

Citation: 2012TCC319
Date: 20120907
Docket: 2011-3778(IT)I

BETWEEN:

OSWALD F. ROBERTS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR JUDGMENT

(Delivered orally from the bench on July 13, 2012, in Toronto, Ontario.)

**These Reasons for Judgment are issued in substitution for the
Reasons for Judgment dated September 7, 2012
The only amendment to these Reasons is the addition
of the name of Counsel for the Respondent**

V.A. Miller J.

[1] This appeal relates to Mr. Roberts' 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2009 and 2010 taxation years. The issue is whether Mr. Roberts can claim a medical expense tax credit for the fees he paid to the YMCA and the JCC in these years. An ancillary issue is whether the Appellant has the documentation to support an additional amount of \$672 which he claimed as medical expenses in 2009.

[2] At the beginning of the hearing, counsel for the Respondent conceded that the amount of \$672 was a medical expense in 2009 and the appeal should be allowed to that extent.

Preliminary

[3] As a preliminary matter, counsel for the Respondent asked that the appeal for the 2001, 2002, 2003, 2004, 2005, 2006 and 2007 taxation years be quashed as the Appellant did not serve the Minister of National Revenue (the "Minister") with a

Notice of Objection as required by subsection 165(1) of the *Income Tax Act* (the “Act”) for these years. As well, the Appellant did not apply for an extension of time to object within the period allowed by subsection 166.1(7) of the *Act*. In support of its position, counsel filed the affidavit of Maria Paskaris, an officer in the Toronto Litigation Office of the Canada Revenue Agency (the “CRA”).

[4] The affidavit disclosed the following:

Year	Assessed	Reassessed	90 day period	One year
2001		June 22, 2006	September 20, 2006	September 20, 2007
2002		May 5, 2003	August 5, 2003	August 5, 2004
2003	April 29, 2004	Nil assessment		
2004	July 14, 2005	Nil Assessment		
2005	March 30, 2006			June 15, 2007
2006 and 2007		August 27, 2009	November 25, 2009	November 25, 2010

[5] The Appellant objected to all of the above reassessments on April 12, 2011 and he was notified that his objection was made beyond the limitation period and could not be accepted.

[6] It is a prerequisite that a taxpayer must serve a notice of objection on the Minister within one year and ninety days of either the reassessment date or his filing date, whichever is applicable in the circumstances, before he can appeal to the Tax Court of Canada¹. This was not done for the years 2001, 2002, 2003, 2004, 2005, 2006 and 2007.

[7] The Respondent’s motion to quash is granted.

Medical Expense

[8] In 1992 the Appellant was diagnosed with prostate cancer. His physician recommended that, both pre-surgery and post operatively, the Appellant should participate in an exercise program to assist him to cope with the side effects of surgery. On October 9, 1992, the Appellant had radical prostatectomy.

[9] After surgery, the Appellant suffered with incontinence. He continued his exercise program by purchasing a membership at the Jewish Community Centre (“JCC”); and, in 2009, he became a member of the YMCA. His membership fees were:

	2009	2010
JCC	\$ 453	
YMCA	724	\$1,235
Total	\$1,177	\$1,235

[10] According to correspondence from the Appellant's physician, the Appellant's symptoms of incontinence decreased dramatically since he joined the JCC/YMCA.

[11] It is the Appellant's position that these amounts should be allowed as medical expenses for the following reasons: (a) He became a member of these organizations on the recommendation of his physician that he participate in an exercise program. (b) Both the JCC and the YMCA are registered charities. (c) On the website for the CRA, T2201 states in part: "Recreational programs offered by a public sector body that is for persons with disabilities provided on an on-going basis at a community centre qualifies as a medical expense." (d) The Appeals Division Sudbury Tax Services Office allowed him to claim his membership fees at the JCC as a medical expense for 2008.

[12] The definition of "medical expense" in subsection 118.2(2) of the *Act* lists the specific types of costs that are eligible for the medical expense tax credit. This list is exhaustive and only the cost of those items listed will qualify as a medical expense. As was clearly stated by the Federal Court of Appeal in *Ali v. Canada*, 2008 FCA 190 at paragraph 17:

With respect to the legislative scheme at issue in this case, the definition of "medical expense" in subsection 118.2(2) of the ITA contains an enumeration of the specific types of costs that are eligible for the METC. This indicates a legislative purpose of limiting the availability of the METC to a specific list of items.

[13] None of the paragraphs in subsection 118.2(2) lists the costs of a membership to a health club as a medical expense. It is my view that this means that the membership fees for a health club is not considered to be a medical expense for the purposes of the *Act*.

[14] With respect to the Appellant's second reason that both the JCC and the YMCA are charitable organizations, this has no bearing on whether the fees for membership at these organizations are medical expenses.

[15] In his Notice of Appeal, the Appellant made a statement which he says is a quote from the website of CRA. He listed the quote as part of T2201.

[16] The T2201 is the Disability Tax Credit application and certification form. It applies to a tax credit which is separate from the medical expense tax credit. The disability tax credit applies to individuals who have a “severe and prolonged mental or physical impairment” as certified by a medical practitioner. However, the medical expense tax credit applies to individuals who have sustained significant medical expenses. The T2201 has no application to the facts of this appeal.

[17] Lastly, the Appellant submitted that the cost of his 2008 health club membership was allowed as a medical expense and on the basis he should be allowed a medical expense for the costs of his 2009 and 2010 health club membership.

[18] CRA does not have to assess all of the Appellant’s taxation years in exactly the same manner. As Boyle J. opined in *Couture v. Canada*, 2008 TCC 171 at paragraph 10:

Unfortunately for Ms. Couture, CRA's assessment of an individual in one taxation year does not in any way preclude it from reconsidering and taking a different position in other taxation years.

[19] Regrettably, I must dismiss the Appellant’s appeal with respect to the membership fees he paid to the JCC and the YMCA in the 2009 and 2010 taxation years. In the 2009 taxation year, the Appellant incurred a medical expense in the amount of \$672 and the appeal is allowed to that extent.

Signed at Ottawa, Canada, this 20th day of September 2012.

“V.A. Miller”

V.A. Miller J.

¹ *Bormann v. R.*, 2005 FCA 82

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APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: **Kathleen Beahen**
Andrea Jackett

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada