

Docket: 2005-585(IT)G

BETWEEN:

RICHARD LORNE JANZEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on April 3, 2008 at Calgary, Alberta

Before: The Honourable Justice Valerie A. Miller

Appearances:

For the Appellant:                   The Appellant himself  
Counsel for the Respondent:       Darcie Charlton

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**JUDGMENT**

The appeal from the reassessments made under the *Income Tax Act* for the 2000 and 2001 taxation years is allowed and the reassessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada this 13<sup>th</sup> day of May, 2008.

"V.A. Miller"

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V.A. Miller, J.

Citation: 2008TCC292  
Date: 20080513  
Docket: 2005-585(IT)G

BETWEEN:

RICHARD LORNE JANZEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

#### **V.A. Miller, J.**

[1] This is an appeal from Notices of Reassessment dated September 5, 2003 for the Appellant's 2000 and 2001 taxation years wherein the Minister of National Revenue ("Minister") included the amounts of \$164,969 and \$2,997 respectively as unreported income. The Appellant had reported \$0 and \$1,161 as income in his 2000 and 2001 income tax returns respectively.

[2] Prior to the hearing of this appeal the Respondent notified the Court that it had reviewed documents which were provided by the Appellant after the Notice of Appeal was filed. As a result of that review the Respondent conceded that in the 2000 taxation year the amount of \$48,562.79 should be removed from the Appellant's income as it represented amounts that the Appellant paid for expenses of Powernet Concepts Inc. ("Powernet") and these amounts were subsequently reimbursed to him. As well, the Respondent conceded that in the 2000 and 2001 taxation years the Appellant incurred the amount of \$6,000 as expenses for work-space in the home.

[3] At the hearing the Appellant represented himself. Donald Zolc, Craig Peturson, an appeals officer with the Canada Revenue Agency ("CRA"), and

Kelly Storrier, a complex case officer with CRA gave evidence on behalf of the Respondent.

[4] It was the Respondent's position that the Appellant was an employee of Powernet; he withdrew monies from Powernet when he needed it; and he did not report these amounts as income. It was the Appellant's position that in 2000 all revenue deposited into Powernet's bank account was his revenue from the sale of his shares. As a result, any amount that he withdrew from Powernet's bank account was his own money. He submitted that in the alternative, if the Court found that he had failed to report income in 2000 and 2001, then he is a Métis and his income is not taxable in accordance with the decision in *R. v. Powley*, 2003 SCC 43.

[5] In 1999, the Appellant and Donald Zolc ("Zolc") began to work together to develop a software program. Their intent was to sell this software program to the public through distributors. The software program was eventually called "the Personal Growth Series" and I will refer to it as such.

[6] The Appellant decided that the business was best carried on in a corporate form. As he and his spouse already owned all the shares in Powernet, the Appellant decided to use it rather than incur the costs of incorporating another company. As the original idea for the Personal Growth Series was Zolc's, the Appellant promised to give Zolc 50 percent of the shares in Powernet. The evidence disclosed that in 1999, Zolc only received 30 percent of the shares in Powernet but that he was aware of this.

[7] The Appellant was the President, CEO and account manager of Powernet.

[8] In 1999 and part of 2000, Powernet raised funds by selling licences to the right to distribute the Personal Growth Series. (The Appellant and Zolc could not agree on the exact time that Powernet ceased to raise money by the sale of licences.) The licences ranged in price from \$2,500 to \$30,000 and depended on the size of the territory associated with it. It was Zolc's recollection that he sold 22 licences. The Appellant did not give evidence on the number of licences that he sold. Both the Appellant and Zolc had hoped that if they sold enough licences, Powernet would have sufficient funds to finish the software program and market it.

[9] In April 2000, the Appellant started to raise funds by selling Powernet shares. The evidence disclosed that the Appellant increased the number of shares in Powernet from 1000 in 1999 to 1,100,000 in 2000 to 10,000,000 in 2001. In 1999 and up to April 2000, the Appellant and his spouse held 60 percent of the shares in

Powernet. According to the Corporate Registry Profile Report as of September 11, 2001, the Appellant held 51 percent of the shares in Powernet.

[10] There were several sales of shares. The Corporate Registry Profile Report as of September 11, 2001 listed eight shareholders in addition to the Appellant and Zolc. However, the evidence disclosed that there was one other shareholder at this time whose name was not recorded in the Corporate Registry.

[11] The evidence showed that the Appellant sold 10,000 of his shares to Richard Dielschneider on April 26, 2001 for \$15,000. All other Share Purchase Agreements that were tendered as Exhibits were sales by Powernet of its treasury shares. The proceeds from those sales were revenue to Powernet.

[12] Only the Appellant and his spouse had signing authority on Powernet's bank account.

[13] The Appellant and his spouse had debit cards to access Powernet's bank account. In 1999, Zolc was given one of the debit cards so that he had access to the bank account when he was travelling throughout Western Canada to sell distributorships for the program Personal Growth Series.

[14] I found that Zolc was credible and I accept his evidence. Zolc testified that when he was on the road he used the debit card on a daily basis to pay expenses. He also went to the bank on a regular basis to take funds out of Powernet's bank account. He said that in 2000 he saw the amount of \$80,000 deposited into the bank account and "almost as quickly" it was withdrawn from the bank account. He questioned the Appellant on this transaction and was told that the amount of \$80,000 was from the sale of shares to Ronald Driscoll.

[15] Zolc's evidence is supported by the Exhibits. Exhibit A-6 showed that Powernet sold 110,000 shares to C.I.R. Holdings Ltd. on April 4, 2000 for \$80,000. Ronald Driscoll and Carolyn Driscoll signed the Share Purchase Agreement on behalf of C.I.R. Holdings Ltd. The bank statement (Exhibit R-7) disclosed that \$80,400 was deposited into Powernet's bank account on April 7, 2000 and through three transactions on April 10, 2000, \$80,000 was withdrawn by "Touchtone Transfer".

[16] It was Zolc's evidence that he returned the debit card to the Appellant sometime in 2000 when he was no longer on the road for Powernet. He stated that this would have occurred shortly after he saw the transaction described in paragraph

15 above. I note that in the General Ledger dated December 31, 2000 (Exhibit R-6) the last debit machine withdrawal recorded for Zolc occurred on May 26, 2000. Consequently, I find that Zolc returned the debit card to the Appellant shortly after May 26, 2000.

[17] In 2000, the software program was not finished. Zolc and the Appellant decided that it would be difficult to continue to sell distributorships. It was decided that Zolc would stop travelling and that he and the Appellant would concentrate on finishing the software program as they were programmers.

[18] In 2000 and 2001, Powernet operated out of the Appellant's home. The Appellant used 46.5 percent of his home as an office for Powernet.

[19] The Appellant made all decisions with respect to Powernet's business. There was no evidence that there were any meetings of the board of directors in 1999 and 2000.

[20] According to the Appellant, his duties for Powernet included "pretty much everything". He assisted with the development and programming of the Personal Growth Series. He made decisions on who would be hired to assist with the development of the Personal Growth Series. He made decisions on money, time frames and priorities. He worked at least 14 hours a day, six days a week.

[21] In early 2000, the directors and shareholders of Powernet asked the Appellant for an accounting. They wanted to see Powernet's books and financial statements. No books had ever been created. In October 2001, the directors had a board meeting. The Appellant had been invited to this meeting but he did not attend. The result of the meeting was that the board hired a lawyer who was able to get copies of Powernet's bank statements from the bank.

[22] The board of directors hired an accountant who prepared a General Ledger for Powernet for the periods ending December 31, 1999, December 31, 2000 and December 31, 2001. These ledgers were produced using the bank statements, Zolc's receipts and input from Zolc and some of the other directors. It was Zolc's evidence that he sat with the accountant and told him from his recollection which debits in the bank statements should be attributed to him and which should be attributed to the Appellant.

[23] Powernet issued a T4A slip to the Appellant in the amount of \$164,969 for the 2000 taxation year. The CRA completed an Employer Compliance Audit and T4

slips were prepared in the Appellant's name in the amounts of \$164,969 and \$2,997 for the 2000 and 2001 taxation years respectively.

[24] The evidence disclosed that the Appellant failed to recognize that Powernet was a separate entity from himself. He treated Powernet's bank account as if it were his own personal bank account. He treated Powernet's treasury shares as if they were his own personal shares. The following excerpt from the transcript was typical of his attitude. While questioning Zolc the Appellant stated:

Buddy, I was the board. I was the majority shareholder. Don't be telling me about the board. I made—I had all the decisions. I paid all the bills. I invited you guys ...

[25] Overall, the Appellant gave no explanation for the amounts attributed to him in the General Ledgers prepared by the accountant. He spoke in generalities.

[26] The Appellant stated that he had made a shareholder loan to Powernet in 1999 for the amount of \$11,000. The loan document was dated May 3, 1999 and was signed only by the Appellant. The bank statement for 1999 did not support the Appellant's statement.

[27] Only the Appellant and his spouse had signing authority on Powernet's bank account. The evidence disclosed that in 2000 the Appellant or his spouse used the telephone to transfer \$109,310 out of Powernet's bank account. The Appellant gave no explanation for the transfer of funds.

[28] At the hearing the Respondent noticed errors in the General Ledger for year end December 31, 2000. There were transactions that were attributed to Zolc and yet they were included in the Appellant's income. As a result, the Respondent conceded that additional amounts should be deleted from the income assessed to the Appellant in 2000. However, as stated below, I have increased the additional amounts which should be deleted from the Appellant's income for the 2000 taxation year.

[29] It was Zolc's evidence that he had access to Powernet's bank account by way of a debit card. It was also his evidence that he used the debit card to pay for expenses and to withdraw cash while he was travelling to obtain distributors for Powernet. According to the General Ledger for December 31, 2000, the last debit transaction by Zolc occurred on May 26, 2000 in Vancouver. As a result, the only amounts of debit withdrawals, transfers and purchases that are definitely the Appellant's and should be included in the Appellant's income are those that occur after May 26, 2000. Consequently the amount of "ABM Transfer" included in the Appellant's income should be \$300.00 and not \$1,350.00; the amount of "ABM

Withdrawals” included in the Appellant’s income should be \$670 and not \$9,012.22; the amount of “Personal Amounts” included in the Appellant’s income should be \$1,595.30 and not \$3,455.45.

[30] I am also satisfied that the money the Appellant received from Powernet was income to the Appellant. As stated by Justice Teskey in *Palardy v. Canada*, [1997] T.C.J. No. 111 at paragraph 21:

- 21 ... Money coming out of a corporation can only be:
- (1) income to the recipient;
  - (2) a dividend duly declared;
  - (3) a loan duly documented;
  - (4) a withdrawal of capital duly documented.

There was no documentation to show that the Appellant was being repaid for any loans he may have made to the corporation or that he was receiving a loan from the corporation. There was never a dividend declared by Powernet. The money the Appellant received from Powernet was income to him.

[31] The Appellant had also argued in the alternative that any income he received was not taxable in accordance with the decision in *R. v. Powley*. This decision does not stand for the proposition that income earned by Métis is not subject to taxation. Rather this decision deals with the Métis aboriginal right to hunt for food in the vicinity of Sault Ste. Marie.

[32] The appeal is allowed, without costs, on the basis that the Appellant’s income for the 2000 taxation year should be recalculated in accordance with paragraph 29 herein. As well, the amount of \$48,562.79 should be deleted from the Appellant’s income as conceded by the Respondent at the start of the hearing as this amount was based on a review of cheques, receipts and visa statements presented by the Appellant to CRA. The Appellant is also entitled to deduct the amount of \$6,000 as expenses incurred for the office in his home in the years 2000 and 2001. However, the home expenses for the 2001 taxation year cannot exceed the Appellant’s net income in accordance with paragraph 8(13)(b) of the *Income Tax Act* (“the Act”).

Signed at Ottawa, Canada this 13<sup>th</sup> day of May, 2008.

"V.A. Miller"

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V.A. Miller, J.



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COURT FILE NO.: 2005-585(IT)G  
STYLE OF CAUSE: Richard Lorne Janzen v. The Queen  
PLACE OF HEARING: Calgary, Alberta  
DATE OF HEARING: April 3, 2008  
REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller  
DATE OF JUDGMENT: May 13, 2008

APPEARANCES:

For the Appellant: The Appellant himself  
Counsel for the Respondent: Darcie Charlton

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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