

Docket: 2011-1407(IT)G

BETWEEN:

RENAUD BERGERON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on December 10, 2012, at Montreal, Quebec.

Before: The Honourable Justice Patrick Boyle

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Emmanuel Jilwan

[OFFICIAL ENGLISH TRANSLATION]

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* with respect to the Appellant's 2006 and 2007 taxation years is dismissed, with costs, in accordance with the Reasons for Judgment attached hereto.

Signed at Ottawa, Canada this 18th day of January 2013.

"Patrick Boyle"

Boyle J.

Translation certified true
on this 1st day of March 2013.

Erich Klein, Revisor

Citation: 2013 TCC 13
Date: 20130118
Docket: 2011-1407(IT)G

BETWEEN:

RENAUD BERGERON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Boyle J.

[1] This appeal relates to Mr. Bergeron's involvement in a transfer of the Immigrant Investor Program ("IIP") operations of Canaccord Capital to Industrial Alliance in 2005. The agreements provided, among other things, that the Appellant, who had managed the program at Canaccord, would move to Industrial Alliance as an independent contractor so that he could continue to manage the transferred accounts. At the time of the transfer, Mr. Bergeron was entitled to certain deferred "*honoraires de fermeture*" (hereinafter "closing fees") in respect of the transferred IIP accounts. As part of these transactions Mr. Bergeron provided indemnities and guarantees relating to the transferred accounts.

[2] The taxpayer's position is that certain amounts subsequently received by him in respect of closing fees for the transferred accounts were capital gains for 2006 and 2007. The Respondent's position is that these amounts were ordinary income. In addition, the taxpayer questions whether the reassessment for 2006 was made within the prescribed limitation period.

[3] It is clear from the evidence, including the documentary evidence, that the rights to, and interests in, Canaccord's IIP were transferred by Canaccord to Industrial Alliance. The same documents make it clear that Mr. Bergeron was to become an independent contractor responsible for, among other things, managing the transferred IIP accounts. The terms of Mr. Bergeron's contract for services were set out in a letter agreement among Mr. Bergeron and Industrial Alliance and Leduc & Associés signed before the transfer in 2005. The agreement provided that, following the transfer, Mr. Bergeron was to enter into a contract for services whereby he would join Leduc & Associés for a two-year period. In 2008, the 2005 arrangement was further documented, in a more detailed fashion and retroactively. Both of these agreements provide for payment of the amounts in question to Mr. Bergeron under his contract for services. The closing fees relating to the transferred accounts were to be paid to Mr. Bergeron at the rate of 75% of such fees received for the year ending August 31, 2006 and 50% thereof for the year ending August 31, 2007.

[4] No one from Canaccord Capital testified, nor was Mr. Bergeron's employment contract with Canaccord Capital put in evidence. No one from Industrial Alliance or Leduc & Associés testified either.

[5] At the time of the 2005 transfer, Mr. Bergeron had certain entitlements to the deferred closing fees, which Canaccord Capital would have been required to pay to him when the underlying investments matured. It was these rights that Mr. Bergeron was protecting through his new arrangements with Industrial Alliance and Leduc & Associés.

[6] It is clear that the amounts at issue in the appeals for the 2006 and 2007 taxation years are amounts paid in accordance with subparagraphs 2(a) and (b) respectively on the third page of the July 18, 2005 letter agreement entered into by Mr. Bergeron, Industrial Alliance and Leduc & Associés, which dealt with closing fees. The amounts in question are also clearly identified and computed as closing fees on the Leduc & Associés cheques to Mr. Bergeron for those amounts. There is simply nothing in the evidence before me to support a conclusion that these amounts were paid on any other basis or that there was a disposition of capital property by Mr. Bergeron to Industrial Alliance or Leduc & Associés. It is clear that from the legal contracts that these amounts were paid to him in accordance with the terms of his contract for services and that they are therefore properly taxable on income account.

[7] Absent a disposition of capital property, section 42 of the *Income Tax Act* dealing with guarantees is, by its terms, simply not applicable here.

[8] The reassessment with respect to Mr. Bergeron's 2006 taxation year was not statute-barred. The evidence clearly confirms that the reassessment was issued within the normal three-year reassessment period.

[9] Mr. Bergeron's objection filed with the Canada Revenue Agency, Appeals, was successful to the extent both of not having the amounts reported as capital gains taxed twice—as ordinary income and as capital gains—and of having the penalties imposed in the reassessments removed in their entirety.

[10] The appeal is dismissed, with costs.

Signed at Ottawa, Canada this 18th day of January 2013.

"Patrick Boyle"

Boyle J.

Translation certified true
on this 1st day of March 2013.

Erich Klein, Revisor

CITATION: 2013 TCC 13

COURT FILE NO.: 2011-1407(IT)G

STYLE OF CAUSE: RENAUD BERGERON v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: December 10, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: January 18, 2013

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Emmanuel Jilwan

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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