

Docket: 2009-1277(IT)I

BETWEEN:

GARNETT BAILEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on October 15, 2010, at Calgary, Alberta

Before: The Honourable Justice L.M. Little

Appearances:

Agent for the Appellant: Veronica Jorquera  
Counsel for the Respondent: Gergely Hegedus

---

**AMENDED JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 2004 taxation year is allowed, without costs, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment, in accordance with the attached **Amended** Reasons for Judgment.

Signed at Vancouver, British Columbia, this **22nd day of June** 2011.

“L.M. Little”

---

Little J.

Citation: 2011 TCC 227  
Date: 20110622  
Docket: 2009-1277(IT)I

BETWEEN:

GARNETT BAILEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

**AMENDED REASONS FOR JUDGMENT**

Little J.

A. FACTS

[1] The Appellant and his brother, Ronald Bailey, were equal partners in a landscaping business that operated under the name of Blue Mountain Peak Landscaping Services (the “Partnership”).

[2] The Partnership carried out landscaping work for individuals and commercial customers in the City of Calgary and the surrounding area.

[3] The 2004 taxation year was the second year of business operation for the Partnership.

[4] Subsequent to the 2004 taxation year, the Appellant and his brother incorporated their landscaping business.

[5] In computing income for the 2004 taxation year, the Appellant reported a net business loss in the amount of \$44,646.49.

[6] The Minister of National Revenue (the “Minister”) reassessed the Appellant on December 11, 2006 to disallow the business loss of \$44,646.49 and assessed net business income in the amount of \$36,471.00.

[7] The Appellant filed a Notice of Objection.

[8] By Notification dated December 4, 2008, the Minister confirmed the reassessment for the 2004 taxation year.

## B. ISSUE

[9] The issue is whether the Partnership is entitled to deduct any amounts in excess of the amounts allowed by the Minister in determining the income of the Partnership for the 2004 taxation year.

## C. ANALYSIS AND DECISION

[10] While carrying out an audit on the Partnership for the 2004 taxation year, the Minister made a number of conclusions. The conclusions are outlined in the Minister’s Reply, dated November 6, 2009. The Reply contains the following comments:

### I. Undeclared Revenue

1. Except for the income earned by the Partnership, the Appellant had no other sources of income in 2004.

Comment: The parties agreed that this statement is correct.

2. The Minister maintains that there were unknown deposits to the business bank account of the Partnership in the amount of \$6,856.93.
3. The Minister maintains that the contributions that were made to the Partnership bank account totalled \$32,898.47 and of this amount, \$19,538.13 was made through personal debt financing.
4. The Minister maintains that revenue earned by the Partnership exceeded revenue reported by the Partnership by \$20,217.27. According to the Minister, the amount of \$20,217.27 is made up as follows:

Contributions made to the Partnership	\$32,898.47
Unknown deposits to business bank accounts	<u>6,856.93</u>
Total:	\$39,755.40
Less: Contributions to Partnership through debt financing	<u>19,538.13</u>
Unreported Sales:	\$20,217.27

Comment: I have concluded that the Appellant did not produce sufficient evidence to establish that the Minister was incorrect in his conclusions. This item should not be changed.

II. Opening Inventory

5. The Minister maintains that the Partnership claimed opening inventory in the amount of \$13,717.69.
6. Of the total amount claimed by the Appellant as the opening inventory, the amount of \$8,922.25 represented the purchase of equipment and not inventory.
7. Amounts claimed by the Partnership in excess of \$8,922.25 were not incurred.

Comment: I have concluded that the Minister was correct in removing the amount of \$8,922.25 from the opening inventory. In my opinion, the amount of \$8,922.25 should be added to the Partnership's capital cost allowance schedule. I have also concluded that the following amounts should be added to the Partnership's capital cost allowance schedule:

Arn's Equipment – Invoice # 100751	\$ 1,743.83
Arn's Equipment – Invoice # 100457	12,497.39
Arn's Equipment – Invoice # 100748	<u>11,422.25</u>
Total (see Exhibit A-10):	\$25,663.47

(See capital cost allowance schedule at paragraph XV, on page 9.)

III. Advertising

**(Note: Amended from original Reasons dated April 28, 2011)**

8. During the hearing, the Appellant filed invoices issued by Super Pages which indicated that the following amounts were paid in 2004 for advertising (Exhibit A-5):

Super Pages	\$650.99
	<u>310.00</u>
Total:	\$960.99

The amount of \$960.99 will be allowed as an advertising expense.

IV. Business Tax, License and Dues

9. The Minister maintains that the Partnership incurred expenses with respect to business tax, license and dues of no more than \$574.65.

Comment: During the hearing, the Appellant filed records showing that the following additional payments were made:

Business Licence	\$150.00
Licence Fee	\$100.00
City of Calgary Planning Service	\$300.00

(See Exhibit A-15)

I will allow an additional \$550.00 in this category.

V. Fuel Costs (not including Motor Vehicle)

**(Note: Amended from original Reasons dated April 28, 2011)**

10. The Minister maintains that the Partnership incurred fuel costs (other than for motor vehicles) of no more than \$3,537.00 (See Exhibit R-4).

**Comment: The Partnership should be allowed fuel costs (other than for motor vehicles) of \$3,537.00.**

VI. Insurance

**(Note: Amended from original Reasons dated April 28, 2011)**

11. Further records on insurance were filed with the Court **during the hearing**. I am satisfied that the Partnership is entitled to claim the following additional amounts for insurance:

Tax year insurance for 2004	\$ 5,253.96
WCB insurance	1,761.08
Insurance on the two leased Silverado vehicles (\$5,240 at 75%)	<u>3,930.00</u>
Total:	\$10,945.04

The amount of \$10,945.04 is allowed as an insurance expense.

VII. Management and Administration Fees

12. The Minister maintains that the amount of \$46,000.00 claimed by the Partnership as management and administration fees was in respect of drawings by the Appellant.
13. The Minister also maintains that management and administration fees that were claimed by the Partnership were not incurred.

Comment: During the hearing, the Agent for the Appellant stated that she agreed with the Minister on this point.

VIII. Meals and Entertainment

14. The Minister maintains that the amount of \$1,406.78 claimed by the Partnership as meals and entertainment was not incurred and, if incurred, was personal.

Comment: It was established that only 50 percent of the actual cost was claimed. I will agree with the claim of \$1,406.78 and allow the Appellant a deduction of \$1,406.78.

IX. Motor Vehicle Expenses

15. The Minister maintains as follows:

- a) the business of the Partnership was seasonal – the majority of the work being carried out during eight months of the year and mainly carried out in or around Northwest and Northeast Calgary and the Town of Cochrane, Alberta;
- b) in addition to working as a partner in the Partnership, Ronald Bailey was also employed on a full-time basis during the 2004 taxation year and because of his outside employment, Ronald Bailey did not work as many days for the Partnership as the Appellant did;
- c) the Partnership leased a 2003 Chevrolet Silverado and a 2004 Chevrolet Avalanche (the “Leased Vehicles”). The Appellant claims that the Leased Vehicles were used by the Appellant and Ronald Bailey in carrying out the business activities of the Partnership;
- d) the Appellant and Ronald Bailey did not maintain any records with respect to the following:
  - i) personal kilometres;
  - ii) business kilometres; and
  - iii) total kilometres driven in the year.
- e) some of the amounts claimed as motor vehicle expenses for the Leased Vehicles were for personal use of the Leased Vehicles by the partners and were not business expenses of the Partnership;
- f) some of the amounts claimed as motor vehicle expenses were with respect to other personal vehicles that were not used for business activities of the Partnership;
- g) some amounts that were claimed as business are motor vehicle expenses that were not incurred in the business activities of the Partnership;
- h) no more than 75 percent of the motor vehicle expenses that were incurred by the Partnership could reasonably be considered to have been incurred in the course of the business activities of the Partnership; and

- i) motor vehicle expenses of no more than \$25,666.00 were incurred for the purposes of the business activities of the Partnership.

Comment: During the hearing, it was stated that the total amount claimed for motor vehicle expenses in 2004 was \$34,530.00. Since the Appellant was allowed to claim 75 percent of these expenses as business expenses, he is entitled to claim his share of \$25,897.00 or \$12,948.75.

X. Office Supplies

16. The Minister said that the Partnership incurred office expenses of no more than \$812.24 and any other expenses claimed as office expenses were not incurred.

Comment: The Appellant did not provide any evidence to convince me to change the Minister's position.

XI. Supplies

17. The Minister determined that the Partnership incurred expenses in respect of supplies of no more than \$8,381.29 and any other expenses claimed as supplies were not incurred.

Comment: The Appellant did not provide any evidence to convince me to change the Minister's position. The amount of \$8,381.29 will be allowed as the cost of office supplies.

XII. Wages

18. The Minister determined that the Partnership incurred expenses in respect of wages of no more than \$26,221.05.

Comment: I agree with the Minister on this point.

XIII. Telephone and Utilities



19. The Minister said that the Partnership incurred expenses in respect of telephone and utilities of no more than \$4,080.00. Note: In a letter dated November 28, 2006, the auditor said, “You made representation, per your revised T-124 that utility and telephone expenses were \$4,080. We are accepting your position.” (See Exhibit R-4).

Comment: I agree with the Minister on this point.

#### XIV. Charitable Donations

20. The Minister said that amounts totalling \$2,250.00 that were claimed by the Partnership as donations were personal expenses of the partners and were not incurred in the business activities of the Partnership.

Comment: When carrying out the audit, the auditor, Kerri Blanke, reviewed the charitable donations and said in her letter dated May 31, 2006:

##### 5. Charitable Donations

Charitable donations are not a partnership expense, and hence the expense will be denied to the partnership in the amount of \$2,250. The amounts paid that qualify as charitable donations (i.e. paid to a registered charity) will be added to the appropriate partners non-refundable tax credits upon request in writing to the auditor. (See Appendix H). (Emphasis Added)

Comment: I was advised that the auditor did not receive a request from the Appellant.

Appendix H, of Exhibit R3, contains a list of donations totalling \$2,250.00. Of the amount of \$2,250.00, there is a reference to a payment of \$635.00 to Money Mart. (There was no evidence filed to establish that the payment to Money Mart was a charitable donation.) The evidence indicated that most of the cheques were signed by the Appellant and there is a reference to “TITHES” on the cheques issued to the Garden Road Church.

I have concluded that the Appellant is entitled to claim a credit for the following charitable donations in 2004:

Amount claimed:	\$2,250.00
-----------------	------------

Deduct Money Mart:	<u>635.00</u>
Total:	\$1,615.00

XV. Capital Cost Allowance

21. The Minister maintains that the capital cost allowance claimed in the amount of \$28,348.00 was with respect to two trucks that were leased by the Partnership.
22. The lease payments that were paid in connection with the two leased trucks were claimed and allowed as expenses in calculating motor vehicle expenses.
23. The Partnership purchased equipment in the year at a cost of \$8,922.25. The Minister maintains that the Partnership was allowed to claim capital cost allowance on the equipment calculated as follows:

$$1/2 \text{ of } \$8,922.25 \times 20 \text{ percent} = \$892.00$$

Comment: The Partnership should also be allowed to add to the capital cost allowance schedule the amounts of \$1,743.83, \$12,497.39 and \$11,422.25 as shown in paragraph 7 above. In addition, no capital cost allowance should be available for the two leased trucks since the leasing expenses that were paid for the trucks were allowed as a business expense.

XVI. Legal, Accounting and Other Fees

24. The Minister determined that legal, accounting and other fees that were claimed by the Partnership in the amount of \$450.00 were not incurred.

Comment: I agree with the Minister's position on this point.

XVII. Landfill Expense

25. The Minister determined that the Partnership incurred landfill expenses in the amount of \$1,678.02.

Comment: I agree with the deduction of this amount.

XVIII. Equipment Rental

26. The Minister said that the Partnership incurred equipment rental expenses in the amount of \$502.13. (See Exhibit R-4). This amount should be allowed.

Comment: Amounts totalling \$8,922.25 that were claimed by the Partnership as rental expenses were paid for the purchase of the equipment. See capital cost allowance schedule, paragraph XV above.

XIX. Purchase

27. The Minister said that the Partnership made purchases in the amount of \$7,451.19.

Comment: There should be no change to this item.

[11] The appeal is allowed, without costs and the Minister is to reassess to allow the deductions as shown above.

[12] Before closing, I want to state that the Appellant's records were not prepared properly. He did not have proper records for automobile expenses and he had inadequate records for meals, entertainment and various other business expenses. Many of the other records were insufficient to permit a business deduction. In my opinion, the Appellant was unsuccessful in many of his claims because of inadequate record keeping.

Signed at Vancouver, British Columbia, this 22nd day of June 2011.

“L.M. Little”

---

Little J.

CITATION: 2011 TCC 227

COURT FILE NO.: 2009-1277(IT)I

STYLE OF CAUSE: GARNETT BAILEY AND HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: October 15, 2010

AMENDED REASONS FOR  
JUDGMENT BY: The Honourable Justice L.M. Little

DATE OF AMENDED  
JUDGMENT: June 22, 2011

APPEARANCES:

Agent for the Appellant: Veronica Jorquera  
Counsel for the Respondent: Gergely Hegedus

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Myles J. Kirvan  
Deputy Attorney General of Canada  
Ottawa, Canada