

Docket: 2011-2800(IT)I

BETWEEN:

GORDON McINTOSH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeal of
Susan McIntosh (2011-2801(IT)I) on December 14, 2011 at Edmonton, Alberta

Before: The Honourable Justice J.M. Woods

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Paige Atkinson

JUDGMENT

The appeal with respect to assessments made under the *Income Tax Act* for the 2007 and 2008 taxation years is allowed, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the following items should be excluded from the appellant's income:

- (a) meals in the amounts of \$1,209 and \$813, plus GST, for the 2007 and 2008 taxation years, respectively,
- (b) an inter-company advance in the amount of \$14,000 for the 2008 taxation year, and

- (c) an amount of \$618 on account of motor vehicle expenses for the 2008 taxation year.

The appellant is entitled to his costs, if any.

Signed at Toronto, Ontario this 29th day of December 2011.

“J. M. Woods”

Woods J.

Docket: 2011-2801(IT)I

BETWEEN:

SUSAN McINTOSH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeal of
Gordon McIntosh (2011-2800(IT)I) on December 14, 2011 at Edmonton, Alberta

Before: The Honourable Justice J.M. Woods

Appearances:

Agent for the Appellant: Gordon McIntosh
Counsel for the Respondent: Paige Atkinson

JUDGMENT

The appeal with respect to assessments made under the *Income Tax Act* for the 2007 and 2008 taxation years is allowed, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the following items should be excluded from the appellant's income:

- (a) meals in the amounts of \$1,209 and \$813, plus GST, for the 2007 and 2008 taxation years, respectively,
- (b) an inter-company advance in the amount of \$14,000 for the 2008 taxation year, and

- (c) an amount of \$618 on account of motor vehicle expenses for the 2008 taxation year.

The appellant is entitled to her costs, if any.

Signed at Toronto, Ontario this 29th day of December 2011.

“J. M. Woods”

Woods J.

Citation: 2011 TCC 579
Date: 20111229
Docket: 2011-2800(IT)I

BETWEEN:

GORDON McINTOSH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Docket: 2011-2801(IT)I

AND BETWEEN:

SUSAN McINTOSH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] The question to be decided in these appeals is whether Gordon and Susan McIntosh received a shareholder benefit in respect of meals consumed by them and paid by their wholly-owned corporation. For the 2007 and 2008 taxation years, meals in the amounts of \$1,209 and \$813, plus GST, were included in the income of each of the appellants under section 15(1) of the *Income Tax Act*.

[2] Two other issues were raised in the notices of appeal which were resolved in the appellants' favour prior to the hearing.

[3] In the relevant taxation years, the appellants operated an auto detailing business through their wholly-owned corporation, Quick-Clean Incorporated. The appellants were the only persons working in the business in these years.

[4] Quick-Clean's customers were almost exclusively automobile dealers and wholesalers. Approximately 500 automobiles were serviced during the two years at issue. The nature of the business required the appellants to work at irregular hours, including nights and weekends.

[5] Most of the expenditures at issue involve restaurant meals consumed outside the normal hours of work, and involve circumstances where the appellants had to return to work after the meal.

[6] The Minister of National Revenue assumed that this expenditure was made to benefit the appellants in their capacity as shareholders and that it was not incurred for the purpose of earning income from the business.

[7] I am satisfied from the evidence that the Minister's assumption was incorrect. The expenditures were incurred in order to benefit Quick-Clean's business in the same manner that any corporation agrees to reimburse arm's length employees for meals consumed while working overtime. The meals were provided to the appellants in their capacity as either employees or independent contractors. The expenditure was not paid in their capacity as shareholders.

[8] Counsel for the respondent referred me to a decision of Campbell J. in which she decided that meals provided to a shareholder were a shareholder benefit: *Kowalchuk v The Queen*, 2005 TCC 757, 2005 DTC 1754. This decision was based on a lack of reliable evidence from the taxpayer to rebut the assumptions of the Minister. The circumstances in these appeals are quite different.

[9] I have concluded that the cost of the meals was incorrectly included in the income of the appellants as a shareholder benefit.

[10] I was also referred to an *obiter* comment in *Kowalchuk* to the effect that benefits in respect of meals are taxable even if they are paid in the capacity of an employee. It is not necessary that I consider this comment because the respondent did not put employee benefits at issue in the pleadings.

[11] The appeals will be allowed on the basis that the following items should be excluded from the appellants' income:

- (a) meals in the amounts of \$1,209 and \$813, plus GST, for the each of the appellants for the 2007 and 2008 taxation years, respectively,
- (b) an inter-company advance in the amount of \$14,000 for the 2008 taxation year, and
- (c) an amount of \$618 for each appellant on account of motor vehicle expenses for the 2008 taxation year.

[12] The appellants are entitled to their costs, if any.

Signed at Toronto, Ontario this 29th day of December 2011.

“J. M. Woods”

Woods J.

CITATION: 2011 TCC 579

COURT FILE NOS.: 2011-2800(IT)I and
2011-2801(IT)I

STYLE OF CAUSE: GORDON McINTOSH v.
HER MAJESTY THE QUEEN and
SUSAN MCINTOSH v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: December 14, 2011

REASONS FOR JUDGMENT BY: The Honourable Justice J.M. Woods

DATE OF JUDGMENTS: December 29, 2011

APPEARANCES:

Agent for the Appellants: Gordon McIntosh
Counsel for the Respondent: Paige Atkinson

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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