

Docket: 2002-3217(IT)I

BETWEEN:

JEAN-MARC TROTTIER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on June 18, 2004, at Quebec City, Quebec

By: The Honourable Judge Alain Tardif

Appearances:

Agents for the Appellant: Gaston Drolet and
Stéphanie Morasse, Student-At-Law

Counsel for the Respondent: Alain Gareau

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for taxation years 1998 and 1999 is dismissed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 12th day of August 2004.

“Alain Tardif”

Tardif J.

Reference: 2004TCC526
Date: 20040812
Docket: 2002-3217(IT)I

BETWEEN:

JEAN-MARC TROTTIER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Tardif J.

[1] This is an appeal from an assessment made under the *Income Tax Act* (the “Act”) for taxation year 1998. The issue at bar is whether the Minister of National Revenue (the “Minister”) was justified in disallowing the credit claimed by the Appellant for a charitable gift of \$22,500 for taxation years 1998 and 1999.

[2] The parties agreed to proceed by means of the same evidence for this docket and for *Louis Laliberté* (Docket: 2002-1892(IT)I).

[3] The assessment disputed in this appeal was issued further to the consideration of the following assumptions of fact:

- a) during taxation years 1998 and 1999, the Appellant worked as a notary;
- b) the Appellant exercised his profession with Louis Laliberté under the name Trottier Laliberté, notaires (hereinafter the “Corporation”);
- c) the Appellant was the sole shareholder in Rentinvest Inc. during the taxation years at issue;

- d) the Appellant attached a tax receipt issued by “l’Oasis à Coeur Ouvert” (hereinafter “Oasis”), dated July 3, 1998, to his 1998 tax return, for the sum of \$22,500; a note on the receipt states: “Référence Coop de l’Échange”;
- e) the Appellant claimed \$10,305 for taxation year 1998 and \$12,194 for taxation year 1999; these amounts were disallowed by the Minister in the computation of credits for charitable gifts claimed for these years;
- f) a receipted dated July 3, 1998, for the sum of \$22,500 was also issued by Oasis to Louis Laliberté;
- g) according to a transaction coupon issued by the Coop de l’Échange and dated December 10, 1997, the Société d’Échange Commercial de Québec Métropolitain (hereinafter “SECQM”) purchased 25,000 exchange units from the Appellant;
- h) according to a transaction coupon issued by the Coop de l’Échange on the same date (December 10, 1997), the Appellant purchased 25,000 exchange units from SECQM;
- i) according to the contract of sale dated December 10, 1997, SECQM sold a dinosaur skeleton replica to the Appellant in consideration of 25,000 Coop de l’Échange commercial exchange units;
- j) as of December 10, 1997, and May 29, 1998, the fair market value of the exchange units was nil;
- k) as of December 10, 1997, the fair market value of the dinosaur skeleton replica, which was received in consideration of the exchange units, is nil;
- l) on May 29, 1998, according to the transaction coupon issued by the Coop de l’Échange, the Corporation purchased 45,000 exchange units from SECQM;
- m) according to the Corporation’s accounting records, on August 16, 1998, the Corporation issued an invoice to Rentinvest Inc. for fees in the amount of \$45,000;

16-08-98	Accounts receivable	\$51,761.00	
	Fees		\$45,000.00
	GST payable		\$3,150.00
	QST payable		\$3,611.25

Invoice for fees—Rentinvest Inc.;

- n) according to the Corporation's accounting records, on August 17, 1998, Rentinvest Inc. paid the \$45,000 in fees, invoiced by the Corporation, in candles for a sum of \$25,000 and a painting of a dinosaur for a sum of \$20,000:

17-08-98	Candles purchased	\$25,000.00	
	Painting (dinosaur) purchased	\$20,000.00	
	GST	\$3,150.00	
	QST	\$3,611.25	
	Accounts receivable		\$51,761.00

Receipt from Rentinvest for candles and painting as payment of fees;

- o) on August 18, 1998, according to the Corporation's accounting records, the Corporation sold candles to SECQM for a sum of \$25,000 and a painting of a dinosaur for a sum of \$20,000:

18-08-98	Accounts receivable	\$51,761.25	
	Sale of candles		\$25,000.00
	Sale of dinosaur painting		\$20,000.00
	GST		\$3,150.00
	QST		\$3,611.25

Sale of painting and candles to the SECQM;

- p) according to the Corporation's accounting records, on August 19, 1998, the Corporation purchased a painting from a museum for the sum of \$45,000:

19-08-98	Purchase of a painting (museum)	\$45,000.00	
	GST	\$3,150.00	
	QST	\$3,611.25	
	Accounts payable		\$51,761.25

Purchase of a painting from the museum;

- q) no invoice for the purchase of a painting was submitted;

- r) according to the Corporation's accounting records, on August 20, 1998, the \$45,000 owed to the museum for the purchase of a painting was paid by SECQM:

20-08-98	Accounts payable	\$51,761.25	
	Accounts receivable		\$51,761.25

Amount owing to the museum paid by SECQM;

- s) according to the Corporation's accounting records, on August 21, 1998, the Appellant and Louis Laliberté invoiced the Corporation for \$22,500 each, acquired a painting for \$45,000, and donated this painting to a museum:

21-08-98	Fees—Trottier	\$22,500	
	Fees—Laliberté	\$22,500	
	Purchase of painting		\$45,000

Donation of painting to museum;

- t) on October 27, 2000, the agent for the Corporation explained to the Minister that the receipts issued by Oasis were further to the gift of a dinosaur skeleton replica;
- u) on August 29, 2001, Louis Laliberté explained to the Minister that the gifts established by Oasis were further to the gift of 45,000 SECQM exchange units;
- v) according to the Appellant's notice of objection, this was a cash donation;
- w) the real consideration for the receipts from Oasis was a number of SECQM exchange units, also known as "bartering points";
- x) the exchange units were obtained following diverse transactions involving the Corporation, Rentinvest Inc. held by the Appellant, the Coop de l'Échange, and finally, the Appellant and Louis Laliberté personally;
- y) the receipt submitted by the Appellant for the charitable gift is deficient because it shows that it is a receipt for a cash donation rather than for a gift of property other than cash; it does not describe the gift in kind and provides neither the name nor the address of the appraiser;

- z) the explanations provided to the Minister by the Appellant to explain the basis for the charitable receipt from Oasis do not agree with the Corporation's accounting records;
- aa) the receipt from Oasis submitted by the Appellant is deficient, because it is dated July 3, 1998, which is prior to the date of the gift, August 21, 1998, as identified in the Corporation's accounting records;
- bb) the Corporation's accounting records for 1997, and Rentinvest Inc.'s accounting records for 1997 and 1998 were not provided to the Minister, because these records apparently cannot be located;
- cc) the Appellant did not, in any form, make a donation for the sum of \$22,500 to Oasis.

[4] The Appellant agreed with the content of paragraphs (a) to (i), (l) to (o), (q), (r), (u), (w), (x), and (aa). He agreed with the content of paragraph (s), except for the information relating to the purchase of a painting for \$45,000; he denied this aspect. A number of paragraphs were denied outright; they are as follows: (j), (k), (p), (t), (v), (y), (z), (bb), and (cc).

[5] Louis Laliberté, Notary, and Gaston Drolet, Accountant, were the only witnesses.

[6] Mr. Laliberté's testimony was rather brief. He was not the person acting as the main player in the various transactions leading to the issuance of the receipts (Exhibits A-9 and A-10). The accountant, Gaston Drolet, was more forthcoming.

[7] From the outset, Mr. Drolet stated that all the accounting entries explained and justified the Appellant's claims, and he was very insistent on this fact. The consistency of the facts upon which the entries were based was not, however, as well established.

[8] Where the accountant, who was the person responsible for the accounting records of Appellant's legal firm, appeared to be very familiar with the file, he nonetheless made very surprising claims.

[9] He stated that it was not a painting, but a dinosaur replica, the specific property that is central to the history of the file leading to the gift. Later, bartering points, then cash, were involved, on the basis that bartering points were, for all intents and purposes, cash.

[10] When he was asked about the various steps taken to validate the charitable organization's status, the accountant replied that this was not a critical requirement; he then acknowledged that he had done some research which confirmed that the organization that issued the receipt was duly registered and authorized to issue receipts. He stated, however, that he had been informed that the organization had had this authorization revoked at one time.

[11] The accountant also provided an explanation for the bill of costs for the amount of \$45,000. He stated that the Appellant worked physically for Rentinvest Inc., which he owned.

[12] As a result of this work, his availability to work at his legal firm, Trottier Laliberté, was reduced, thus the Corporation invoiced Rentinvest Inc. for \$45,000 for 45 days of work, at a rate of \$1,000 per day.

[13] Likely to justify the reasonableness of the invoice, the accountant also stated that the charges could have been much higher, because the Appellant had been absent for a number of days more than the number indicated in the invoice.

[14] In his argument, counsel for the Respondent raised the following question, with reason:

[Translation] In this matter, I submit, Mr. Justice, that a problem arises:
How can Trottier Laliberté, notaires, issue an invoice for maintenance or renovation work that Mr. Trottier performs for his own business?

[15] Overall, the Appellant, through the testimony of Mr. Laliberté and that of the accountant, argued that he had not concealed anything and that everything had been declared and recorded in complete accounting entries.

[16] Essentially, the Appellant's arguments, expressed mostly by the accountant, affirmed, reiterated, and insisted that everything had been disclosed and entered into the accounting records with absolute consistency.

[17] The development of the facts upon which the Appellant's arguments are based is open to doubt and raises a number of questions, to the extent that it may be suspected that some facts were simply invented to support the claims of accounting consistency of which the Appellant was obviously very proud.

[18] Taxation is not only a consistent accounting exercise. Compliance with the provisions of the *Income Tax Act* is the only criterion that must be considered in determining whether an assessment is well founded. Accounting consistency cannot validate the facts that lead to conclusions of non-compliance with the provisions of the Act.

[19] For the moment, I see no point in evaluating this aspect of the evidence, because in order for a receipt for a charitable gift to be acceptable, it must meet very specific and very strict conditions. For this reason, it is necessary to first evaluate the case in this light to determine whether the essential conditions have been met.

[20] In this case, the wording of the receipt is as follows (Exhibit A-10):

[Translation]

L'OASIS À COEUR OUVERT INC
278 de la Salle, Suite 001
Quebec City, Quebec G1K 2T3
Registration number: 89310 8068 RR 0001

Receipt number: 10004
DATE July 3, 1998

Received from: Mr. Jean-Marc Trottier
Address: 370 René Lévesque Blvd. West

City/Province: QUEBEC CITY, QUEBEC Postal Code: G1S 1R9 SIN: xxx xxx xxx

The sum of: --- --- Twenty-two thousand five hundred dollars --- --- \$22,500

Note: Reference—Coop de l'Échange

(signature)
Jean-Yves Gagnon

[21] Does the receipt filed by the Appellant comply with the provisions of section 3500 and subsections 3501(1) and (1.1) of the *Income Tax Regulations* (the "Regulations")? These provisions read as follows:

3500. In this Part,

[...]

"other recipient of a gift" means a person, to whom a gift is made by a taxpayer, referred to in any of subparagraphs 110.1(1)(a)(iii) to (vii), paragraphs 110.1(1)(b) and (c), subparagraph 110.1(3)(a)(ii), paragraphs (c) to (g) of the definition "total charitable gifts" in subsection 118.1(1), the

definition "total Crown gifts" in subsection 118.1(1), paragraph (b) of the definition "total cultural gifts" in subsection 118.1(1) and paragraph 118.1(6)(b) of the Act;

[...]

"official receipt" means a receipt for the purposes of subsection 110.1(2) or (3) or 118.1(2), (6) or (7) of the Act, containing information as required by section 3501 or 3502;

[...]

3501. (1) Every official receipt issued by a registered organization shall contain a statement that it is an official receipt for income tax purposes and shall show clearly in such a manner that it cannot readily be altered,

(a) the name and address in Canada of the organization as recorded with the Minister;

(b) the registration number assigned by the Minister to the organization;

(c) the serial number of the receipt;

(d) the place or locality where the receipt was issued;

(e) where the donation is a cash donation, the day on which or the year during which the donation was received;

(e.1) where the donation is a gift of property other than cash

(i) the day on which the donation was received,

(ii) a brief description of the property, and

(iii) the name and address of the appraiser of the property if an appraisal is done;

(f) the day on which the receipt was issued where that day differs from the day referred to in paragraph (e) or (e.1);

(g) the name and address of the donor including, in the case of an individual, his first name and initial;

(h) the amount that is

(i) the amount of a cash donation, or

(ii) where the donation is a gift of property other than cash, the amount that is the fair market value of the property at the time that the gift was made; and

(i) the signature, as provided in subsection (2) or (3), of a responsible individual who has been authorized by the organization to acknowledge donations.

[22] In a past decision, *Plante v. Canada* [1999] T.J.C. No. 51 (Q.L.), I dealt with the rigidity of the requirements established for a receipt for a charitable gift to be compliant. The following are paragraphs 40 to 43 of this case:

[40] Did the receipt filed by the appellant meet the *Act*'s requirements and entitle her to benefits under the *Act*?

[41] This is a very important question, since Parliament has subjected the deduction for gifts to specific conditions.

[42] Subsection 118.1(2) of the *Act* reads as follows:

118.1(2) A gift shall not be included in the total charitable gifts, total Crown gifts or total cultural gifts of an individual unless the making of the gift is proven by filing with the Minister a receipt therefore that contains prescribed information.
[emphasis added]

[43] Section 3500 and subsections 3501(1) and (1.1) of the *Income Tax Regulations (Regulations)* provide as follows:

3500. In this Part,

...

“official receipt” means a receipt for the purpose of paragraph 110(1)(a), (b), (b.1) or subsection 110(2.2) of the Act, containing information as required by section 3501 or 3502;

...

“other recipient of a gift” means a person referred to in any of subparagraphs 110(1)(a)(iii) to (vii), paragraph

110(1)(b) or (b.1) or subparagraph 110(2.2)(a)(ii) of the Act to whom a gift is made by a taxpayer

3501. (1) Every official receipt issued by a registered organization shall contain a statement that it is an official receipt for income tax purposes and shall show clearly in such a manner that it cannot readily be altered,

(a) the name and address in Canada of the organization as recorded with the Minister;

(b) the registration number assigned by the Minister to the organization;

(c) the serial number of the receipt;

(d) the place or locality where the receipt was issued;

(e) where the donation is a cash donation, the day on which or the year during which the donation was received;

(e.1) where the donation is a gift of property other than cash

(i) the day on which the donation was received,

(ii) a brief description of the property, and

(iii) the name and address of the appraiser of the property if an appraisal is done;

(f) the day on which the receipt was issued where that day differs from the day referred to in paragraph (e) or (e.1);

(g) the name and address of the donor including, in the case of an individual, his first name and initial;

(h) the amount that is

(i) the amount of a cash donation, or

(ii) where the donation is a gift of property other than cash, the amount that is the fair market value of the property at the time that the gift was made; and

(i) the signature, as provided in subsection (2) or (3), of a responsible individual who has been authorized by the organization to acknowledge donations

[23] The actual wording of the receipt issued by Oasis à coeur ouvert Inc. is non-compliant; it describes a cash donation of \$22,500, whereas the evidence shows that it was a donation of bartering points assigned by “Coop de l’Échange.”

[24] What is the value of these bartering points to a corporation that deals exclusively with its own members? The accountant’s completely arbitrary and self-interested appraisal was certainly not the way to determine their fair market value.

[25] A receipt must contain a brief description of the property; the receipt filed specifies twenty-five thousand five hundred dollars in words and in numbers, “\$25,000,” including the dollar sign.

[26] The receipt does not match the property that was given to the charitable organization. The receipt contains no description of the property—not the painting, the dinosaur replica, or the bartering points. It simply states “Référence Coop de l’Échange,” which does not specify that the property consists of bartering points; the bartering points were not issued to the benefit of the Appellant, but to the benefit of the corporation he owns.

[27] Accounting consistency is not synonymous with a justificatory shield for fiscal correctness. Transactions must not be essentially entries of accommodation.

[28] To benefit from the tax credit resulting from a gift to a certified organization, it is imperative that the receipt meets all the requirements set out in the Regulations; failure to do so means that the donor cannot claim a credit for the charitable gift as described in section 110.1 of the Act.

[29] In this case, after hearing the evidence, the facts surrounding the origin of the gift are still vague; moreover, some facts are questionable.

[30] The gift was not a cash donation as the receipt leads to believe; it was essentially a certificate that identifies the bartering points issued by an exchange coop. The receipt was issued to the Appellant personally, whereas the gift was made by his corporation.

[31] Finally, members only can deal with the Coop de l’Échange, therefore, the value of the bartering points is not equivalent to cash, contrary to the contentions of the accountant, Gaston Drolet. I do not agree with his interpretation, which appears to me to be absolutely unfounded.

[32] Aside from these various aspects that, in themselves, would justify a dismissal of the appeal, the receipt filed in support of the credit claimed is absolutely non-compliant with subsection 3501(1) of the Regulations, with particular respect to the description of the property and its fair market value—two aspects that are essential for a compliant receipt in support of a credit claimed for a charitable gift.

[33] Therefore, the appeal is dismissed.

Signed at Ottawa, Canada, this 12th day of August 2004.

“Alain Tardif”

Tardif J.

REFERENCE: 2004TCC526

COURT FILE No.: 2002-3217 (IT)I

STYLE OF CAUSE: Jean-Marc Trottier and Her Majesty the Queen

PLACE OF HEARING: Quebec City

DATE OF HEARING: June 18, 2004

REASONS FOR JUDGMENT BY: The Honourable Judge Alain Tardif

DATE OF JUDGEMENT: August 12, 2004

APPEARANCES:

Agents for the Appellant: Gaston Drolet and
Stéphanie Morasse, Student-At-Law

Counsel for the Respondent: Alain Gareau

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