undertaken by the entire family. The

expenses claimed relate to supplies and a \$10 per hour labour charge for the children's painting services.

[38] The maintenance and repair expense for 2004 was \$5,318.51. It was not claimed as a current deduction but was treated as capital cost of Class 1 property for capital cost allowance purposes.

[39] The expense for 2005 was \$3,360.10. One-half of this amount (\$1,680.05) was deducted as a current expense and the balance was treated as capital cost of Class 1 property.

[40] The Minister has not allowed any capital cost in respect of maintenance and repairs for 2004 or 2005. However, a current deduction in the amount of \$1,137 was allowed for the 2005 taxation year.

[41] In the replies, the respondent put in issue the capital cost reported in the returns. This is in error in my view because the capital cost did not affect the assessments. No capital cost allowance was claimed in either 2004 or 2005. Since these appeals were heard under the informal procedure, I propose to comment on the capital cost so that it might provide assistance for future taxation years. However, my comments in this respect are not binding and will not be reflected in the formal judgments.

[42] For the purpose of analyzing the maintenance and repairs expenditures, I will separately review the cost of supplies and the children's labour.

[43] As for the cost of maintenance supplies in 2004, the respondent conceded at the hearing that the amounts claimed should be added to Class 1. The concession was made because the appellants produced appropriate receipts at the hearing. This amount is \$2,637.79.

[44] As for the cost of maintenance supplies in 2005, the Minister rejected certain receipts as being for personal items. They include things such as family meals and cat litter. I agree that the disallowance of these items is appropriate. The cost of supplies should be reduced from \$1,389.20 to \$1,137.

[45] As for the cost of labour in 2004 and 2005, the Minister takes the position that no amounts were paid to the children. I disagree with this. The appellants did not pay cash to the children for their painting services but the amounts did reduce the amount owing for rent. This form of payment is acceptable as long as the record keeping is

proper. I have no reason to believe that it was not.

[46] Accordingly, I would conclude that the capital cost claimed for maintenance and repairs for 2004 in the amount of \$5,318.51 is proper.

[47] As for maintenance and repairs for 2005, the total expenditures are labour of \$1,804 and supplies in the amount of \$1,137. I propose that the aggregate amount, \$2,941, be divided equally between current expense and capital cost. The current deduction allowed for 2005 is therefore \$1,470, which is \$333 more than what was allowed by the Minister. An additional deduction of \$333 will be allowed.

[48] I now turn to the management and administration fees. This was a monthly charge in the amount of \$400 purportedly paid to the children who were living in the rental property. The amounts that were deducted are \$2,800 for the 2004 taxation year and \$5,040 for the 2005 taxation year.

[49] The Minister disallowed the deduction on two grounds, first, that the fees were not paid, and second, that the amounts were unreasonable.

[50] As for whether the fees were paid, I am satisfied that they were. As with the fees for painting services, the management and administration charges reduced the amount of rent owing. I see nothing wrong with this arrangement.

[51] The respondent also submitted that the fees should be disallowed as being unreasonable. In light of the relationship between the parties, it is reasonable to scrutinize the deductions. To the extent that they exceed what any reasonable business person would pay, the excess should be disallowed pursuant to section 67 of the *Act*: *Gabco Ltd. v. MNR*, 68 DTC 5210 (Ex Ct), at 5216.

[52] Based on my notes from the hearing, Mr. Tiede testified that this amount was paid for extra services provided by the children in respect of the maintenance of the property. Such services included cleaning, snow removal, inspections and repairs. The amount paid represents 40 hours per month at \$10 per hour.

[53] The problem that I have with this expenditure is that there are no back up records to justify the amounts paid. No records were kept of the nature of the services and the time spent. Without these records, it is impossible to be satisfied that the fees are reasonable. I would also note that aggregate fees paid to the children (painting and management) virtually offset the rent that was charged. I am not satisfied that this is reasonable without having proper supporting records. No amount will be

allowed for management and administration.

[54] When the above adjustments relating to the rental property are taken into account, the appellants should be allowed additional deductions in the amounts of \$265.65 and \$850.40 for the 2004 and 2005 taxation years, respectively. These amounts should be allocated equally so that each appellant would be entitled to additional deductions in the amount of \$132.83 for the 2004 taxation year and \$425.20 for the 2005 taxation year.

### Conclusion

[55] As a final comment, I would note that some of the items above are based on approximations rather than a meticulous review of the mountain of receipts which Mr. Tiede introduced into evidence. In taking this approach, some of my estimates may result in a windfall to the appellants and in other cases the adjustments may be to their detriment. I have endeavoured to, on balance, be generous to the appellants. I would also comment that Mr. Tiede did a commendable job in organizing the receipts for the Court.

[56] In the result, the appeal of Mr. Tiede for the 2003, 2004 and 2005 taxation years will be allowed, and the assessments will be referred back to the Minister of National Revenue for reassessment. For the 2003 taxation year, Mr. Tiede will be entitled to deduct a business loss based on: deductions on current account in the amount of \$2,022.49, capital cost additions in respect of Class 12 property in the amount of \$674.56, and eligible capital expenditures in the amount of \$2,725.48. For the 2004 and 2005 taxation years, Mr. Tiede will be allowed additional deductions in the amounts of \$132.83 and \$425.20, respectively.

[57] The appeal of Mrs. Tiede will also be allowed, and the assessments will be referred back to the Minister of National Revenue for reassessment on the basis that Mrs. Tiede is entitled to additional deductions for the 2004 and 2005 taxation years in the amounts of \$132.83 and \$425.20, respectively.

[58] The parties will bear their own costs.

Signed at Ottawa, Canada this 10<sup>th</sup> day of February 2011.

“J. M. Woods”

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Woods J.



CITATION: 2011 TCC 84

COURT FILE NOS.: 2010-29(IT)I  
2010-30(IT)I

STYLES OF CAUSE: ROBERT W. TIEDE v. HER MAJESTY  
THE QUEEN and MYRNA D. TIEDE v.  
HER MAJESTY THE QUEEN

PLACE OF HEARING: Winnipeg, Manitoba

DATES OF HEARING: December 1 and 3, 2010  
January 14, 2011

REASONS FOR JUDGMENT BY: The Honourable Justice J. M. Woods

DATE OF JUDGMENTS: February 10, 2011

APPEARANCES:

Agent for the Appellants: Robert W. Tiede

Counsel for the Respondent: Laura Perron (student-at-law)  
Penny Piper

COUNSEL OF RECORD:

For the Appellants:

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