

Docket: 2006-3783(IT)G

BETWEEN:

GILLES TREMBLAY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on September 16, 2008, at Québec, Quebec.

Before: The Honourable Justice Réal Favreau

Appearances:

For the appellant: The appellant himself

Counsel for the respondent: Yanick Houle

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for the 2000, 2001 and 2002 taxation years is allowed in part, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment to reduce the unreported income for the 2000 taxation year by \$55,000, to increase the unreported income for the 2001 taxation year by \$47,000 and to reduce the unreported income for the 2002 taxation year by \$19,200 with adjustments to the penalties but without changes to the shareholder's benefits.

Signed at Québec, Quebec, this 11th day of June 2009.

"Réal Favreau"

Favreau J.

Translation certified true
on this 10th day of July 2009

François Brunet, Revisor

Citation: 2009 TCC 313
Date: 20090611
Docket: 2006-3783(IT)G

BETWEEN:

GILLES TREMBLAY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Favreau J.

[1] This is an appeal from the reassessments issued by the Minister of National Revenue ("the Minister") in accordance with the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended ("the Act"), dated June 1, 2004, and September 21, 2006, for the 1999, 2000, 2001 and 2002 taxation years. The assessments resulted from an audit performed according to the net worth method and included unreported business income, shareholder's benefits resulting from advances from a company, and penalties under subsection 163(2) of the Act.

[2] On the basis of the reassessments dated September 21, 2006, the amounts of the unreported income, of the shareholder's benefits, and of the penalties for the 2000, 2001 and 2002 taxation years are as shown in the following table:

	2000	2001	2002
REVISED unreported income	\$186,148	\$42,958	\$66,805
PLUS Shareholder's benefits	\$1,000	\$9,965	\$3,314
REVISED difference in net worth	\$187,148	\$52,923	\$70,119
REVISED penalties	\$22,957	\$5,034	\$5,962

[3] In an amended return for the 2000 taxation year, the appellant requested that a non-capital loss of \$11,659 be carried back to the 1999 taxation year. The Minister denied the carry-back to the 1999 taxation year following a reassessment dated June 1, 2004.

[4] In this case, the following points are in issue:

- (a) The use of the combined net worth method with the appellant's former spouse
- (b) A \$30,000 credit at the time that the appellant purchased a residence in Stoneham
- (c) A \$10,000 cash loan obtained from Laurent Trépanier
- (d) A \$7,000 loan obtained from Gestion Atlantique Inc.
- (e) A \$14,595 loan obtained from 2963159 Canada Inc.
- (f) A \$57,500 private placement
- (g) A \$45,000 debt of Daniel Bouchard
- (h) A \$7,410 loan obtained from the appellant's brother

[5] Before analyzing each issue, I will provide some information about the appellant. In addition to having a bachelor's degree in actuarial science, the appellant has a master's degree in project management. The appellant was employed as a trustee in bankruptcy until September 1, 1995. Following an audit by the Office of the Superintendent of Bankruptcy and the endorsement of a partner's instruments, moneys were sought from the appellant in regard to his management of certain files, and he had to make an assignment of his property. During the years at issue, he worked in land decontamination. He would purchase contaminated lands at low prices, decontaminate them through companies in which he held shares, and sell them for a profit. The appellant also had interests in various companies including 25% of the shares in Écolo-tech Décontamination Inc. and 25% of the shares in 9076-1214 Québec Inc.

[6] In addition to his bankruptcy in 1997, the appellant has had other encounters with the law. On May 7, 1999, the appellant was convicted of 13 counts of failing to remit the positive amount of his net tax (Goods and Services Tax). On September 9, 1999, the appellant was convicted of having, by deceit, falsehood or other fraudulent means, defrauded the creditors of Final P. Inc. of over \$5,000. On November 12, 2001, he was sentenced to 691 days in prison for failing to report and to remit \$59,710.08 in relation to the Quebec Sales Tax. The appellant began to serve his sentence in November 2001 and was released on April 30, 2002.

[7] The appellant did not file an income tax return for the 1998 or 1999 taxation years. For the 2000 taxation year, the appellant reported a net loss of \$11,659. For the 2001 taxation year, he reported no income, while for the 2002 taxation year, he reported a net loss of \$12,301.

Combined net worth

[8] The Minister undertook an audit of the appellant's net worth, having found that the appellant had no records and that his income tax returns were based solely on a balance sheet and an income statement. Supporting documentation for expense claims was often missing. The Minister combined the appellant's net worth with that of his former common-law spouse, Johanne Carrier, because their assets and liabilities were not treated separately. For example, the appellant was making payments on his former spouse's vehicle, while cheques in the appellant's name were deposited into his former spouse's bank account. The appellant paid the residence-related expenses, while his former spouse paid for groceries. The appellant also sold a company called Distri-Carr to his former spouse to settle a debt he owed her. In these circumstances, I find it appropriate to use the combined net worth method, because there is clearly confusion of patrimony, liabilities and expenses.

[9] In his Notice of Appeal, the appellant alleged that a SAAB vehicle described as capital property should be excluded from his assets for the period between December 31, 1999, and December 31, 2000, because the vehicle belonged to his former spouse (paragraphs 15.1 and 17.1). The appellant also alleged in his Notice of Appeal that the amount of personal expenditures for the 2001 and 2002 taxation years should be reduced by \$21,879 and \$34,274.47 respectively because those amounts came from the bank account with the Caisse populaire des Laurentides held by his former spouse (paragraphs 27.1 and 37.1). Finally, the appellant alleged that, with respect to 2001, the \$248 and \$230 in deductions at source (DAS), and with respect to 2002, the \$251.90 and \$195.25 in DAS, belonged to his former spouse (paragraphs 27.5, 27.6, 37.5 and 37.6).

[10] The appellant's former spouse did not testify at the hearing. However, the calculation of the difference in net worth enclosed with the Reply to the Notice of Appeal showed that the DAS for the appellant's former spouse's federal and provincial taxes and her tax refunds were taken into account. The \$19,000 paid for the SAAB vehicle was treated as the appellant's capital property because he made the monthly lease payments until the lease ended in 2001. In 2001, the capital property appearing on the appellant's personal balance sheet was reduced by \$19,000, and a loss of \$19,000 was recognized under personal-use property in the calculation of the

difference in net worth. The balance of the appellant's former spouse's account with the Caisse populaire des Laurentides was added to the current assets on the personal balance sheet at December 31 of 1999, 2000, 2001 and 2002. This is unavoidable in cases where the combined net worth method is used because of the confusion of patrimony, liabilities and expenses. It should be noted that the income reported by the appellant's former spouse was only \$3,005, \$1,751 and \$572 for 2000, 2001 and 2002 respectively. Those amounts are clearly insufficient to accumulate any kind of capital in a bank account.

Credit of \$30,000 at the time the appellant purchased a residence

[11] The appellant is claiming that the real value of the residence was \$120,000, not \$150,000 as it appears on the notarial act dated January 31, 2000, signed by the appellant and his brother, Denis Tremblay. The appellant's brother did not testify at the hearing and therefore did not explain the difference in the residence's value or the transactions that had taken place before the appellant purchased the residence. By his testimony alone, the appellant could not contradict a valid writing signed before a notary.

Cash loan of \$10,000 obtained from Laurent Trépanier

[12] According to the appellant, this loan was obtained in 2002, and it was given in cash in order to avoid the five-day waiting period that applies when a cheque is cashed. Counsel for the respondent alleges that the loan is not on the list of the appellant's loans for 2002 provided in paragraph 42 of the Notice of Appeal. Since the issue of this loan is not supported by any documentary evidence and since the lender did not confirm its existence and its terms and conditions by testifying at the hearing, the loan need not be taken into consideration in the calculation of the appellant's net worth.

Loan of \$7,000 from Gestion Atlantique Inc.

[13] According to the appellant, loans totalling \$15,000 were issued by Gestion Atlantique Inc. in order to secure the appellant's hypothec payments to the Caisse populaire Notre-Dame des Laurentides. At the hearing, the appellant tendered a photocopy of two cheques dated March 2, 2001, totalling \$7,000, made out to the Minister of Finance by Gestion Atlantique Inc. (Exhibit A-3). Serge Garneau testified at the hearing as a director of the companies that had given advances to the appellant. Mr. Garneau confirmed that he was a business partner of the appellant and that Gestion Atlantique Inc. had given the appellant advances totalling \$7,000, but that he

had no agreement setting out the terms and conditions of those advances. Furthermore, he could not provide any reasons why the cheques were made out to the Minister of Finance rather than to the appellant.

[14] Even though Mr. Garneau's testimony is not completely disinterested, there is sufficient evidence showing that the companies he controlled, namely, 9076-1214 Québec Inc., Ecolo-Tech, Gestion Atlantique Inc. and 2963159 Canada Inc. had actually given advances to the appellant. The Minister accepted the advances given to the appellant by 9076-1214 Québec Inc. The same also goes for the advances of \$2,902 personally provided to the appellant by Mr. Garneau.

Advances of \$14,595 made by 2963159 Canada Inc.

[15] These advances are part of those made to the appellant by companies controlled by Serge Garneau. Unfortunately for the appellant, they were not claimed in the Notice of Appeal and therefore cannot be accepted. Furthermore, no loan agreement or proof of payment was offered at the hearing. Finally, Mr. Garneau's testimony concerning the advances made to the appellant by 2963159 Canada Inc. was not very clear or specific.

Private placement of \$57,500

[16] In his Notice of Appeal, the appellant alleged that the sum of \$57,500 came from advances made by Laurent Trépanier, not from a private placement made on March 14, 2000. However, the loan agreement between the appellant on the one hand and Laurent Trépanier and Gestion Laurent Trépanier (1993) Inc. on the other hand, signed on December 10, 2002, refers specifically, in the preamble, to a \$57,500 loan from Laurent Trépanier directly or through related corporations for a private investment made on March 14, 2000. In his testimony, the appellant was unable to explain how the \$57,500 loan was used. Consequently, the assessments issued should not be altered in order to have that investment amount subtracted.

Debt of \$45,000 from Daniel Bouchard

[17] In paragraph 27.2 of the Notice of Appeal, the appellant alleged that the sum of \$45,000 should be deducted from his personal expenses, considering that it was used to settle a contested claim of 9076-1214 Québec Inc., which was owed by Daniel Bouchard as the lessee of a building on a lot in Blainville. According to the appellant, the \$45,000 was used to settle the late rent payments of the lessee Daniel Bouchard. In addition, an excess sum collected had allegedly been given back to

Daniel Bouchard. Since no documentary evidence was filed concerning the bank drafts that the appellant had allegedly given to Mr. Bouchard and since Mr. Bouchard did not testify at the hearing to corroborate the facts, the appellant's allegations will not be accepted.

Loan of \$7,410 from the appellant's brother

[18] The appellant did not mention this loan in his Notice of Appeal or at the time of the audit. No documentary evidence was filed, and the appellant's brother did not testify at the hearing. In these circumstances, this element will not be accepted.

Non-capital loss for 2000 carried back to 1999

[19] The loss carry-back was not challenged at the hearing. Consequently, no non-capital loss can be carried back to the 1999 taxation year.

Penalties

[20] Subsection 163(2) of the Act provides for the following penalties:

False statements or omissions – Every person who, knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a "return") filed or made in respect of a taxation year for the purposes of this Act, is liable to a penalty of the greater of \$100 and 50% of the total of

...

[21] In view of the combined net worth assessed by the Minister, the appellant failed to report in his income tax returns for the 2000, 2001 and 2002 taxation years income and benefits totalling \$187,148, \$52,923 and \$70,119 respectively. The unreported income amounts are very significant in comparison to the income amounts reported by the appellant, namely, a net loss of \$11,659 for 2000, an income of zero for 2001 and a net loss of \$12,301 for 2002.

[22] The audit showed that the appellant's records and books of account were inadequate and not very reliable. The auditor also noted that the audit had been performed in rather difficult conditions and that he had had to issue several requirements in order to obtain information from the appellant.

[23] The appellant's academic training and professional experience leave no doubt that he has a great deal of knowledge about these matters and about his tax duties.

[24] For the reasons mentioned above, I am satisfied that the appellant earned unreported income and did not provide a credible explanation for the discrepancy between his reported income and his net worth. In my view, the Minister discharged his burden of proof under subsection 163(2) of the Act.

Other adjustments

[25] At the hearing, the parties agreed that the appellant's income for 2000, 2001 and 2002, determined by the net worth method, should be revised by the addition to his loans and mortgages amount for 2000 rather than 2001, of \$55,000 from a loan issued by Gestion L. Trépanier (1993) Inc., and for 2001, of \$1,000 from an advance made by 9076-1214 Québec Inc.

[26] Given the adjustments set out in the preceding paragraph and the acceptance of the \$7,000 loan issued by Gestion Atlantique Inc. in 2001, the Court determines that the appellant's unreported income for the years 2000, 2001 and 2002 is \$131,148, \$89,956 and \$47,605 respectively. The shareholder's benefits in the amounts of \$1,000 for 2000, \$9,965 for 2001 and \$3,314 for 2002 will also be added to the unreported income.

[27] Consequently, the appeal is allowed in part, without costs, and the assessments issued on September 21, 2006, regarding the 2000, 2001 and 2002 taxation years are referred back to the Minister for reconsideration and reassessment to reduce the unreported income for the 2000 taxation year by \$55,000, to increase the unreported income for the 2001 taxation year by \$47,000, and to reduce the unreported income for the year 2002 by \$19,200, with adjustments to the penalties but without changes to the shareholder's benefits.

Signed at Québec, Quebec, this 11th day of June 2009.

“Réal Favreau”

Favreau J.

François Brunet, revisor

CITATION: 2009 TCC 313
COURT FILE NO.: 2006-3783(IT)G
STYLE OF CAUSE: Gilles Tremblay v. Her Majesty the Queen
PLACE OF HEARING: Québec, Quebec
DATE OF HEARING: September 15, 2008
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APPEARANCES:

For the appellant: The appellant himself
Counsel for the respondent: Yanick Houle

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

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