Docket: 2010-3174(IT)I

BETWEEN:

KENNETH J. DOLEMAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 28, 2011, at Brandon, Manitoba

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Rosanna Slipperjack-Farrell

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* for the 2004 and 2005 taxation years is allowed and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant's motor vehicle expenses are increased to $612.78 and $382.50 in 2004 and 2005 respectively.

In all other respects, the appeal is dismissed.

Signed at Ottawa, Canada, this 12th day of July 2011.

"V.A. Miller"

V.A. Miller J.

Citation: 2011TCC349
Date: 20110712
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BETWEEN:

KENNETH J. DOLEMAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

V.A. Miller J.

[1] This appeal results from the reassessment of the Appellant's 2004 and 2005 taxation years. The issues are:

a) Whether the Appellant's Bed and Breakfast ("B & B") operation is part of a self-contained domestic establishment and the work space in home expenses are restricted in accordance with subsection 18(12) of the *Income Tax Act* (the "*Act*").
b) Whether the Minister was correct in determining that 25% of the Appellant's property was used for the B&B operation.
c) Whether the business expenses incurred by the Appellant were greater than those allowed by the Minister.

[2] The only witnesses at the hearing were the Appellant and his accountant, Stan Pacak.

Self-Contained Domestic Establishment

[3] Subsection 18(12) of the *Act* reads as follows:

> **18(12) Work space in home** -- Notwithstanding any other provision of this Act, in computing an individual's income from a business for a taxation year,

> (*a*) no amount shall be deducted in respect of an otherwise deductible amount for any part (in this subsection referred to as the "work space") of a self-contained domestic establishment in which the individual resides, except to the extent that the work space is either
>
> (i) the individual's principal place of business, or
>
> (ii) used exclusively for the purpose of earning income from business and used on a regular and continuous basis for meeting clients, customers or patients of the individual in respect of the business;
>
> (*b*) where the conditions set out in subparagraph (*a*)(i) or (ii) are met, the amount for the work space that is deductible in computing the individual's income for the year from the business shall not exceed the individual's income for the year from the business, computed without reference to the amount and sections 34.1 and 34.2; and
>
> (*c*) any amount not deductible by reason only of paragraph (*b*) in computing the individual's income from the business for the immediately preceding taxation year shall be deemed to be an amount otherwise deductible that, subject to paragraphs (*a*) and (*b*), may be deducted for the year for the work space in respect of the business.

[4] The phrase self-contained domestic establishment is defined in section 248 of the Act as follows:

> “self-contained domestic establishment”
>
> “self-contained domestic establishment” means a dwelling-house, apartment or other similar place of residence in which place a person as a general rule sleeps and eats;

[5] The question is whether the Appellant’s B & B operation is part of the self-contained domestic establishment in which the Appellant resides. Where it is found that a taxpayer’s business is contained in his home, the aim of subsection 18(12) is to limit the amount of home maintenance expenses that the taxpayer can deduct for the work space in his home. Those expenses are limited to the income earned in the year from the business.

[6] In July 1996, the Appellant purchased, a fully restored, circa 1898 Victorian stone house (the “Property”) in Swan River, Manitoba. It was his evidence that he purchased the Property with the intention of operating a B & B business within it. The Property was a two storey home with a finished basement and an unfinished attic. In furtherance of his intention, the Appellant constructed two bedrooms, a bathroom and a sitting area in the attic of his Property. For safety purposes, the office of the Fire Commissioner required that he install an exterior door and a deck from the

second floor. This exterior door on the second floor could not be used to access the Property from outside as there was no staircase from it to the ground.

[7] The rooms in the attic and a bedroom on the second floor were used almost exclusively for the B & B operation. When there was a guest in the second floor bedroom, he shared the only bathroom on that floor with the Appellant and his family. On the main floor of the Property, B & B guests shared the living room, dining room, study, washroom and hallway with the Appellant and his family. There was no separate entrance for the B & B guests nor were there any separate, self-contained, living quarters for the Appellant and his family.

[8] The Appellant's business was a true B & B operation. That is, the B & B accommodations were within the Appellant's home and he and his family shared their living quarters with their guests.

[9] Both parties relied on the same cases to support their positions.

[10] The Appellant stated that the facts in *Rudiak v. The Queen*[1] were "somewhat similar" to those in the present appeal. He read the following portion from paragraph 7 of that decision:

> (*b*) the kitchen was used to make the breakfast for guests of the bed and breakfast; (the guest did not use or occupy the kitchen. The prepared breakfast was served in the guest's dining room);
>
> (*c*) the laundry room served both the bed and breakfast and personal use; (this is accurate but again the guests did not use the Appellant's laundry room);

The Appellant stated that in his B & B operation, as in *Rudiak*, access to the kitchen and laundry room was restricted.

[11] Counsel for the Respondent relied on *Rudiak*, *Denis v. R*[2], and *Vallee-Moczulski v. R*[3] to demonstrate the circumstances that were necessary to find that subsection 18(12) did not apply.

[12] In *Rudiak*, the taxpayer had purchased an older residence for the purpose of establishing and operating a B & B. He renovated the home for the B & B and he also constructed a separate apartment to provide living quarters for him and his wife. The private residence was off-limits to the guests. It contained its own private garage and entrance, eating area, family room, bathroom and bedroom. The guest area was self-contained with three bedrooms with ensuite bathrooms, a dining room for the guests, a sitting area and verandah.

[13] I find that the B & B operation in the present appeal is distinguishable from that in *Rudiak*. The Appellant's B & B operation was carried on in a portion of his family home. In *Rudiak*, the B & B business was carried on in a separate self-contained area. As stated by McArthur T.C.J. at paragraph 8 of his decision:

> The bed and breakfast guest premises and the Appellant's living area were physically separate. The business was carried on in the renovated confines of the original house. The Appellant and his wife's place of residence was wholly-contained within the newly-constructed addition to the rear of the business premises. The guests did not use this separate residence. The Appellant did use his private kitchen and laundry facilities and a small garage area for the business, but I find that this does not detract from the Appellant's position that it was minor in comparison to the overall picture. The fact remains that the guests did not use the kitchen, laundry area or office.

[14] The Appellant also stated that his operation is similar to that in *Denis* in that his family does not reside in the entire house. They do not occupy the areas designed, built and used for the B & B operation. They only occasionally use these rooms for friends and family at family gatherings.

[15] In the present appeal, the Appellant's family may not reside in the attic space and the one bedroom on the second floor which were used for the B & B operation; but, the B & B guests shared all of the Appellant's residence except a sunroom on the first floor and the three family bedrooms on the second floor.

[16] Based on all of the evidence, I conclude that the Appellant's B & B operation is a part of a self-contained domestic establishment and his work space in home expenses were properly limited.

Allocation of Business/Personal Use of Property

[17] The Appellant submitted a floor plan of the Property which included the square footage of each room.

[18] He calculated that 68% of the Property was used for the B & B operation. However, he "adopted a more conservative approach" and claimed only 50% of all operating expenses for the year as business expenses.

[19] It was the Minister's position that the business use of the Property was 25%. This allocation was based on the area of the Property used for business purposes and the occupancy rate of the B & B.

[20] In 2004 and 2005, the B & B operation had guests for 30 nights (8% of the year) and 47 nights (12% of the year) respectively. Based on these figures, the Minister assumed that the Appellant had an average occupancy rate of 10% in the years at issue. The Minister then calculated the portion of the Property which was used only for business and the business portion of the Property which was shared by the B & B operation and the Appellant and his family. The following chart illustrates the Minister's calculation.

	Square Feet	**100% Business Use**	**Business Portion of Shared Space**	**Personal Portion of Shared Space**	**100% Personal Use**
Basement					
Workout	300		30	270	
Laundry	132		13.2	118.8	
Office	198		19.8	178.2	
Balance	370				370
Main					
Dining	300		30	270	
Study	300		30	270	
Living	300		30	270	
Kitchen	300		30	270	
Sunroom	265				265
Second Floor					
Guest Room	150	150			
Washroom	68		6.8	61.2	
Common	231		23.1	207.9	
Bedrooms	751				751
Third					
Guest Room	360	360			
Washroom	100	100			
Den	200	200			
Total	**4325**	**810**	**212.9**	**1916.1**	**1386**
Percentage of Total		**18.73%**	**4.92%**	**44.30%**	**32.05%**

The business use of the Property was determined to be 25% (based on 18.73% + 4.92%)

[21] In 2004 and 2005, the Appellant's B & B was a part time operation. It had guests for one month and one and one-half months in 2004 and 2005 respectively. I find that the Minister's allocation of 25% business use of the Property is reasonable in these circumstances.

Business Expenses

[22] The Appellant disagreed with the amounts allowed for motor vehicle expenses. They were $109 and $75 in 2004 and 2005.

[23] As he did not have all of the receipts, he had estimated that his motor vehicle expenses were $902 and $1,405 in 2004 and 2005 respectively.

[24] At the hearing, the Appellant asked that he be permitted to claim the automobile allowance rate permitted by the Canada Revenue Agency in each of the years as it is obvious that his expenses in each of the years had to be greater than the amount allowed. I agree with the Appellant.

[25] Both parties agreed that the Appellant drove 1,459 kilometers and 850 kilometers for business in 2004 and 2005 respectively. The automobile allowance rates in 2004 and 2005 were 42 cents and 45 cents.

[26] The appeal is allowed to increase the Appellant's motor vehicle expenses to $612.78 and $382.50 in 2004 and 2005. In all other respects, the appeal is dismissed.

Signed at Ottawa, Canada, this 12th day of July 2011.

"V.A. Miller"

V.A. Miller J.

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[1] 2000 D.T.C. 3901 (TCC)
[2] 2007 TCC 656
[3] 2003 TCC 175

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COURT FILE NO.:	2010-3174(IT)I
STYLE OF CAUSE:	KENNETH J. DOLEMAN AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Brandon, Manitoba
DATE OF HEARING:	June 28, 2011
REASONS FOR JUDGMENT BY:	The Honourable Justice Valerie Miller
DATE OF JUDGMENT:	July 12, 2011

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Rosanna Slipperjack-Farrell

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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