

Docket: 2014-323(IT)I

BETWEEN:

ELLSWORTH MURRAY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 11, 2014, at Ottawa, Ontario

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Tamara Watters

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2011 taxation year is dismissed.

Signed at Ottawa, Canada, this 16th day of June 2014.

“V.A. Miller”

V.A. Miller J.

Citation: 2014TCC197

Date: 20140616

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BETWEEN:

ELLSWORTH MURRAY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

V.A. Miller J.

[1] This appeal relates to the Appellant's 2011 taxation year in which the Minister of National Revenue (the "Minister") disallowed various expenses. The issues raised by the Appellant were whether he was entitled to deduct (a) premiums in the amount of \$1,441.56 which he had paid for a private health care plan; and, (b) rent in the amount of \$8,400 for his office.

[2] The Appellant is in the business of selling insurance and in 2011 he earned gross commission income of \$16,946 from his insurance sales. In his income tax return, he claimed that he incurred expenses of \$29,960 related to his insurance sales. On reassessment, the Minister allowed the Appellant to deduct expenses of \$16,388. His net commission income was \$558. He reported net income of \$31,512 in 2011.

Private Health Care Plan

[3] In his income tax return the Appellant claimed a business expense of \$1,629 for a private health care plan. At the objection stage of this case, he changed the amount from \$1,629 to \$1,442. He stated that he was following the Tax Guide which accompanied his income tax return. The Minister disallowed the amount as a business expense but gave the Appellant a non-refundable tax credit for a medical expense in the amount of \$1,442.

[4] At the hearing of his appeal, the Appellant was adamant that he should be allowed a business expense for the premiums he paid for a private health plan. He stated that he did not incur any medical expenses in 2011.

[5] The documentary evidence presented by the Appellant did not support his statement that he had paid premiums to a private health plan. His premiums were shown as a deduction from his Public Service Pension with the Federal Government. The definition of “*private health services plan*” in section 248 of the *Income Tax Act* (“*ITA*”) specifically excludes a plan established under an Act of Parliament. The premiums paid by the Appellant do not qualify as deductions.

[6] In addition, when I consider subparagraph 20.01(1)(a)(i) of the *ITA*, I conclude that the Appellant did not meet the requirements of this provision. It reads:

20.01 (1) Notwithstanding paragraphs 18(1)(a) and (h) and subject to subsection (2), there may be deducted in computing an individual’s income for a taxation year from a business carried on by the individual and in which the individual is actively engaged on a regular and continuous basis, directly or as a member of a partnership, an amount payable by the individual or partnership in respect of the year as a premium, contribution or other consideration under a private health services plan in respect of the individual, the individual’s spouse or common-law partner or any person who is a member of the individual’s household if

(a) in the year or in the preceding taxation year

(i) the total of all amounts each of which is the individual’s income from such a business for a fiscal period that ends in the year exceeds 50% of the individual’s income for the year, ...

[7] In 2011, the Appellant’s business income was his profit from his insurance business or \$558. This did not exceed fifty percent of his income for 2011. In 2010, the Appellant’s business income was a negative amount.

Rental Expense

[8] In denying that the Appellant incurred a rental expense of \$8,400, the Minister assumed that the Appellant resided at 605-1090 Kristin Way, Ottawa, Ontario. He made no assumptions about where or if the Appellant had an office.

[9] The Appellant claimed that his office rental expense was \$8,400 and that his office was located at 605-1090 Kristin Way. He denied that he lived at 605-1090 Kristin Way and insisted that this apartment was only used as an office. However, he refused to give his home address or to answer any questions with respect to his home.

[10] It was explained to the Appellant at the beginning of his hearing that he had the onus of showing that the Minister's assumptions were incorrect. This he did not do. His evidence on this issue consisted of self serving statements.

[11] I have concluded from the evidence that the Appellant resided at 605-1090 Kristin Way and if he had an office, it was in his home. The Appellant has not provided any details about his office.

[12] At the hearing of the appeal, the Appellant stated that he was entitled to a deduction for registration fee he paid for his vehicle in August 2008. The present appeal was only with respect to the Appellant's 2011 taxation year. His 2008 taxation year was not at issue.

[13] In conclusion, the Appellant did not incur a business expense for premiums paid for a private health service plan and he has not provided evidence to demonstrate that he had an office at 605-1090 Kristin Way.

[14] The appeal is dismissed.

Signed at Ottawa, Canada, this 16th day of June 2014.

"V.A. Miller"

V.A. Miller J.

CITATION: 2014TCC197
COURT FILE NO.: 2014-323(IT)I
STYLE OF CAUSE: ELLSWORTH MURRAY AND HER MAJESTY THE QUEEN
PLACE OF HEARING: Ottawa, Ontario
DATE OF HEARING: June 11, 2014
REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller
DATE OF JUDGMENT: June 16, 2014

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Tamara Watters

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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