

Docket: 2004-3512(IT)I

BETWEEN:

CHARLES CHUTE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on May 11, 2005, at Sherbrooke, Quebec
Before: The Honourable Justice Pierre R. Dussault

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Annick Provencher

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2000 and 2001 taxation years are allowed and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the amount of \$7,351 added to the appellant's income for the 2000 taxation year must be reduced by \$1,463 and that the amount of \$19,016 added to the appellant's income for the 2001 taxation year must be reduced by \$1,620.

Signed at Ottawa, Canada, this 27th day of July 2005.

"P.R. Dussault"

Dussault J.

Citation: 2005TCC377
Date: 20050727
Docket: 2004-3512(IT)I

BETWEEN:

CHARLES CHUTE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Dussault J.

[1] These are appeals from assessments for the appellant's 2000 and 2001 taxation years. In his income tax returns, the appellant declared an income of \$6,965 and an income of \$1,939 for the 2000 and 2001 taxation years, respectively.

[2] By the assessments in issue, the Minister of National Revenue ("Minister") increased the appellant's income by \$7,351 for the 2000 taxation year and by \$19,016 for the 2001 taxation year. For the 2001 taxation year, the increase takes into account \$499 for home office expenses, the deduction of which was refused. In a letter dated May 16, 2005, sent to the Court following the hearing, the respondent concedes that the deduction of this amount should be allowed.

[3] It should be noted that the assessments were made pursuant to an audit by the Ministère du Revenu du Québec ("M.R.Q."). The increase in income for the 2000 and 2001 taxation years also results from applying a somewhat modified "net worth method" of assessment whereby the personal and living expenses (cost of living) of the appellant and his wife were determined, with respect to certain items of expenses, by using statistical data, which the appellant challenged at the objection stage. At that stage, the difference between the amounts used as the basis for the assessments and the appellant's own figures for certain items of personal expenses was reduced by 50 % by the M.R.Q. for a total of \$2,539 in 2000 and of

\$1,920 in 2001. The Minister agreed to the same reductions reflected in the assessments in issue.

[4] The situation is summarized in the following charts provided by counsel for the respondent in her May 16, 2005, letter:

<u>2000</u>				
	<u>Amounts Before Objections</u>	<u>Appellant's Figures at Objections</u>	<u>Difference</u>	<u>Amounts Allowed by Appeals Officer</u>
Furniture	\$ 585	\$ 0	\$ 585	\$ 292.50
Maintenance and Repairs	\$ 455	\$ 100	\$ 355	\$ 177.50
Clothing	\$ 1 312	\$ 100	\$ 1 212	\$ 606
Medical Expenses	\$ 1 397	\$ 300	\$ 1 097	\$ 548.50
Personal Care	\$ 507	\$ 95	\$ 412	\$ 206
Other	<u>\$ 1 417</u>	<u>\$ 0</u>	<u>\$ 1 417</u>	<u>\$ 708.50</u>
Total	\$ 5 673	\$ 595	\$ 5 078	\$ 2 539

<u>2001</u>				
	<u>Amounts Before Objections</u>	<u>Appellant's Figures at Objections</u>	<u>Difference</u>	<u>Amounts Allowed by Appeals Officer</u>
Furniture	\$ 596	\$ 0	\$ 596	\$ 298
Maintenance and Repairs	\$ 464	\$ 100	\$ 364	\$ 182
Clothing	\$ 1 338	\$ 100	\$ 1,238	\$ 619
Medical Expenses	\$ 1 425	\$ 300	\$ 1,125	\$ 562.50
Personal Care	\$ 517	\$ 95	\$ 422	\$ 211
Other	<u>\$ 99</u>	<u>\$ 0</u>	<u>\$ 99</u>	<u>\$ 44.50</u>
Total	\$ 4 439	\$ 595	\$ 3 844	\$ 1 920

[5] In his Notice of Appeal, the appellant challenged the above disputed items. There was a difference remaining between his own statement of expenses based on what he termed real expenses and the assessments by the M.R.Q. and by the Minister based on statistical data. Here is how he addressed the issue for each year:

2000:

...

I was asked to fill out a statement of personal expenses, which I did to the best of my recollection. The person handling my file accepted most of the figures, but substituted some for the Ministere du Revenu's statistics. I explained to them that these were incorrect, but was ignored. I have listed them again, as they are valid to my life and lifestyle.

Household furniture: They put a figure of \$585.00. I put \$300.00. I did not buy any furniture in 2000, but did get a Bell Express Vu dish at an app. cost of \$300.00

Repairs & maintenance: They put \$455.00. I put \$100.00. The only repairs I did this year were 1) patch the roof shingles with pitch which cost about \$20.00 and 2) paint window frames at a cost of about \$35.00 for a gallon of paint.

Medical expenses: They put \$1,312.00. I put \$300. My wife and I take Vit. C, app. \$70.00 per year and she takes blood pressure medication, app. \$150.00 a year, plus misc. small things.

Clothing: They put \$1,312.00. Each year for at least the last five years, I have bought 2 pairs of jeans at app. \$25.00 a pair, 2 or 3 sets of underwear and some socks for app. \$40.00. My wife purchases my shirts at a thrift shop in Sherbrooke for \$1.00 to \$2.00 each and I get 5 or 6 per year. The costs for my wife are very similar, and we do buy new shoes some years.

Personal care: They put \$507.00. I get my hair cut 3 or 4 times a year at a cost of \$9.75 plus \$2.00 tip = \$47.00 per year. My wife has her hair cut 4 times a year at a cost of \$10.00 plus \$2.00 tip = \$48.00 per year. This is a total of \$95.00.

Other (spending money): They put \$1,417.00. I don't know what this refers to, since I can't find any reference to it on the form I was asked to fill out. I can't understand how they can just say I had extra money.

...

2001:

...

I was asked to fill out a statement of personal expenses, which I did to the best of my recollection. The person handling my file accepted most of the figures, but substituted some for the Ministere du Revenu's statistics. I explained to them that

these were incorrect, but was ignored. I have listed them again, as they are valid to my life and lifestyle.

Household furniture: They put a figure of \$596.00. I put \$0.00. I did not buy any furniture or electronics in 2001.

Repairs & maintenance: They put \$464.00. I put \$100.00. The only repairs I did this year were to patch the roof shingles, which cost about \$20.00 for the pitch, and painted window frames at a cost of \$35.00 for a gallon of paint.

Medical expenses: They put \$1,425.00. I put \$450.00. My wife and I take Vit. C, app. \$70.00 per year and she takes blood pressure medication, app. \$150.00 per year, plus misc. small things.

Clothing: They put \$1,338.00. Each year for at least the last five years, I have bought 2 pairs of jeans at app. \$25.00 a pair, 2 or 3 sets of underwear and some socks for app. \$40.00. My wife purchases my shirts at a thrift shop in Sherbrooke for \$1.00 to \$2.00 each and I get 5 or 6 a year. The costs for my wife are very similar, and we do buy new shoes some years.

Personal care: They put \$517.00. I get my hair cut 3 or 4 times a year at a cost of \$9.75 plus \$2.00 tip = \$47.00 per year. My wife gets her hair cut 4 times a year at a cost of \$10.00 plus \$2.00 tip = \$48.00 per year. This is a total of \$95.00.

Other (spending money): They put \$99.00. I don't know what this refers to, since I can't find any reference to it on the form I was asked to fill out. I can't understand how they can just say I had extra money.

[6] At the hearing, counsel for the respondent agreed to reduce to zero the amounts under the item "Other", that is \$708.50 for 2000 and \$49.50 for 2001.

[7] The appellant is an antique dealer. He lives in the country on 50 acres of land in the municipality of Eaton, Quebec. One part of the two-storey residence is 100 years old and the other part is 20 years old.

[8] In his testimony, the appellant reiterated the explanations contained in his Notice of Appeal with regard to the disputed expenses for the two years in issue. He testified that his cost of living is low, that the expenses he claimed were genuine and that he had no other expenses under the items he disputes.

[9] However, with regard to maintenance and repair expenses, the appellant admitted he had a lawnmower and tractor for removing snow and that the fuel expense for this equipment amounted to roughly \$150 per year.

[10] With regard to clothing expenses, the appellant said he has no need for "fancy clothes". When asked whether he nonetheless had winter clothes, he said he had a 15-year-old winter coat, rubber boots and galoshes. The appellant said he did not know what his wife wore during the years in issue.

[11] With regard to medical expenses, the appellant said that he and his wife wore glasses. However, he said he did not purchase any in 2000 or 2001 and that he did not recall whether his wife had done so. He added that neither he nor his wife went to the dentist during those years.

[12] Andrée Deslonchamps, an auditor with the M.R.Q., confirmed that statistical data from Statistics Canada had been used for the different expense items disputed by the appellant. She said that the item "Other" was used to arrive at an amount representing the total expenses of a two-person family on social assistance. However, she admitted that the statistical data reflected an average and that the M.R.Q. did not have evidence that the amounts stated by the appellant were incorrect. On the other hand, she said that the appellant had not provided detailed or satisfactory explanations that would account for the lower expenses that he said he had incurred.

[13] Joselyne Létourneau, an appeals officer with the Canada Customs and Revenue Agency, explained that after the appellant filed his Notices of Objection, she made the same changes that had been made at the provincial level. Specifically, where the appellant challenged the use of statistical data for an expenditure item, she reduced by 50% the difference between the amounts established on the basis of the statistics and the appellant's own figures. In her view, the appellant was claiming that some of his expenses were in fact lower than the amounts established and, since no field audit had been done, she decided to give the appellant the benefit of the doubt and reduce the differences by 50%.

[14] The appellant reported only \$6,965 in income for the year 2000 and \$1,939 for the year 2001. However, according to Appendix II of the Reply to the Notice of Appeal ("the Reply"), the mortgage payments alone for 2000 and 2001, based on the figures the appellant himself provided during the audit, amounted to \$5,134 and \$6,350 respectively. Appendix I of the Reply, which also uses the appellant's own figures, states that the food expenses for the years 2000 and 2001 amounted to

\$3,600 and to \$4,250 respectively. These figures alone show that the appellant obviously did not report all his income for the two years in issue. In fact, the differences between the reported income and the income established following the audit amount to \$7,351 for 2000 and to \$19,016 for 2001. The differences take into account the adjustments that were made in response to the Notices of Objection.

[15] The fact that the appellant clearly did not report all his income and that the differences are quite significant, lead me to believe that the appellant also tried to minimize his expenses during the audit. Therefore, I have some trouble accepting his testimony as a whole — testimony which, I might add, was rather vague in some respects.

[16] Furthermore, I acknowledge that statistical data are not necessarily a very reliable source for determining the "cost of living", which can vary considerably from one taxpayer or family to another based on many factors.

[17] In the instant case, the difference between the amounts the appellant submitted and the amounts used for the assessments has already been reduced by 50%. In addition, the respondent concedes that the amounts of \$708.50 and of \$49.50 under the item "Other", for the years 2000 and 2001 respectively, must be reduced to zero.

[18] Under the item "Furniture", the difference of \$292.50 for the year 2000 is kept because a Bell ExpressVu dish was purchased for \$300. The \$298 difference for 2001 is cancelled.

[19] Under the item "Maintenance & Repair", the differences of \$177.50 in 2000 and of \$182 in 2001 are kept in view of the appellant's admission regarding an additional fuel expense of roughly \$150 for the lawnmower and the tractor.

[20] Under the item "Clothing", the differences of \$606 in 2000 and of \$619 in 2001 are kept. In my opinion, even if a person has a simple lifestyle and buys inexpensive clothing, it is not reasonable to believe one can clothe oneself in Canada, for both summer and winter, for as little as \$100 a year. In my opinion, the appellant's testimony on that point was rather vague and unconvincing. He was unable to provide any information regarding the clothing that his wife normally wore and regarding her winter clothing in particular. I emphasize that the actual difference is \$100 less per year than the amount stated in the charts reproduced at paragraph 4, assuming the appellant estimated the total clothing expense for himself and his wife at \$200 per year, not at \$100 per year.

[21] Under the item "Medical Expenses", the differences of \$548.50 in 2000 and \$562.50 in 2001 are cancelled. I can accept that two healthy people do not spend more than \$300 per year on this expense item where the only purchases made are vitamin C and one blood pressure medication.

[22] Under the item "Personal Care", the differences of \$206 for the year 2000 and of \$211 for the year 2001 are cancelled. I was not made aware of all the expenditures placed under this item to establish the statistics, and no clarifications were provided on the subject. I accept the explanations provided by the appellant in his Notice of Appeal.

[23] In short, for the 2000 taxation year, the amount of \$7,351 added to the income is reduced by \$1,463, which is the total of the amounts added to the income under the following items:

"Other"	\$708.50
"Medical Expenses"	\$548.50
"Personal Care"	\$206.00

[24] For the 2001 taxation year, the amount of \$19,016 added to the income is reduced by \$1,620, which is the total of the amounts added to the income under the following items:

"Other"	\$49.50
"Furniture"	\$298.00
"Medical Expenses"	\$562.50
"Personal Care"	\$211.00
"Home Office Expenses"	\$499.00

[25] Accordingly, the appeals from the assessments made for the 2000 and 2001 taxation years are allowed and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the amount of \$7,351 added to the appellant's income for the 2000 taxation year must be reduced by \$1,463 and that the amount of \$19,016

added to the appellant's income for the 2001 taxation year must be reduced by \$1,620.

Signed at Ottawa, Canada, this 27th day of July 2005.

"P.R. Dussault"

Dussault J.

CITATION: 2005TCC377
COURT FILE NO.: 2004-3512(IT)I
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PLACE OF HEARING: Sherbrooke, Québec
DATE OF HEARING: May 11, 2005
REASONS FOR JUDGEMENT BY: The Honourable Justice Pierre R. Dussault
DATE OF JUDGMENT: July 27, 2005

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Annick Provencher

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Firm:

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