

Citation: 2012TCC315  
Date: 20121107  
Docket: 2011-3195(IT)I

BETWEEN:

GEORGE J. BRAKE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

**AMENDED REASONS FOR JUDGMENT**

(Delivered orally from the bench on July 4, 2012, in St. John's,  
Newfoundland and Labrador.)

**The Reasons for Judgment dated September 5, 2012 are amended to  
replace the word “proceeding” in paragraph 6 with the word  
“preceding” in accordance with the transcript of the oral reasons**

V.A. Miller J.

[1] This appeal relates to the Appellant’s 2008 taxation year. The issue is whether he can claim a bad debt expense of \$11,442.56.

[2] The Appellant has his CMA designation and is a retired accountant.

[3] In assessing the Appellant, the Minister of National Revenue (the “Minister”) made the following assumptions:

- a) the Appellant was the sole proprietor of Villa Marie Coiffure (“Villa”), a beauty salon and a barber shop;
- b) the Appellant and his spouse each owned 50% of the shares in Cabot Island Enterprise Limited (“Cabot”);

- c) the Appellant's spouse was the sole proprietor of Moments Cards & Gifts ("Moments");
- d) prior to 2008, Villa paid expenses of \$1,442.56 on behalf of Cabot ("Cabot's debt");
- e) Cabot's debt was recorded in Villa's books as an Account Receivable and was recorded in Cabot's books as a Demand Loan Payable;
- f) Cabot's debt was never recorded in Villa's books as income and was never reported as income on any of the Appellant's income tax returns;
- g) Prior to 2008, Villa paid expenses on behalf of Moments and advanced funds to Moments; as of 2008, Moments owed \$83,927.27 to Villa ("Moments' debt");
- h) Moments' debt was recorded in Villa's books as an Account Receivable and was recorded in Moments' books as an Account Payable;
- i) Moments' debt was never recorded in Villa's books as income and was never reported as income on any of the Appellant's income tax returns;
- j) On his 2008 return, the Appellant claimed Cabot's debt of \$1,442.56 as a bad debt expense;
- k) On his 2008 return, the Appellant claimed \$10,000 of Moments' debt as a bad debt expense;
- l) Total bad debt expenses claimed on the Appellant's 2008 return were \$11,442.56;
- m) The Appellant was not an insurer or a financial institution; and,
- n) The Appellant's ordinary business did not include the lending of money.

[4] It is the Appellant's position that the term "income" is not defined in the *Income Tax Act* (the "Act"). It is a fluid concept which can encompass the alternative terms such as "earnings" and "profit". The Appellant reasoned that:

- a) The money lent to Cabot and Memories was his money and he paid taxes on it;

- b) Both Cabot's debt and Memories' debt were recorded in Villa's books as Accounts Receivable. By not expensing either of these debts, Villa's income/profit was not reduced. Consequently, both debts were included in his income tax returns as income.

[5] It is the Minister's position that Appellant is not entitled to claim the debt of \$11,442.56 as it was never included in income for the 2008 taxation year or for a preceding taxation year.

[6] Where a taxpayer is not in the business of lending money, he must establish that he meets the conditions in paragraph 20(1)(p) of the *Act* before he can write-off a debt. The taxpayer must show that the debt became bad in the year and that it was included in computing his income for the year or **preceding** taxation year.

[7] The Appellant is not in the business of lending money. The debts at issue were not from the sale of goods which would have been included in the Appellant's income and which would have been deductible if the Appellant was not able to later collect the sale price. In this appeal, the debts resulted from loans to related entities who did not repay the Appellant. The money lent may have come from the Appellant and may at one time have been income to the Appellant; but, the debts were never included in the Appellant's income and they cannot be written off.

[8] The Appellant submitted no documentary evidence to show that the debts were included in his or Villa's income in either 2008 or any preceding taxation year.

[9] Consequently, I conclude that the Appellant has not established that he is entitled to write-off the debts as an expense.

[10] The appeal is dismissed. There will be no costs.

Signed at Ottawa, Canada, this 7<sup>th</sup> day of November 2012.

"V.A. Miller"

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V.A. Miller J.

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COURT FILE NO.: 2011-3195(IT)I  
STYLE OF CAUSE: GEORGE J. BRAKE AND  
THE QUEEN  
PLACE OF HEARING: St. John's, Newfoundland and Labrador  
DATE OF HEARING: July 3, 2012  
REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller  
DATE OF JUDGMENT: July 11, 2012  
DATE OF ORAL REASONS: July 4, 2012

APPEARANCES:

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