

Docket: 2005-1548(IT)I

BETWEEN:

BRENDA ORYSCHAK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on December 1, 2005 at Kamloops, British Columbia

Before: The Honourable Justice L.M. Little

Appearances:

Agent for the Appellant: Diane Serwatkewich

Counsel for the Respondent: David Everett

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### **JUDGMENT**

The appeals from the assessments made under the *Income Tax Act* for the 2000, 2001 and 2002 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment

Signed at Vancouver, British Columbia, this 10th day of March 2006.

"L.M. Little"

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Little J.

Citation: 2006TCC146  
Date: 20060310  
Docket: 2005-1548(IT)I

BETWEEN:

BRENDA ORYSCHAK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

#### **Little J.**

##### A. FACTS:

[1] The Appellant operates a bookkeeping, tax consulting and tax preparation business from her home in Kamloops, British Columbia.

[2] When the Appellant filed her income tax returns for the 2000, 2001 and 2002 taxation years she claimed a number of deductions for motor vehicle expenses, meals and entertainment and bad debts.

[3] The Minister of National Revenue (the "Minister") issued Reassessments on the following basis:

##### 1. Motor Vehicle Expenses:

The Appellant had claimed that she used the Ford truck 90% for business purposes. Officials of the Canada Revenue Agency ("CRA") determined that the Ford truck was used 20% for business purposes. The following amounts are involved:

Claimed

Revised

2000	\$6,521.29	\$1,449.17
2001	3,659.36	813.19
2002	7,008.27	709.17

[4] The appeal was heard in Kamloops, British Columbia on December 1, 2005. During the hearing various comments were made by both parties concerning the business use of the Ford truck by the Appellant.

[5] On December 3, 2005 the agent for the Appellant sent a letter to the Court. In her letter the agent for the Appellant maintained that the Auditor from the CRA did not finish her task of calculating the mileage for the business use of one of the vehicles. The Appellant's agent also made a number of other comments concerning the evidence provided by the Auditor from the CRA.

[6] By letter dated December 9, 2005 Mr. David Everett, counsel for the Respondent, sent the Court a copy of a letter dated December 9, 2005 from Clare Matheson, the CRA Auditor. In her letter Ms. Matheson said that the methodology used by her to determine the business use of the vehicle was based on the estimated log provided to her by the Appellant.

[7] By letter dated January 11, 2006 Mr. Everett provided the Court with a further analysis by Ms. Matheson of a vehicle expense calculation for the 2000 taxation year which he said should be read with reference to Ms. Matheson's letter dated December 9, 2005.

[8] After considering the information provided by the parties during the hearing and the information provided subsequent to the hearing I have concluded that the business use of the Ford vehicle was as follows:

- 2000 - 60%)
- 2001 - 60%) of the amount originally claimed by the Appellant
- 2002 - 60%)

2. Meals and Entertainment:

The following amounts were claimed by the Appellant:

<u>Taxation Year</u>	<u>Claimed</u>	<u>Allowed</u>
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2000	\$1,468.09	0
2001	1,538.15	0
2002	1,114.30	0

The Minister did not allow the Appellant to deduct any expenses that she paid for meals and entertainment of her clients. (Note: The Appellant testified that she deducted 50% of the amount paid for meals and entertainment re personal use.)

I have carefully considered the Appellant's testimony and I accept the testimony of the Appellant that she had business meetings with her clients at the various restaurants referred to by her in evidence.

I have concluded that the following amounts should be allowed:

Taxation Year

2000	\$1,101.06
2001	1,153.61
2002	835.73

3. Bad Debts:

[9] The following amounts were claimed by the Appellant as Bad Debts:

Bad Debts Claimed

	<u>Claimed</u>	<u>Allowed</u>
2001	\$ 3,975.00	0
2002	18,539.00	0

[10] Bad Debts and Doubtful Debts are dealt with in paragraphs 20(1)(l) and 20(1)(p) of the Act. Paragraph 20(1)(l) read as follows:

20. (1) Notwithstanding paragraphs 18(1)(a), (b) and (h), in computing a taxpayer's income for a taxation year from a business or property, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:

...

(l) Doubtful or impaired debts — a reserve determined as the total of

(i) a reasonable amount in respect of doubtful debts (other than a debt to which subparagraph (ii) applies) that have been included in computing the taxpayer's income for the year or a preceding taxation year; and

[11] Paragraph 20(1)(p) reads:

(p) Bad debts — the total of

(i) all debts owing to the taxpayer that are established by the taxpayer to have become bad debts in the year and that have been included in computing the taxpayer's income for the year or a preceding taxation year, and

...

[12] Based on the testimony I have concluded that the Appellant should be allowed to deduct the bad debts or doubtful debts that she claimed on the understanding that she must include in her income for the subsequent years any portion of the bad debts or doubtful debts which was paid. In reaching this conclusion I agree with the comments of Madam Justice Reed of the Federal Court where she said in *Coppley, Noyes & Randall Limited v. The Queen*, 91 DTC 5291 where she said at page 5297:

Both counsel agree that the senior management of a corporate taxpayer is in the best position to determine, from its inspection of the company's accounts' receivable, which accounts are likely to give rise to difficulty and might be a doubtful collection ...

[13] In other words, I believe that the Appellant's business judgment as to which debts may be uncollectible is to be preferred over the judgment of the CRA Auditor.

4. Work Space in Home:

During the hearing the parties reached an agreement with respect to the tax treatment of the work space in the home. I will, therefore, not deal with this issue.

[14] The appeals are allowed, without costs, and the Minister is to reassess the Appellant to make the adjustments referred to above.

Signed at Vancouver, British Columbia, this 10th day of March 2006.

"L.M. Little"

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Little J.

CITATION: 2005TCC146  
COURT FILE NO.: 2005-1548(IT)I  
STYLE OF CAUSE: Brenda Oryschak and  
Her Majesty the Queen  
PLACE OF HEARING: Kamloops, British Columbia  
DATE OF HEARING: December 1, 2005  
REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little  
DATE OF JUDGMENT: March 10, 2006

APPEARANCES:

Agent for the Appellant: Diane Serwatkewich

Counsel for the Respondent: David Everett

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.  
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