Docket: 2003-797(IT)G

BETWEEN:

ISRAEL CHAFETZ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard with the appeals of *Donald Jordan (2003-800(IT)G)* and *James Taylor (2003-802(IT)G)* on November 23 and 24, 2005, at Vancouver, British Columbia, by The Honourable Justice Campbell J. Miller

Appearances:

Counsel for the Appellant:	Roslyn Goldner and Donald J. Jordan
Counsel for the Respondent:	Lynn Burch and Margaret Clare

JUDGMENT

The appeals from assessments of tax made under the *Income Tax Act* for the 1992 and 1993 taxation years are dismissed, with costs to the Respondent.

Signed at Ottawa, Canada, this 20th day of December, 2005.

"Campbell J. Miller"

Miller J.

Docket: 2003-800(IT)G

BETWEEN:

DONALD JORDAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard with the appeals of *Israel Chafetz (2003-797(IT)*G) and *James Taylor (2003-802(IT)G)* on November 23 and 24, 2005, at Vancouver, British Columbia, by The Honourable Justice Campbell J. Miller

Appearances:

Counsel for the Appellant:	Roslyn Goldner and the Appellant himself
Counsel for the Respondent:	Lynn Burch and Margaret Clare

JUDGMENT

The appeals from assessments of tax made under the *Income Tax Act* for the 1992 and 1993 taxation years are dismissed, with costs to the Respondent.

Signed at Ottawa, Canada, this 20th day of December, 2005.

"Campbell J. Miller"

Miller J.

Docket: 2003-802(IT)G

BETWEEN:

JAMES TAYLOR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard with the appeals of *Israel Chafetz (2003-797(IT)*G) and *Donald Jordan (2003-800(IT)G)* on November 23 and 24, 2005, at Vancouver, British Columbia, by The Honourable Justice Campbell J. Miller

Appearances:

Counsel for the Appellant:	Roslyn Goldner and Donald J. Jordan
Counsel for the Respondent:	Lynn Burch and Margaret Clare

JUDGMENT

The appeals from assessments of tax made under the *Income Tax Act* for the 1992 and 1993 taxation years are dismissed, with costs to the Respondent.

Signed at Ottawa, Canada, this 20th day of December, 2005.

"Campbell J. Miller"

Miller J.

Citation: 2005TCC803
Date: 20051220
Docket: 2003-797(IT)G,
2003-800(IT)G,
2003-802(IT)G,

BETWEEN:

ISRAEL CHAFETZ, and
DONALD JORDAN, and
JAMES TAYLOR,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Miller J.

[1] Messrs. Taylor, Jordan and Chafetz (the Appellants), three law partners, invested in a joint venture, Sierra Trinity in 1992 and 1993. They claimed Canadian Exploration Expense (CEE) in those years in connection with the joint venture. They were audited and were requested to sign waivers, which they did in 1996 and 1997. The waivers included reference to "Canadian Exploration and Development Expense" (CEDE). The Appellants were reassessed in 2001 denying a deduction for CEE in 1992 and 1993. The Appellants argue that the reassessments cannot reasonably be regarded as relating to the matters specified in the waivers, and that the Minister is therefore statute-barred from reassessing in connection with CEE for 1992 and 1993. I find the waivers are effective and that the Minister is not statute-barred from reassessing the Appellants' 1992 and 1993 taxation years.

Facts

[2] In 1992 and 1993 the Appellants invested in the Sierra Trinity joint venture. Mr. Taylor was the partner who more closely investigated this investment, and had knowledge of what it involved, being the acquisition of seismic data.

[3] The Appellants claimed CEE in their 1992 and 1993 tax returns in connection with this investment in Sierra Trinity. They did not claim Canadian Development Expense (CDE) nor Canadian Oil and Gas Property Expense (COGPE) in their returns. Apart from carrying charges, CEE was the only joint venture-related claim. This claim related to the cost of the seismic data.

[4] The Appellants certified their 1992 and 1993 tax returns as correct, without having reviewed the significant claims for the CEE. To put this in perspective, Mr. Taylor's CEE claim for 1992 was approximately $75,000 on income (primarily from his law practice) of $300,000. All three Appellants testified that their respective accountants prepared their returns, which they simply signed after checking to see how much they owed.

[5] In April 1996, Mr. S.W. Holmes of Revenue Canada wrote to the Appellants asking 14 questions in connection with the joint venture, specifically alluding to CEE, CDE and COGPE. The Appellants, upon receipt of this letter from Mr. Holmes, retained Mr. Ian J. Gamble, a tax lawyer with the firm of Thorsteinssons in Vancouver, British Columbia, a firm specializing in taxation law. Neither Mr. Gamble nor the Appellants responded to the 14 questions.

[6] At this time the Thorsteinssons firm were acting on a matter, which was proceeding in the Tax Court of Canada, relating to the qualification of the acquisition cost of seismic data as CEE. The Appellants had varying degrees of knowledge of this fact, suffice it to say that they knew there was a case going through the courts, dealing with the merits of the same issue facing them. Mr. Taylor also acknowledged that CEE was, as he put it, their "best argument". Mr. Taylor had some understanding of CEE as he had previously represented clients in a matter which had a CEE element to it, although he wisely obtained advice from tax lawyers.

[7] On July 9, 1996, Mr. Holmes wrote to Mr. Gamble as follows:[1]

> Dear Sirs:

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[1] Exhibit A-1, Tab 5.

Re: Sierra Trinity Joint Venture
(Canadian Exploration Expense (CEE))

As a result of our telephone conversation today, please find enclosed waivers for the following:

Donald J. Jordan
Israel Chafetz
James P. Taylor

Please advise us immediately if the waivers for the above captioned taxpayers will be forthcoming as their 1992 income tax returns become statute barred July 25, 1996 and August 2 and 9, 1996 respectively. If we are not provided with waivers we will have to commence reassessment action. In Mr. Jordan's case this would be July 18, 1996 and in Mr. Chafetz's and Mr. Taylor's case July 26, 1996. As discussed, no response has been received to date in respect of our previous letters to the taxpayers.

Thank you for your co-operation and assistance in this matter.

Yours truly,

"S.W. Holmes"
Revenue Canada
Vancouver Tax Services Office

[8] The waivers themselves read:

Waiver

The normal reassessment period referred to in subsection 152(4) of the *Income Tax* Act, within which the Minister may reassess or make additional assessments or assess tax, interest or penalties under Part "I, I.1 and I.2" of the *Act* is hereby waived for the taxation year indicated above, in respect of:

Net income for income tax purposes as affected by application of Canadian Exploration and Development Expense or Canadian Oil and Gas Property Expense in respect of Sierra Trinity Inc.

Carrying charges on line 221.

[9] The Appellants, upon receipt of the waivers, met to discuss their course of action. Mr. Taylor advised the other two Appellants that he believed they were not being asked to waive CEE. He testified that he did not know the definition of Canadian Exploration and Development Expense (CEDE), but understood it to be a separate term from CEE or CDE. He did not look the terms up in the *Act*. He further testified that he knew that a similar case was proceeding through the courts in connection with the acquisition cost of seismic data, and that this was a factor in deciding to sign the waivers. The Appellants agreed that it would be in order to proceed to sign the waivers, which they did. They testified that they believed Revenue Canada required more time to review some expenses, but not others. Mr. Jordan and Mr. Chafetz relied entirely on Mr. Taylor in reaching their decision. They did not believe it was necessary to discuss their waivers with their tax counsel, Mr. Gamble.

[10] In December 1996, Mr. Holmes again wrote to Mr. Gamble seeking information with respect to CEE.

[11] Again in March 1997, the Appellants received a letter from Mr. Holmes of Revenue Canada as follows:[2]

> Dear Mr. Taylor:
>
> RE: Audit of Joint Venture Business
> Canadian Exploration Expense (CEE)
>
> …
>
> However, due to the approaching statute barred date of June 27, 1997 for your 1993 return, it may become necessary to issue a notice of reassessment prior to that date.
>
> As a result, you may wish to sign and return (**unaltered)** a waiver to us by April 18, 1997. This will enable you to present additional representations and/or documentation to our office to ensure that all facts are fully considered prior to any further action. Failure to provide a waiver (**unaltered**) by the specified date will result in our reassessing your 1993 income tax return without further notice.

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[2] Exhibit A-1, Tab 10.

[12] The enclosed waivers were identical in wording to the first waivers except for reference to the 1993 taxation year, as opposed to the 1992 taxation year. The Appellants signed these waivers on the same basis as they signed the first waivers.

[13] In February 1999, the Appellants received a proposal letter from Mr. Holmes with respect to their 1992 and 1993 years indicating that Revenue Canada intended to disallow the expenses. Mr. Holmes wrote: [3]

> Dear Mr. Taylor:
>
> Re: Audit of Joint Venture Business – 1992 Taxation Year
>
> …
>
> Further to our proposal letter dated April 24, 1996, we have not been provided with any documents which would indicate that exploration work was done with the seismic data acquired by the purported joint venture. The mere possession of seismic data in and by itself does not qualify the expenditure as being a CEE under the *Income Tax Act (ITA*). In order to qualify as CEE, the expense must be incurred "for the purpose of determining the existence, location, extent or quality of an accumulation of petroleum or natural gas in Canada". From the information we received from Sierra Trinity Inc. there was no evidence to show that the seismic data were used for exploration purposes. No supporting documents were provided to us to verify the acquisition of leases, the drilling of wells, or letters to investors for additional cash calls.

The assessments were issued in 2001, and in April 2001 the Appellants filed Notices of Objection claiming the waivers were defective. This was the first time Revenue Canada was advised by the Appellants of that position.

[14] Mr. Holmes, of Revenue Canada, testified that he drafted the waivers. He used the expression Canadian Exploration and Development Expense to save words, rather than writing out Canadian Exploration Expense and Canadian Development Expense in full. He was not aware at the time there even was a defined term "CEDE", and that it pertained to the pre-1975 period. In conversation with Mr. Gamble, the only aspect of the waiver addressed between Mr. Holmes and Mr. Gamble were the carrying charges.

Analysis

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[3] Exhibit A-1, Tab 19.

[15] The relevant legislation regarding CEDE and CEE is found in subsections 66(15) and 66.1(6) of the *Income Tax Act* (see Appendix A). The relevant legislation regarding waivers is found in subparagraphs 152(4)*(a)*(i) and (ii) and subparagraphs 152(4.01)*(a)*(i) and (ii) of the *Act*, as follows:

> 152(4) The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect of the year only if
>
> *(a)* the taxpayer or person filing the return
>
> (i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this *Act*, or
>
> (ii) has filed with the Minister a waiver in prescribed form within the normal reassessment period for the taxpayer in respect of the year; or
>
> 152(4.01) Notwithstanding subsections (4) and (5), an assessment, reassessment or additional assessment to which paragraph (4)*(a)* or *(b)* applies in respect of a taxpayer for a taxation year may be made after the taxpayer's normal reassessment period in respect of the year to the extent that, but only to the extent that, it can reasonably be regarded as relating to,
>
> *(a)* where paragraph (4)(a) applies to the assessment, reassessment or additional assessment,
>
> (i) any misrepresentation made by the taxpayer or a person who filed the taxpayer's return of income for the year that is attributable to neglect, carelessness or wilful default or any fraud committed by the taxpayer or that person in filing the return or supplying any information under this *Act*, or
>
> (ii) a matter specified in a waiver filed with the Minister in respect of the year; and

…

[16] The question to be determined is whether the Minister's reassessments of the Appellants' 1992 and 1993 taxation years, denying CEE, can reasonably be regarded as relating to a "matter specified" in the waivers signed by the Appellants. I break this issue into two components: first, what is the "matter specified" in the waiver; second, can the reassessments reasonably be regarded as related to it?

(i) "Matter specified"

[17] The words in the waiver which are at the core of this dispute are "Canadian Exploration and Development Expense". If there was a mutuality of intention between the Respondent and Appellants as to what that meant, I could quickly move on to the second branch of the inquiry. But there is no such common understanding. The Respondent meant Canadian Exploration Expense and Canadian Development Expense – that is absolutely clear. The Appellants did not know what it meant, but suggested that they knew it did not mean CEE. I find the Appellants' testimony that they "knew" that it did not cover CEE overstated. Without having looked up the definition of CEDE, they could, at best, have assumed it did not cover CEE. This assumption led to a belief by Mr. Taylor that he was not waiving CEE, a belief he passed on to his partners.

[18] In this situation, where the parties hold different opinions as to what is the matter specified, it is helpful to appreciate that the waiver itself is neither the Appellants' nor the Respondent's waiver: it is for their mutual advantage (see *Cal Investments Limited. v. The Queen*[4]). I find it is, therefore, insufficient to accept one party's intention as determinative. I particularly have reservations about accepting the Appellants' stated intention that they knew CEE was not covered in the waivers. The Appellants did not word the waivers, nor did they know what they were waiving. They believed it did not include CEE. This is not strong evidence of an intention not to waive CEE; I would best describe it as wishful thinking that the waiver did not cover CEE. I do not deny they had convinced themselves that was the case; they were credible witnesses. I question the strength of the foundation of that belief, however.

[19] If I am not prepared to accept either party's stated intention of the meaning of the matter specified, it is for me to determine objectively what those words mean. Given the very nature of a waiver, a "matter specified" in a waiver must

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4 90 DTC 6556 (F.C.T.D.).

involve a substantial issue between the parties. As indicated in the oft-cited case of *Solberg v. Canada*,[5] where both parties know what is at issue, a technical error will not invalidate the waiver. It is also clear (see *Mah v. Canada*[6]) that the Minister cannot base a reassessment on a substantial issue that is not specified in the waiver. These cases lead me to conclude that, in determining the matter specified, I should seek the substantive issue. This interpretation of "matter" accords with *Black's Law of Dictionary* interpretation being "a subject under consideration".

[20] Mr. Jordan suggests that the matter or substantive issue can only be viewed through the very words used by the Respondent in the waivers – CEDE (a definition in the *Act* that covers pre-1975 exploration expenses only). Further, he argues that if there is any ambiguity, that should be decided in favour of the taxpayer (see *Solberg* and *Gagné v. The Queen*[7]). What troubles me with this approach is that it leads to an absurdity: the matter in issue had nothing to do with pre-1975 expenses. Mr. Jordan argues that the expression "CEDE" is capitalized, and as such, can only be read as a defined term, notwithstanding that it yields a nonsensical result. I am not to consider the result, according to Mr. Jordan. He argues that the defined term means what it means – no more, no less, and he took me to a number of cases limiting the usage of defined terms to their meaning (see for example *Yellow Cab Ltd. v. Alberta*[8]). The cases provided do not deal with a defined term used in a waiver, where words in a waiver are to identify a substantive issue being waived.

[21] The underlying dispute between the parties related to the acquisition cost of seismic data, and its deductibility. The Appellants knew that was the issue. They did not know technically whether, for income tax purposes, that was CEDE, COGPE, CEE or CDE. They did know that CEE was their best argument. All to say, there was no doubt as to the substantive issue; the doubt lay in the specific characterization of the expense.

[22] I do not need to rely on any extrinsic evidence to find that a waiver for the years 1992 and 1993 of a defined term that only applies to a period before 1975 invites closer scrutiny of the defined term. The capitalization of the word CEDE in such circumstances is insufficient to preclude another interpretation. There is an interpretation that is both reasonable and sensible: CEDE, in a 1992/1993 waiver,

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5 92 DTC 6448 (F.C.T.D.).
6 2003 DTC 1312 (T.C.C.).
7 2003 DTC 807.
8 [1980] 2 S.C.R. 761.

can only mean CEE and CDE. Mr. Jordan argues that grammatically the word "Expense" would have to be pluralized to accept that result. This is too fine a distinction to rely upon to ignore a common sense interpretation. I conclude the words CEDE in the context of a 1992 and 1993 waiver are not ambiguous: they mean CEE and CDE.

(ii) Can the reassessments reasonably be regarded as relating to the matter specified in the waivers?

[23] Having found the "matter specified" is CEE, then it follows that a reassessment of CEE not only relates to the matter specified – it is the matter specified. Thus the waiver is effective, and the Minister is not statute-barred.

[24] If I am wrong in my interpretation of the matter specified in the waivers, and if the Appellants are correct in suggesting that "CEDE", as expressed in the waivers, can only mean the 1974 definition, then I wish to address this second branch of the inquiry on that basis.

[25] Under the first branch of the inquiry, Mr. Jordan argued that the waivers' reference to "in respect of" limits the matter to the defined term. I believe Mr. Jordan is sidestepping the real issue which arises in the second branch of the inquiry, and that is the meaning of the words "reasonably be regarded as relating to". As was indicated in the *Mah* case:[9]

> [13] In *Stone Container* I was concerned with the phrase "in respect of" in the waiver form. In the case at bar, I am also concerned of the language of subparagraph 152(4.01)*(a)*(ii) and whether that provision authorizes the reassessment in issue on the basis that "it can reasonably be regarded as relating to a matter specified in the waiver". The phrase "in respect of" in the standard form of waiver limits the application of the waiver to the matter specified and, by virtue of subparagraph 152(4.01)*(a)*(ii), any other matters that can reasonably be regarded as relating to the matter specified. In other words, the phrase "in respect of" in the waiver is simply an expression of the reasonable relationship required by subparagraph 152(4.01)*(a)*(ii). It is quite clear that the Minister cannot base a reassessment on a substantive issue that is not specified in a waiver or cannot be regarded as relating to the substantive issue that is specified in the waiver.

[26] I do not believe I am expanding the definition of CEDE, if I find something outside the definition is reasonably related to the definition. Indeed, to follow Mr. Jordan's restrictive approach would render the words "reasonably be regarded as

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9 *Supra.*

related to" meaningless. Mr. Jordan argues that in determining whether the assessment can reasonably be regarded as related to the waivers, I am precluded again from relying on extrinsic evidence, but must limit myself to the words themselves. Clearly, if I were to rely on extrinsic evidence, it overwhelmingly points to a relationship between the ongoing issue of CEE and the waivers. This is evident in all the correspondence between Revenue Canada and the Appellants. But, accepting Mr. Jordan's proposition, can exploration expenses that may or may not qualify as CEE in 1992 and 1993 reasonably be regarded as related to a definition covering exploration expenses for a period prior to 1974? In looking at the history of these technical definitions, I characterize CEDE as the predecessor to CEE and CDE. A new regime was introduced after 1974 and different rates were attached to expenses depending on their classification as CEE or CDE. I cannot imagine a stronger relationship between CEE and its predecessor CEDE. Both deal with exploration expenses and are separated solely by timing considerations. I find that the denial of a deduction for exploration expenses that in 1992 do not qualify as CEE can reasonably be regarded as related to a definition that covers such exploration expenses for an earlier period. On this basis, I also would find the Minister can rely on the waivers and that the Minister is not statute-barred.

[27] Does my finding result in any prejudice to the Appellants? No. It was clear that, had they refused to sign the waivers, they would have been assessed denying CEE. It is also clear that, had they undertaken even a cursory investigation into the import of the waivers (for example, ask their own tax lawyer, read the definitions, or speak to the Canada Revenue Agency officer) they would have been fully aware they were waiving CEE. These facts may not go to the interpretation of the waivers, but they do go to the issue of whether the Appellants have suffered any prejudice. I find they have not.

[28] I dismiss the appeals and grant costs to the Respondent.

Signed at Ottawa, Canada, this 20th day of December, 2005.

"Campbell J. Miller"

Miller J.

Appendix A

66(15) In this section,

…

"Canadian exploration and development expenses" incurred by a taxpayer means any expense incurred before May 7, 1974 that is

(a) any drilling or exploration expense, including any general geological or geophysical expense, incurred by the taxpayer after 1971 on or in respect of exploring or drilling for petroleum or natural gas in Canada,

(b) any prospecting, exploration or development expense incurred by the taxpayer after 1971 in searching for minerals in Canada,

(c) the cost to the taxpayer of any Canadian resource property acquired by the taxpayer after 1971,

(d) the taxpayer's share of the Canadian exploration and development expenses incurred after 1971 by any association, partnership or syndicate in a fiscal period thereof, if at the end of that fiscal period the taxpayer was a member or partner thereof,

(e) any expense incurred by the taxpayer after 1971 pursuant to an agreement with a corporation under which the taxpayer incurred the expense solely in consideration for shares of the capital stock of the corporation issued to the taxpayer by the corporation or any interest in such shares or right thereto, to the extent that the expense was incurred as or on account of the cost of

(i) drilling or exploration activities, including any general geological or geophysical activities, in or in respect of exploring or drilling for petroleum or natural gas in Canada,

(ii) prospecting, exploration or development activities in searching for minerals in Canada, or

(iii) acquiring a Canadian resource property, and

(f) any annual payment made by the taxpayer for the preservation of a Canadian resource property,

but, for greater certainty, does not include

(g) any consideration given by the taxpayer for any share or any interest therein or right thereto, except as provided by paragraph *(e)*, or

(h) any expense described in paragraph *(e)* incurred by another taxpayer to the extent that the expense was, by virtue of that paragraph, a Canadian exploration and development expense of that other taxpayer;

66.1(6) In this section

..

"Canadian exploration expense" of a taxpayer means any expense incurred after May 6, 1974 that is

(a) any expense including a geological, geophysical or geochemical expense incurred by the taxpayer (other than an expense incurred in drilling or completing an oil or gas well or in building a temporary access road to, or preparing a site in respect of, any such well) for the purpose of determining the existence, location, extent or quality of an accumulation of petroleum or natural gas (other than a mineral resource) in Canada,

(b) any expense (other than an expense incurred in drilling or completing an oil or gas well or in building a temporary access road to, or preparing a site in respect of, any such well) incurred by the taxpayer after March, 1985 for the purpose of bringing a natural accumulation of petroleum or natural gas (other than a mineral resource) in Canada into production and incurred prior to the commencement of the production (other than the production from an oil or gas well) in reasonable commercial quantities from such accumulation, including

(i) clearing, removing overburden and stripping, and
(ii) sinking a shaft or constructing an adit or other underground entry,

(c) any expense incurred before April, 1987 in drilling or completing an oil or gas well in Canada or in building a temporary access road to, or preparing a site in respect of, any such well,
(i) incurred by the taxpayer in the year, or
(ii) incurred by the taxpayer in any previous year and included by the taxpayer in computing the taxpayer's Canadian development expense for a previous taxation year,

if, within six months after the end of the year, the drilling of the well is completed and

(iii) it is determined that the well is the first well capable of production in commercial quantities from an accumulation of petroleum or natural gas (other than a mineral resource) not previously known to exist, or

(iv) it is reasonable to expect that the well will not come into production in commercial quantities within twelve months of its completion,

(d) any expense incurred by the taxpayer after March, 1987 and in a taxation year of the taxpayer in drilling or completing an oil or gas well in Canada or in building a temporary access road to, or preparing a site in respect of, any such well if

(i) the drilling or completing of the well resulted in the discovery that a natural underground reservoir contains petroleum or natural gas, where

(A) before the time of the discovery, no person or partnership had discovered that the reservoir contained either petroleum or natural gas, and

(B) the discovery occurred at any time before six months after the end of the year,

(ii) the well is abandoned in the year or within six months after the end of the year without ever having produced otherwise than for specified purposes,

(iii) the period of 24 months commencing on the day of completion of the drilling of the well ends in the year, the expense was incurred within that period and in the year and the well has not within that period produced otherwise than for specified purposes, or

(iv) there has been filed with the Minister, on or before the day that is 6 months after the end of the taxation year of the taxpayer in which the drilling of the well was commenced, a certificate issued by the Minister of Natural Resources certifying that, on the basis of evidence submitted to that Minister, that Minister is satisfied that

(A) the total of expenses incurred and to be incurred in drilling and completing the well, in building a temporary access road to the well and in preparing the site in respect of the well will exceed $5,000,000, and

(B) the well will not produce, otherwise than for a specified purpose, within the period of 24 months commencing on the day on which the drilling of the well is completed,

(e) any expense deemed by subsection (9) to be a Canadian exploration expense incurred by the taxpayer,

(f) any expense incurred by the taxpayer (other than an expense incurred in drilling or completing an oil or gas well or in building a temporary access road to, or preparing a site in respect of, any such well) for the purpose of determining the existence, location, extent or quality of a mineral resource in Canada including any expense incurred in the course of

(i) prospecting,

(ii) carrying out geological, geophysical or geochemical surveys,

(iii) drilling by rotary, diamond, percussion or other methods, or

(iv) trenching, digging test pits and preliminary sampling,

but not including

(v) any Canadian development expense, or

(vi) any expense that may reasonably be considered to be related to a mine that has come into production in reasonable commercial quantities or to be related to a potential or actual extension thereof,

(g) any expense incurred by the taxpayer after November 16, 1978 for the purpose of bringing a new mine in a mineral resource in Canada into production in reasonable commercial quantities and incurred before the new mine comes into production in such quantities, including an expense for clearing, removing overburden, stripping, sinking a mine shaft or constructing an adit or other underground entry,

*(g.*1) any Canadian renewable and conservation expense incurred by the taxpayer,

(h) subject to section 66.8, the taxpayer's share of any expense referred to in any of paragraphs *(a)* to *(d)* and *(f)* to *(g.*1) incurred by a partnership in a fiscal period thereof, if at the end of the period the taxpayer is a member of the partnership, or

(i) any expense referred to in any of paragraphs (a) to (g) incurred by the taxpayer pursuant to an agreement in writing with a corporation, entered into before 1987, under which the taxpayer incurred the expense solely as consideration for shares, other than prescribed shares, of the capital stock of the corporation issued to the taxpayer or any interest in such shares or right thereto,

CITATION:	2005TCC803
COURT FILE NO.:	2003-797(IT)G, 2003-800(IT)G and 2003-802(IT)G
STYLE OF CAUSE:	Israel Chafetz, Donald Jordan and James Taylor and Her Majesty The Queen
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	November 23 and 24, 2005
REASONS FOR JUDGMENT BY:	The Honourable Justice Campbell J. Miller
DATE OF JUDGMENT:	December 20, 2005

APPEARANCES:

Counsel for the Appellants:	Roslyn Goldner and Donald J. Jordan
Counsel for the Respondent:	Lynn Burch and Margaret Clare

COUNSEL OF RECORD:

For the Appellant:

Name:	Roslyn Goldner and Donald J. Jordan
Firm:	Taylor Jordan Chafetz

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