Docket: 2007-3913(IT)I

BETWEEN:

CRAIG FRASER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on February 29, 2008 at Vancouver, British Columbia

Before: The Honourable Justice Valerie A. Miller

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Max Matas

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2002 and 2003 taxation years are allowed and the reassessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada this 18th day of April, 2008.

"V.A. Miller"

V.A. Miller, J.

Citation: 2008TCC227
Date: 20080418
Docket: 2007-3913(IT)I

BETWEEN:

CRAIG FRASER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

V.A. Miller, J.

[1] These appeals are from reassessments made under the *Income Tax Act* for the 2002 and 2003 taxation years. The issues are whether the Appellant is entitled to deduct various amounts for travel expenses, research and professional expenses, and business use of home expenses.

TRAVEL EXPENSES

[2] The Appellant has worked in the media and entertainment industry as a self-employed performer since 1991. All of his income in 2002 and 2003 was earned from his work as a performer. In these years the Appellant took several trips during which he had videos of himself filmed. In reporting his income for 2002 and 2003, the Appellant deducted the expenses incurred on these trips as a business expense. The Minister of National Revenue ("Minister") found that the Appellant had two separate businesses – one as a performer and another as a producer of documentaries. The Minister capitalized all of the travel expenses except those incurred on the trip to Whistler. He found that the travel expenses formed part of the cost of producing the videos and assigned these costs to Class 10(s). The Minister then found that since the Appellant had not earned any income in 2002 and 2003 from his business as a producer he was not allowed to deduct capital cost allowance ("CCA") for those years. The Minister disallowed the travel expenses claimed in 2003 for the trip to

Whistler on the basis that the trip was personal and the Appellant did not produce a video in Whistler.

[3] In 2002 the Appellant and his wife travelled to Thailand, Parry Sound in Ontario, San Juan Island in Washington, and Florida. They incurred expenses in the amount of $5,408. In 2003 the Appellant and his wife travelled to Whistler, Florida and Costa Rica. They incurred expenses in the amount of $5,616. At the audit stage, the Appellant submitted statements to the Canada Revenue Agency ("CRA") to support that the travel expenses were business expenses. In his written statements to the CRA the Appellant stated that the purpose for these trips was to film adventure travel documentaries and to film footage for his website, Escape-TV.com. The expenses he sought to deduct for each trip included his expenses and those of his wife. The Appellant stated that his wife was the co-host and the co-videographer for the films that were produced from these trips. His statements were corroborated by the documentaries on his website from each of the trips except the trip to Whistler. At the time of the audit and while the CRA was processing the Appellant's Notice of Objection, there was no documentary on Escape-TV.com from the Appellant's trip to Whistler. However, at the hearing of the appeal the Appellant tendered as evidence a DVD with footage from his Whistler trip.

[4] It is the Appellant's position that he has only one business – the media and entertainment business - and the travel expenses were incurred to earn income from that business. He also contends that the travel expenses were current expenses.

[5] At the hearing the Appellant altered the position he had previously taken with CRA. He stated that there were two business purposes for his trips. One of the purposes was to create a series of travel documentaries highlighting himself as a performer in various roles. He hoped to market these documentaries as an adventure series for television. His second purpose was to acquire films that he could incorporate into various demo reels to promote himself as a performer. The Appellant stated that his attempts to sell his adventure series documentaries were unsuccessful.

[6] The Appellant stated when he is applying for work as a performer it is critical that he demonstrate that he has specialized training, skills, abilities and/or experience in the specific type of performance that is being sought. He has prepared marketing materials for each category of performer work that he does. As an example, he stated that when he applies for a contract as a Host he has to provide the following marketing materials:

- an 8x10 photograph which makes him look like a Host;

- a detailed Host-specific resume outlining his work experience, training and special skills;

- a short video presentation or demo reel showing a series of video clips from previous hosting related work.

He noted that as Toronto and Los Angeles are the centers for hiring in this category, the demo reel is the primary marketing tool used in making an application for this type of performance contract. His demo reels included footage from the trips he made in 2002 and 2003.

[7] The Appellant further stated much of the work which he was able to get since 2002 was as a result of the high quality marketing materials that he has prepared for each of the fields in which he seeks work. He then gave numerous examples of contracts that he was able to acquire as a result of his marketing materials and the income he has earned from these contracts. The Appellant was not cross-examined on this portion of his evidence.

[8] By capitalizing the travel expenses, the Minister has conceded that the Appellant has a source of income from making documentaries. See *Stewart v. Canada.*, [2002] 2 S.C.R. 645 at para. 57 where the Court stated:

> It is clear from these provisions that the deductibility of expenses presupposes the existence of a source of income, and thus should not be confused with the preliminary source inquiry. …

The Minister has also found that there was a business purpose for the trips in 2002 and 2003.

I may have answered that question differently if it had been before me. It was not raised as an alternative pleading in the Reply to Notice of Appeal that the travel expenses were personal or living expenses.

[9] After reviewing all the evidence I find that if there was a business purpose to the trips in 2002 and 2003, then that purpose was to make films which became documentaries and clips in the Appellant’s demo reels - the tools he used to market himself as a performer. In either scenario, the films were capital assets and the travel expenses were capital expenditures as they were incurred to bring assets of enduring value into existence. The Appellant has established that footage from the

documentaries was used to earn income from his work as a self-employed performer. He is entitled to deduct CCA from his income in 2002 and 2003.

[10] I further find that the Minister was correct in disallowing the expenses that the Appellant incurred on his trip to Whistler. The DVD that the Appellant tendered was made after the fact. It is my opinion that it was made just for the Court hearing and not for a business purpose.

RESEARCH AND PROFESSIONAL EXPENSES

[11] The Appellant had claimed 100% of the costs for cable television and high speed internet services as research and professional expenses. At the hearing he was prepared to reduce his claim to 75%. He stated that if he were not a performer he would not need high speed internet and three-tiered cable television. He used high speed internet to make applications for employment. The Appellant took the position that as a performer he watched television from a different perspective than the person who was not a performer. Television was a training tool for him and consequently the costs for cable was a business expense.

[12] However, on cross-examination the Appellant stated that he used the television to watch sports programs, especially the Canuck hockey games. His wife also watched television. There was only one internet connection in the home and both he and his wife used the computers. In cross-examination, the Appellant admitted that he used the computer for both personal and business purposes.

[13] The CRA allowed the Appellant to deduct 50% of the costs of his internet and cable television services as a business expense, which in my view was generous. The Appellant has not brought forth sufficient evidence to show that the reassessment was incorrect. The Appellant's statements that he used his computer and television entirely for business purposes were self-serving and were contradicted when he was cross-examined on this issue.

BUSINESS USE OF HOME EXPENSES

[14] The Appellant and his wife live in a two-level condominium which measures 1066 square feet and consists of seven rooms including bathrooms and storage rooms. The Appellant had claimed that three rooms (433 square feet or 40.6%) of the condominium were used exclusively for business. The Minister reassessed on the

basis that it was not reasonable in the circumstances for the Appellant to claim more than 15% of the condominium for the purpose of earning income from business.

[15] On cross-examination the Appellant admitted that each of the rooms which he had claimed was used exclusively for business was also used for personal purposes. For instance, the office also doubled as the guest room when he and his wife had company staying with them. It was also used by his wife when she used the computer. The “rehearsal area” and “storage room” were also used to store personal items. In the end result, the Appellant has not shown that the reassessment was incorrect.

[16] In his Notice of Appeal the Appellant has asked that all interest charges be waived on the net taxes owing for each year. This Court does not have the jurisdiction to waive interest on taxes. The Minister has the discretionary power to waive interest under subsection 220(3.1) of the *Act* and the Appellant must make his request for waiver of interest to the Minister.

[17] The appeals are allowed and the Appellant is entitled to deduct CCA in 2002 and 2003.

Signed at Ottawa, Canada this 18th day of April, 2008.

"V.A. Miller"

V.A. Miller, J.

CITATION:	2008TCC227
COURT FILE NO.:	2007-3913(IT)I
STYLE OF CAUSE:	Craig Fraser v. The Queen
PLACE OF HEARING:	Vancouver, British Columbia
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REASONS FOR JUDGMENT BY:	The Honourable Justice Valerie Miller
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APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Max Matas

COUNSEL OF RECORD:

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