

Docket: 2008-3297(IT)I

BETWEEN:

DILYS MASSICOTTE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 24, 2009, at Toronto, Ontario.

Before: The Honourable Justice Patrick Boyle

Appearances:

For the appellant: The appellant herself

Counsel for the respondent: Mark Tonkovich

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* with respect to the appellant's 2004 and 2005 taxation years is allowed in part, without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the reasons herein.

Signed at Ottawa, Canada, this 30th day of November 2009.

"Patrick Boyle"

Boyle J.

Citation: 2009 TCC 602
Date: 20091127
Docket: 2008-3297(IT)I

BETWEEN:

DILYS MASSICOTTE,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Boyle J.

[1] This informal appeal concerns the denial of two specific categories of expenses claimed by the appellant in computing her rental losses in 2004 and 2005. The larger of the two expense categories involves amounts paid to her two sons for maintenance and repair work. The other disputed amount involves her automobile expenses.

[2] Ms. Massicotte and her brother are co-owners of a two-storey Toronto semi-detached home. It had originally been their parents' home decades earlier and then became the home she and her family shared with her brother and his family. In 1991 Ms. Massicotte and her brother moved out and converted it into a rental property. They had an apartment unit built in the basement that could be rented out separately from the main home. Ms. Massicotte and her brother carry on the rental property venture jointly as 50:50 co-owners.

[3] This property was Ms. Massicotte's only rental activity in the years in question. She was a joint registered owner with her husband of another rental property but her husband solely accounted for all of that property's rental activity, income or loss. Her brother also may have independently owned other rental properties.

[4] Since 1991 Ms. Massicotte's rental property has produced losses in most years. In some years it produced modest profits. Ms. Massicotte and her brother continued to hold the property nonetheless because they believed the house was appreciating significantly in value during the period. They have recently listed the property for sale.

I. Payments to Sons

[5] Ms. Massicotte's two sons were young teenagers in the two years in question. Her evidence is they were each paid \$7,500 each year for garbage removal, lawn cutting, snow removal, clean-up and repainting of the units between tenants, helping with floor refinishing, and other similar minor repairs and maintenance.

[6] The amount was based on paying each son \$12 per hour for 13 hours of work each weekend.

[7] The \$15,000 paid to the sons each year exceeded the gross rents received each year. The rental losses from the total property claimed by Ms. Massicotte and her brother exceeded \$15,000 in each of the years in question.

[8] The amounts paid to the boys was in part deposited into a Registered Education Savings Plan ("RESP") for their benefit for which there are supporting RESP statements of account, which show approximately \$100 per month being invested in the RESP. Part was used to pay directly for things such as school trips, hockey enrolment fees and hockey equipment. There is supporting evidence that one son attended a school trip at a cost of \$380. Ms. Massicotte said the balance was paid to her sons in cash, generally on a weekly basis. The boys spent the cash on things teenaged boys are wont to do such as video games and gaming systems. There is no other corroborating evidence, except for lump sum receipts for services rendered for \$7,500 for each year from each son. No detailed or contemporaneous record of days and times worked nor work performed was maintained. Her sons, now 19 and 17, did not testify.

[9] With the exception of the occasional long weekend, the boys only worked at the property on weekends and not on weekdays. It appears they did not work there on weekdays, including during school breaks or summer vacation. Ms. Massicotte acknowledged the boys did not work 13 hours each and every weekend, especially during hockey season, that they did not go on weekends if an occasion such as a birthday was being celebrated and that they only worked most Sundays in those years

not every Sunday. However, she believes they largely made up for the lost time on other weekends.

[10] There were problems with some tenants. The City issued infraction notices regarding the property's lawns not being cut and there being garbage and non-working automobiles on the property. These are in evidence. In addition Ms. Massicotte said there were similar infractions regarding the non-removal of snow from sidewalks. As a result the boys regularly mowed the lawns and removed garbage and debris on the weekends. If snow had accumulated during the week they would also shovel the sidewalk. I accept that this work was done by the boys but note that the lot is only 25 feet wide and 136 feet deep and that, in addition to the three-bedroom home, there is a detached garage on the property.

[11] I do not accept on the evidence before me that snow removal, lawn cutting and regular vehicle garbage removal accounted for but a modest fraction of the 26 hours allegedly worked each weekend at the property.

[12] In 2004 the main tenant was evicted and left seemingly all of her possessions in the home in a state of some disrepair. This required removal with dumpsters of the contents as well as a number of trips with a trailer to the dump. Extensive cleaning, repairing and refinishing of floors were needed along with repairs to bathroom damage. The boys assisted with much of this work in 2004 although, aged 12 and 14, they were unable to drive or to operate the floor sander.

[13] There was no comparable work surge in 2005 although some clean-up and refinishing had to be attended to between tenants following a further eviction that year as well.

[14] Ms. Massicotte said the 13 hours per week included return travel time to the property from their home. The distance was approximately 30 to 35 kilometres each way and Ms. Massicotte or her husband did the driving.

[15] It is certainly permitted to employ one's teenaged sons and to pay them a reasonable amount for work done by them. Garbage removal, lawn maintenance, snow removal and help with painting are all suitable for boys the ages of Ms. Massicotte's sons. It is also not clear to me that the rate of \$12 an hour is unreasonable though it is surely at least at the upper end of reasonable for a 12-year old in 2004. I also question if, at that rate, paid local travel time to work was reasonable.

[16] I find that the taxpayer's evidence falls far short of satisfying me that her sons worked as many hours as she claimed to have paid them for over the two-year period. The amount claimed worked out to just over 12 hours each weekend of the year for each son. Since they did not work weekdays, many Sundays, hockey tournament weekends or on special occasion weekends, I am not satisfied that they actually worked this much. Further, given the evidence in this case, while I am satisfied the boys did valuable work at the property over the years in question, I am not satisfied that the work for which they were responsible would have involved 1,250 hours between the two of them each year.

[17] On the evidence in this case I am satisfied that each son provided valuable services to their mother and uncle who owned the rental property venture. It would be unrealistic to conclude that they did not. I do not accept that they worked as much as Ms. Massicotte claimed nor do I accept that the value of their services was as high as the \$15,000 annual amount claimed. I find that the value of the work performed by each son each year was \$500.

[18] The evidence in this case is also unable to support a finding that each son was paid \$7,500 each year. To the extent that they were paid anymore than \$500 each per year, I find that the excess was paid to the children by their mother or their mother and father as an allowance or other payment for, or of, personal expenses. (There was no evidence that the co-owner uncle bore 50% of these amounts.)

II. Automobile Expenses

[19] Ms. Massicotte claimed a deduction for automobile expenses each year. The expenses on which the deduction was based were backed up with appropriate supporting documentation. However, the log in evidence used to allocate the expenses between business and personal use records approximately 9,000 kilometres driven in 2004 with respect to the one rental property and approximately 7,500 kilometres in 2005. The rental property was no more than 35 kilometres from her home. Her log did not record the purpose or destination of any trip. She acknowledged her log included trips she made to her husband's rental property and did not relate to the property in question. She acknowledged that for days she went to the property after work she logged the entire day's travel even though she normally drove to work. In some cases these last two approaches may be reasonable. In this case however, I cannot begin to comprehend how her one-half interest in one rental property reasonably required the equivalent of more than two round trips from her home to the property each week of each year.

[20] The Canada Revenue Agency had allowed motor vehicle expenses of \$260 each year which I understand was based on \$10 bi-weekly. At trial the respondent was prepared to concede additional amounts of \$832 for 2004 and \$1,044 for 2005 (being approximately 50% of the amounts claimed remaining in dispute.) Based upon the evidence in this case I am not satisfied that any amounts beyond those have been established as business-related automobile expenses.

[21] I am allowing the taxpayer's appeal in part and ordering the Minister of National Revenue to reconsider and reassess on the basis only that:

- (i) each of the appellant's two sons provided and was paid for \$500 of services in each of 2004 and 2005;
- (ii) an additional \$832 of automobile expenses is deductible in computing the rental venture's net loss in 2004; and
- (iii) an additional \$1,044 of automobile expenses is deductible in computing the rental venture's loss in 2005.

Signed at Ottawa, Canada, this 30th day of November 2009.

"Patrick Boyle"

Boyle J.

CITATION: 2009 TCC 602

COURT FILE NO.: 2008-3297(IT)I

STYLE OF CAUSE: DILYS MASSICOTTE v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 24, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: November 30, 2009

APPEARANCES:

For the appellant: The appellant herself

Counsel for the respondent: Mark Tonkovich

COUNSEL OF RECORD:

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Firm:

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