

BETWEEN:

CINEPLEX INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on November 10-14, 2025, at Toronto, Ontario

Before: The Honourable Justice Ronald MacPhee

Appearances:

Counsel for the Appellant: Glenn Ernst
Ben Hackett
Brittini Tee

Counsel for the Respondent: Dominik Longchamps
Ahmed Ali

JUDGMENT

In accordance with the attached Reasons for Judgement:

The appeal from the reassessment made under the *Income Tax Act*, which is dated January 22, 2019, for the Appellant's 2014 taxation year, is allowed in full.

For further clarification the Appellant is allowed to claim the previously disallowed deduction of \$26,510,522 of non-capital losses in the 2014 taxation year.

The Appellant is entitled to costs. The parties shall have until February 20, 2026 to reach an agreement on costs, failing which the Appellant shall have until March 30, 2026 to serve and file written submissions on costs and the

Respondent shall have until April 30, 2026 to serve and file written response submissions on costs. Any submissions shall not exceed five pages. If the parties do not advise the Court that they have reached an agreement and no submissions are received, costs shall be awarded to the Appellant as set out in the Tariff.

Signed this 15th day of January 2026.

“R. MacPhee”

MacPhee J.

Citation: 2026 TCC 15
Date: 20260115
Docket: 2021-840(IT)G

BETWEEN:

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Appellant,

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REASONS FOR JUDGMENT

MacPhee J.

I. Introduction

[1] Cineplex Inc. (the “Appellant”) is appealing from a reassessment (the “Reassessment”) in respect of its 2014 taxation year in which the Minister of National Revenue (the “Minister”) disallowed the deduction of \$26,510,522 of non-capital losses.

[2] To reach a conclusion on this matter, the Court must consider transactions carried out by a third party, AMC Ventures Inc. (“Ventures”)¹. These transactions resulted in Ventures paying out \$26,610,551.98 (the “Payment”) in 2012 as part of American Multi-Cinema Inc. (“AMC”)’s ceasing to do business in Canada. The questions before the Court are:

- a) Was the Payment made by Ventures a current expense and deductible from Ventures’ income or was it paid on account of capital? Determining this question requires the Court’s interpretation of two specific contracts entered into by Ventures. The parties disagree both with the method by which the

¹ Ventures was incorporated in Delaware on November 9, 1992, as AMC Entertainment Inc. to carry on all of AMC’s theatre business outside of the United States, including in Canada. On March 26, 2012, Ventures was continued into British Columbia and changed its name to AMC Ventures Inc.

Court should interpret these contracts, as well as to what the interpretation should be;

- b) In the alternative, if the Payment was not deductible in computing Ventures' income for its July 2012 year-end, does the Payment qualify as an eligible capital expenditure under ss. 111(5.2) and paragraph 20(1)(b) of the *Income Tax Act*² (the "Act").

II. Facts

[3] The Appellant is a "Canadian corporation" and a "public corporation" for the purposes of the Act.

[4] Beginning in approximately 1977, Cineplex or its predecessors have been in the business of showing movies and selling food and drink concessions in Canada.

[5] As of 2025, Cineplex operates over 155 movie theatres across Canada.

[6] AMC is a major U.S. theatrical exhibitor. Up to 2012, it carried on business in several countries around the world, including Canada. In its Canadian operations, AMC operated its theatres through a subsidiary, Ventures. Between 1993 and 2012 Ventures operated up to eight movie theatres in Canada. Six were in the Greater Toronto area, one was in Ottawa, and one was in Montreal. Overall, the Canadian business was financially unsuccessful³. Ventures incurred approximately \$10 million USD in losses per year in Canada⁴.

[7] Ventures' losses occurred for a variety of reasons, including oversized theatre facilities, high occupancy costs, and ongoing difficulties in obtaining competitive film product. Prior to the transactions described below, Ventures was reducing the screens in use at some of its theatres.

[8] Following a change in ownership at AMC's parent corporation in 2004, AMC decided to exit from all international markets. Ventures' Canadian operations were part of this exit plan.

² *Income Tax Act*, RSC 1985 c 1 (5th Supp).

³ Of the eight theatres, two were profitable (Kanata and Whitby).

⁴ The evidence was inconsistent on this point. Gordon Nelson testified the losses were between \$6 to \$8 million. Whereas John Rainer testified the losses were \$10 million, but also used the \$8 million figure in his testimony.

Steps to facilitate Ventures' departure from Canada

[9] Ventures' ultimate exit from the Canadian market had three components. The first component was Ventures' sale of two of its Canadian theatre operations to Empire Theatres. Although part of Ventures' exit from Canada, this transaction is not relevant to the appeal.

[10] The second component was AMC's negotiations with Cineplex concerning a share sale for Ventures. Cineplex expressed interest in acquiring all the shares of Ventures but wanted two of the remaining six theatres removed from the Ventures' operation prior to closing.

[11] These two theatres were Interchange 30 and Kennedy Commons 20. This meant that Cineplex was interested in buying, as part of a share purchase, a reduced form of Ventures, made up of four of Ventures' original eight theatres in Canada.

[12] Related to the above-described step, the third component for Ventures was the termination of the Kennedy Commons 20 and Interchange 30 theatres (collectively, the "Discontinued Theatres"), as neither Cineplex nor Empire was willing to acquire them. The anticipated cost of closing the Discontinued Theatres was approximately \$26,610,551.98, largely attributable to the remaining obligations under their long-term leases, including discounted future lease payment obligations.

Structure of transactions between AMC and Cineplex, and Ventures and AMCNJ

[13] The Appellant and AMC negotiated a share-purchase structure under which the Appellant would acquire the shares of Ventures after Ventures divested itself of Interchange 30 and Kennedy Commons 20.

[14] On June 20, 2012, AMC and Cineplex entered into a share purchase agreement pursuant to which Cineplex would acquire all the shares of Ventures. The deal closed on July 12, 2012. It was important to Cineplex to close the deal prior to the summer blockbuster period.

[15] The purchase price for the shares of Ventures was \$1. In addition, the share purchase agreement provided for additional consideration equal to ten cents for each dollar of Ventures' non-capital losses in excess of a stipulated threshold. Finally, AMC was required, as a condition of closing, to capitalize Ventures so that it had \$4.5 million in working capital available at the time of the share acquisition.

The Payment made by Ventures to transfer the Discontinued Theatres to AMCNJ

[16] Ventures made unsuccessful attempts to negotiate an early termination with the landlords of the Discontinued Theatres.

[17] AMC determined that a transfer of the two Discontinued Theatres, to a related corporation, was the most effective and immediate solution. Under the transfer agreement, AMC New Jersey (“AMCNJ”) acquired the assets and liabilities associated with the two Discontinued Theatres, and Ventures made the Payment to AMCNJ. This payment of \$26,610,551.98 was intended to compensate for:

- the present value of remaining lease obligations for both Discontinued Theatres, including minimum rent, operating costs, and realty tax payments. This made up the vast majority of the Payment;
- in the partial alternative, the anticipated cost of a negotiated lease surrender at the Discontinued Theatres;
- the expected cost of complying with the operating covenant in the Interchange 30 lease until its expiry in May 2014⁵;
- estimated payments required to satisfy co-tenancy and rent-reduction obligations owed by AMC to other tenants at Interchange 30 if the theatre were closed prematurely; and,
- other contractual wind-down costs, such as obligations to service providers, utilities and employees.

[18] A break down of these costs indicates that the termination costs would be approximately \$7.5 million for Kennedy Commons 20 and approximately \$19 million for Interchange 30⁶.

[19] Following the transfer of the Discontinued Theatres, AMCNJ proceeded to wind down the theatres. Kennedy Commons 20 ceased operations shortly after the transaction and its lease was surrendered effective September 30, 2012. Interchange

⁵ Put succinctly, the shopping mall where the theatre was located had a penalty clause enforceable against Interchange 30 if they stopped doing business before the end of May 2014.

⁶ These amounts were not contested at the trial.

30 remained in limited operation until the expiry of its operating covenant in May 2014, after which the remaining operations were terminated. AMCNJ continued to pay rent under the Interchange 30 lease until its expiry in 2019. The total costs incurred by AMCNJ in respect of the two theatres ultimately exceeded the Payment it received from Ventures.

[20] The Payment made by Ventures to AMCNJ was recorded as an expense by Ventures in computing its income for its taxation year ending July 11, 2012.

[21] AMCNJ declared the Payment as income in its tax filings in Canada in its 2012 taxation year.

[22] The Appellant completed the acquisition of Ventures' shares on July 12, 2012. Ventures was dissolved shortly thereafter, and its remaining assets were distributed to the Appellant.

[23] In computing its income for subsequent taxation years, the Appellant applied Ventures' non-capital loss carry forwards, including the portion attributable to the Payment to AMCNJ. The Minister reassessed the Appellant's 2014 taxation year and disallowed the \$26,510,522 of the loss carry forward attributable to the Payment on the basis that it was not a deductible outlay on income account⁷.

[24] Both the Appellant and the Respondent agreed at the outset of trial that, although Cineplex is the Appellant, the appeal is really about the deductibility of the Payment made by Ventures to AMCNJ. Put simply, the Court must determine whether this Payment was made on account of capital or income.

[25] Two witnesses testified at trial. I found both to be of great assistance.

⁷ Once the wind-up was completed, the Appellant began applying these losses immediately: a portion was used in its 2013 taxation year (which is not under appeal), and the remaining balance of approximately \$44.6 million was deducted in its 2014 taxation year. In his opening statement, Appellant's counsel confirmed that this \$44.6 million represented the remainder of Ventures' non-capital loss after the Appellant had applied some in 2013, and that this remaining amount expressly included the \$26,510,522 loss generated by Ventures' deduction of the Payment to AMCNJ (Transcript from November 10, 2025, at page 32, lines 14-27). The Minister reassessed only the 2014 taxation year and did not challenge the Appellant's ability to deduct Ventures' losses generally. Instead, the reassessment disallowed solely the portion of the loss carry forward attributable to the \$26,610,551 Payment, on the basis that the Payment was not a deductible outlay on income account (Transcript from November 10, 2025, at page 33, lines 9-22).

[26] The first witness, Gordon Nelson, was the Chief Financial Officer at Cineplex in the 2011-2012 time period. He was heavily involved in the purchase of Ventures. He identified and explained the various documents prepared and relied on by the Appellant as part of the transaction. He also confirmed that the Ventures deal would not have closed unless the Discontinued Theatres were removed from Ventures.

[27] The second witness was John Rainer, who was the VP of Global Tax for AMC. His testimony was very helpful in determining AMC's motivation at the time of the transactions in question. His testimony confirmed the following:

- i. on December 23, 2004, AMC was purchased by a number of third parties. At that time the company was converted from a public company to a private company;
- ii. the new owners of AMC directed that the company remove itself from all foreign markets, including Canada;
- iii. Ventures was losing approximately US\$10 million a year in Canada in the years prior to 2012;
- iv. Peter Brown, the CEO of AMC was fired in 2009, in part, for his failure to remove AMC from Canada;
- v. concerted efforts were made by Ventures to buy their way out of the Discontinued Theatres leases, but they were unsuccessful;
- vi. Scotiabank was retained to find a buyer for Ventures;
- vii. there were no buyers for Kennedy Commons 20 and Interchange 30 theatres;
- viii. calculations were done to estimate what it would cost, applying NPV, to all upcoming expenses for the Discontinued Theatres.
- ix. an internal accounting report prepared by AMC calculating the projected cost to get out of the leases for the Discontinued Theatres was

put into evidence⁸. The combined cost to do so was calculated to be \$26,610,551.98.

III. Appellant's position

[28] The Appellant's primary position is that the Payment made by Ventures to AMCNJ was a deductible business expense incurred in the course of and for the purpose of terminating Ventures' unprofitable theatre business in Canada.

[29] In the alternative, the Appellant argues that the Payment was an eligible capital expenditure, 3/4 of which is deductible pursuant to s. 111(5.2) of the Act.

IV. Respondent's position

[30] The Respondent's primary position is that the Court must properly determine what the transaction completed by Ventures was. They argue that the Payment made by Ventures to AMCNJ was negative proceeds of disposition resulting from the sale of two of Ventures' lines of business to AMCNJ, specifically the Kennedy Commons 20 and Interchange 30 movie theatres, and was therefore capital in nature. Put another way, Ventures sold these two theatres and made the Payment to AMCNJ to complete the sale.

[31] In the alternative, if the Court determines that the transaction was not the sale of the two theatre businesses, then the Court should find that the transaction was the sale of the leasehold interests of the Kennedy Commons 20 and Interchange 30 movie theatres, again for negative proceeds of disposition of \$26,610,551.98.

[32] In the further alternative, the Payment was proceeds of disposition or an outlay or expense incurred for the purpose of making a disposition under s. 40(1) of the Act made on account of capital. The sole purpose of the Payment was to enable the closing of a capital transaction that benefited Ventures' parent corporation, specifically the sale of the shares of Ventures to the Appellant.

[33] In the final alternative, if the Court finds that the Payment made to AMCNJ was a current expense, the Payment was not made for the purpose of gaining or producing income. It is therefore properly denied under s. 18(1)(a) of the Act.

⁸ Testimony of John Rainer, exhibit A-17.

V. Analysis

[34] There are two main contracts in issue. They are the Share Purchase Agreement between Cineplex and AMC dated June 20, 2012 (the “Share Purchase Agreement”) and the Asset Transfer Agreement dated July 6, 2012 between Ventures and AMCNJ (the “Asset Transfer Agreement”).

[35] The key provisions from these contracts being relied upon by the litigants are:

From the Share Purchase Agreement:

Exhibit F

1.1(h) The company will transfer (i) the Kennedy and Interchange assets to the extent such theatres are still in operation at such time, (ii) the Assigned Contracts, and (iii) a cash amount equal to the estimated net costs of terminating the Assigned Contracts and ceasing operations in respect of the Kennedy and Interchange assets, including termination of the leases in respect of the same; and (iv) all HST eligible in connection with the foregoing transfers to AMC Theatres of New Jersey Inc. (which shall be registered for HST purposes) in consideration for the assumption of the liabilities in respect of the Kennedy and Interchange Assets and the Assigned Contracts.

From the Asset Transfer Agreement:

1.1 Defined Terms

“**Assumed Liabilities**” means all of the liabilities and obligations of the Transferor related to the Theatres and the Transferred Assets (other than income taxes payable in connection therewith for the period prior to the transfer of the Transferred Assets hereunder), including without limitation:

(i) all liabilities and obligations of the Transferor under or in respect of the Leases;

(ii) all liabilities and obligations of the Transferor under the Assigned Contracts;

(iii) all liabilities and obligations for accounts payable or other amounts owing by the Transferor to any other person relating to the Theatres or the Transferred Assets; and

(iv) all liabilities and obligations of the Transferor in respect of the employees of the Theatres including all liabilities for wages or other compensation, vacation pay, severance entitlement and any Benefit Plans;

2.1 Transfer of Transferred Assets

Subject to the terms of this agreement, the Transferor agrees to sell, transfer, assign, and convey to the Transferee, and the Transferee agrees to acquire from the Transferor on the date thereof all of the rights, title, and interest of the Transferor in and to the business carried on by and all assets and property of the Transferor, compromising solely relating to comprising or solely relating to the first run film exhibition in theatres located in Ontario, commonly known as Kennedy Commons 20 and Interchange 30, other than excluded assets, as **going concerns ...** (emphasis added)

2.3 Purchase Price

The purchase price for the Transferred Assets shall be the fair market value thereof on the date hereof, which the parties agree is \$689,448. Such purchase price shall be satisfied by the transferee assuming and agreeing to pay, satisfy, discharge, perform and fulfill, a portion of Assumed Liabilities having a fair market value on the date hereof equal to the fair market value of the Transfers Assets. The Transferee agrees to assume and pay satisfy discharge perform and fulfill such assume liabilities on the date hereof.

2.4 Assumption of Remaining Liabilities

Subject to the terms and conditions hereof the transferee also agrees to assume pay, satisfy, discharge, perform and fulfill, on the date hereof, all of the remaining Assumed Liabilities which it has not otherwise agreed to assume under Section 2.3 (the “**Remaining Liabilities**”). In consideration, the Transferor agrees to pay, on the date hereof, an amount in cash to the Transferee or is it Transferee may direct equal to the fair market value of the Remaining Liabilities, which the parties hereto agree is \$26,610,551.98 [the “**Cash Payment**”].

Parol Evidence Rule

[36] Given that my decision depends upon the interpretation of two specific contracts, and further that the parties disagree as to the method by which the Court should interpret these contracts, I find it necessary to give consideration to the application of the parol evidence rule in my analysis.

[37] In describing the parol evidence rule, Justice Hogan wrote:

The parol evidence rule is a rule of contract law that prohibits the use of extrinsic evidence “to alter, vary, or interpret in any way the words used in the writing.” According to Sopinka J., it is rooted in the assumption “that when parties reduce an agreement to writing they will have included all the necessary terms and circumstances and that the intention of the parties is that the written contract is to

be the embodiment of all the terms.” This rule aims at “prevent[ing] the use of fabricated or unreliable extrinsic negotiations to attack formal written contracts.” The motivation for this rule is a concern that if contracts cannot be taken at face value it will create uncertainty in the commercial realm.⁹

[38] In *Henco*, Justice Miller made the following observation in obiter, with which I agree:

I have some reservations about the universal application of the parol evidence rule in this Court, where the objective of contract interpretation is to determine a taxpayer's liability for tax. To make that determination this Court often has to resolve the capital versus income dilemma. It is the very nature of the deal at issue, presumably represented by the words of the contract; but often those words are inexact and, indeed, the Parties may have chosen them mistakenly, inappropriately, poorly, at times even misleadingly and often without due thought to the tax implications.¹⁰

[39] I am bound by the parol evidence rule in my analysis. My interpretation of the contracts in issue must focus on the words of the contract. Yet the Supreme Court of Canada has recognized that the surrounding circumstances concerning the entering of the contract may add clarity and assistance in interpreting the intentions of the parties.

While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement (*Hayes Forest Services*, at para. 14; and *Hall*, at p. 30). The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract (*Hall*, at pp. 15 and 30-32). While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement (*Glaswegian Enterprises Inc. v. B.C. Tel Mobility Cellular Inc.* (1997), 1997 CanLII 4085 (BC CA), 101 B.C.A.C. 62).¹¹

[40] As set out above, the application of the parol evidence rule is not absolute. Courts often must decide whether specific extrinsic evidence is admissible in

⁹ *Anand v The Queen*, 2019 TCC 119 [*Anand*] at para 29, citing G.H.L. Fridman, *The Law of Contract in Canada*, 6th ed (Toronto: Carswell, 2011 at 440; and *United Brotherhood of Carpenters and Joiners of America, Local 579 v Bradco Construction Ltd*, [1993] 2 SCR 316.

¹⁰ *Henco Industries Limited v The Queen*, 2014 TCC 192 [*Henco*] at para 89.

¹¹ *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at para 57.

interpreting a contract. Contract ambiguities that the court must wrestle with may arise from either latent or patent defects in the contract.¹²

[41] Both the Appellant and Respondent were able to extract terms and phrases from the two contracts in issue that supported their income versus capital arguments.

[42] The Respondent maintains that the two contracts in issue are clear in their meaning, that they support the assessment in that the Payment was a capital transaction, and that no use of the surrounding circumstances should be considered in determining the purpose of the Payment made by Ventures to AMCNJ. In making this argument the Respondent cited various cases for the proposition that form matters and that the tax consequences must follow the legal form of the transaction¹³.

[43] I find that the Respondent was somewhat inconsistent in this argument. At paragraph 19 of their written submissions, the Respondent takes issue with the form of the contract and argues that the Court should interpret it differently than it is written:

19. In addition, the Federal Court of Appeal recently reaffirmed that in determining the legal rights and obligations arising from a transaction, the court should not be blinded by the formal description or nomenclature used by the parties, but rather find the legal substance of the agreement, its true legal effects and the true legal relationships formed.³³ The Respondent submits that the same can be said when two non-arm's length parties employ a certain wording or drafting structure to attempt to portray as multiple transactions what in reality has the legal substance of a single transaction.

[44] Also, at paragraph 27 of the Respondent's written submissions, uncertainties in the contract are further identified:

27. ...While the Asset Transfer Agreement provides that AMCNJ will assume "a portion" of the Assumed Liabilities in consideration for the Transferred Assets, no

¹² Justice Hogan in *Anand* at paragraph 31 provided the following analysis of latent and patent defects: "The parol evidence rule is not an absolute rule, as extrinsic evidence can be considered in order to dispel ambiguities. Ambiguities may be *patent* or *latent*. A *patent* ambiguity refers to ambiguity that occurs within the contract itself, specifically when a provision or the wording chosen in the contract are capable of having more than one reasonable interpretation. *Latent* ambiguity, on the other hand, arises where the ambiguity is not apparent within the contract itself, but becomes apparent when the surrounding circumstances or factual matrix are considered. [footnotes omitted]"

¹³ See *Shell Canada Ltd v Canada*, [1999] 3 SCR 622, and *Bronfman Trust v The Queen*, [1987] 1 SCR 32.

agreement was made as to what specific liabilities were contained in that portion. 36 Was AMCNJ assuming a portion of the rent to the Interchange landlord or to the Kennedy Commons landlord? Or was it assuming other liabilities of AMC Canada? The lack of specificity as to what the “portion” represents is consistent with the fact that the transfer of assets and liabilities could only occur as a single transaction where AMCNJ assumed all liabilities. Only when the Asset Transfer Agreement is considered to be a single transaction can the liabilities assumed by AMCNJ under the contract be ascertained.

[45] The Respondent requests that I find the Asset Transfer Agreement be interpreted as containing a single transaction, despite the wording of the agreement (see clauses 2.3 and 2.4 of the Asset Transfer Agreement which describe both a Purchase price and a payment for remaining liabilities as components of the agreement). Pursuant to their interpretation the Payment by Ventures should be viewed as a component part of the proceeds of disposition for Ventures. For reasons set out below, I do not accept this interpretation. But I do find that surrounding circumstances should be considered in interpreting the Asset Transfer Agreement.

[46] Further complicating matters is that the Asset Transfer Agreement described the Discontinued Theatres as “going concerns”. This seems to support the Respondent’s position that two active theatres were sold to AMCNJ, a capital transaction, presumably creating a continuing source of income for AMCNJ.

[47] In my analysis of the contracts and the surrounding circumstances, I find that the phrase “going concern” must be interpreted with the aid of the surrounding circumstances. The Discontinued Theatres were still in operation when transferred by Ventures, but upon transfer to AMCNJ, they were intended to be closed as soon as possible in the most cost-efficient manner, nothing more.

[48] Furthermore, contrary to the Respondent’s position, I find that the Asset Transfer Agreement deals with two specific transactions. First the purchase price for the Transferred Assets was agreed to be \$689,448 (see clause 2.3). Secondly Ventures agreed to pay an amount in cash to the AMCNJ equal to the fair market value of the “Remaining Liabilities” amounting to \$26,610,551.98 (clause 2.4).

[49] The wording of the Asset Transfer Agreement, in the Definition section 1.1 has defined Assumed Liabilities in a manner that supports the Appellant’s argument that the Payment made by Ventures was to compensate AMCNJ for the future expenses of the Discontinued Theatres.

[50] In this instance, the surrounding circumstances, called into evidence by the Appellant, assists in interpreting the terms of both contracts in issue, helping to determine whether the Payment was a business expense for Ventures, or in the alternative was made on account of capital.

[51] The \$26,610,551.98 was a calculated figure by AMC (prior to the Asset Transfer Agreement) pertaining to the combined business expense obligations of the Discontinued Theatres. During the testimony of John Rainer, he described an internal accounting report prepared by AMC calculating the projected cost to get out of the leases for the Discontinued Theatres¹⁴. The combined cost to do so was calculated to be \$26,610,551.98. This is of course the exact same figure found at paragraph 2.4 of the transfer contract¹⁵.

[52] Other surrounding circumstances that I consider in deciding this matter are:

- i. As of 2012, AMC was not continuing in the theatre business in Canada, neither through Ventures nor through AMCNJ¹⁶;
- ii. Prior to entering the Asset Transfer Agreement, Ventures' priority was to pay directly to the Landlord (for both Discontinued Theatres) an agreed upon amount to satisfy their long-term lease obligations. They were unable to accomplish this¹⁷;
- iii. AMC was a good corporate citizen who wished to ensure their lease obligations were met in Canada, even if they no longer did business in Canada¹⁸;
- iv. No asset was created by the Payment, nor did it create an enduring benefit for Ventures. Furthermore, the Payment was related to the income-earning arrangements of Ventures (i.e. lease payments) and was not related to Ventures' capital structure¹⁹.

¹⁴ Testimony of John Rainer, exhibit A-17.

¹⁵ Transcript from November 12, 2025, page 46, lines 2-11.

¹⁶ Transcript from November 12, 2025, page 45, lines 19-23.

¹⁷ With respect to Kennedy Commons 20, see Transcript from November 12, 2025, page 35, lines 4-14; and page 107, lines 1-8. With respect to Interchange 30, see Transcript from November 12, 2025, page 36, lines 1-4; and page 56, line 22.

¹⁸ Transcript from November 12, 2025, page 51, lines 4-24.

¹⁹ Transcript from November 12, 2025, pages 44-45.

[53] Based upon the wording of the Asset Transfer Agreement (in paragraphs 2.3 and 2.4) as well as the evidence led by the Appellant concerning the surrounding circumstances that preceded Ventures entering both the Share Purchase Agreement and the Asset Transfer Agreement, I find that Ventures paid the \$26,610,551.98 amount to AMCNJ as a part of their ceasing to do business in Canada. The amount paid was to ensure that their upcoming business obligation, in particular upcoming lease expenses for the Discontinued Theatres, would be paid. In prior years, lease payments were made by Ventures in the ordinary operation of its business. Arranging to have AMCNJ pay this amount was part of a series of steps carried out by Ventures to cease all business in Canada as soon as possible. This was properly recorded as a business expense by Ventures in 2012.

[54] I therefore reject the Respondent's argument that the Payment was negative proceeds of disposition for either the sale of the Discontinued Theatres or in the alternative, for the sale of the two Leasehold interests pertaining to the Discontinued Theatres.

Do Negative Proceeds of Disposition exist under the Act?

[55] While I have reached the above conclusion based upon my interpretation of the Share Purchase Agreement and the Asset Transfer Agreement, if necessary, I would also find that negative proceed of disposition do not exist under the Act.

[56] Parliament likely did not intend the concept of "proceeds of disposition," as used in the Act, to take on a negative value.

[57] The definitions found in section 54 of the Act contains an enumerated list of what constitutes "proceeds of disposition." Every item in that list refers to an amount received or receivable. A plain reading of section 54 demonstrates that "proceeds of disposition" generally refers to the sale price or compensation received for property on disposition. It is an amount received or receivable—not a net figure. Therefore, it is inherently positive.²⁰

²⁰ Perhaps the most significant example is paragraph (a), which provides that "proceeds of disposition" includes the sale price of property that has been sold. In *C.R.I. Environnement Inc v Canada*, 2008 FCA 103, Justice Noël (as he was then) rejected the notion of a sale for a "negative price". At paragraphs 2-3, he wrote "The argument that this was a sale for a 'negative price' lacks any legal basis, **since without the monetary consideration, there is no sale**. Even if a law other than Quebec private law applied to some of the transactions carried out by the appellant, the appellant does not explain how this other law could lead to a finding other than that arrived at by

[58] Secondly, s. 40(1) of the Act, which sets out the formula for computing gains and losses, presupposes that “proceeds of disposition” is a positive figure. The structure of the provision makes clear that amounts paid by the vendor in connection with a disposition are properly accounted for as outlays or expenses to be added to the ACB, but only if they were “made or incurred for the purpose of making the disposition.” If Parliament had intended that “proceeds of disposition” could be negative, then the carefully drafted requirement that outlays and expenses meet this statutory test would be undermined. Allowing payments made by a vendor to be treated as negative proceeds would collapse the distinction between proceeds and expenses, contrary to the legislative scheme.

Except as otherwise expressly provided in this Part, a taxpayer’s gain for a taxation year from the disposition of any property is the amount, if any, by which if the property was disposed of in the year, the amount, if any, by which the taxpayer’s proceeds of disposition exceed the total of the adjusted cost base to the taxpayer of the property immediately before the disposition and **any outlays and expenses to the extent that they were made or incurred by the taxpayer for the purpose of making the disposition** ...

a taxpayer’s loss for a taxation year from the disposition of any property is, if the property was disposed of in the year, the amount, if any, by which the total of the adjusted cost base to the taxpayer of the property immediately before the disposition and any outlays and expenses to the extent that **they were made or incurred by the taxpayer for the purpose of making the disposition**, exceeds the taxpayer’s proceeds of disposition of the property ...²¹

[59] Finally, the ordinary meaning of the term “proceeds” reinforces this interpretation. In both legal and ordinary usage, “proceeds” refers to amounts realized or received, not amounts paid out²². To treat an expenditure as “proceeds” is inconsistent with the plain reading of the Act.

the judge of the Tax Court of Canada. To our knowledge, the concept of a ‘negative price’ sale has no more basis in common law than in civil law. [Emphasis added]”.

²¹ Paragraph 40(1)(a)-(b) of the Act

²² According to B.A. Garner, *Black’s Law Dictionary* (12th ed. 2024), the definition of “proceeds” is “[t]he value of land, land, goods, or investments when converted into money; the amount of money received from a sale ... [s]omething received upon selling, exchanging, collecting, or otherwise disposing of collateral. ...”. In the *Oxford English Dictionary*, the term “proceeds” is similarly defined as “[t]hat which proceeds, is derived, or results from something else; that which is obtained or gained by any transaction or process; an outcome; esp. the money obtained from an event, activity, or enterprise”.

[60] For these reasons, it is my view that Parliament likely did not intend “proceeds of disposition” to be negative in value.

[61] While I have concluded that the Payment was properly expensed by Ventures in 2012, I do think it is necessary to respond to the other arguments put forth by the Respondent. Given my findings, I will not comment on the eligible capital expenditure issue.

Respondent’s other arguments in support of the assessing position that the Payment was part of a capital transaction²³

[62] Does the fact that Cineplex had required, in the Share Purchase Agreement (see paragraph 35 above), Ventures to dispose of the two Discontinued Theatres, make the Payment a capital transaction?

[63] The Respondent argues that the sole purpose of the Payment by Ventures was to enable the closing of a capital transaction that benefited Ventures’ parent corporation, specifically, the sale of Ventures to Cineplex.

[64] Cineplex’s acquisition of Ventures shares was clearly a capital transaction. Yet this does not convert the Payment made by Ventures to AMCNJ into something other than a business expense.

[65] The analysis of former Chief Justice Bowman in *Shoppers Drug Mart* is helpful on this issue. The case is described in the Appellant’s factum at paragraph 153:

Shoppers Drug Mart (“SDM”) was a wholly-owned subsidiary of Imasco. Certain of its employees were granted options by SDM to acquire Imasco shares. As part of the takeover of Imasco by British-American Tobacco (“BAT”), SDM employees were paid by Imasco as consideration for cancelling their options under Imasco’s stock option plans. SDM reimbursed Imasco for such payments and deducted the reimbursements in computing its income. The Tax Court of Canada allowed the appeal from the Minister’s disallowance. Bowman C.J. held

22. I start from the premise that in the ordinary course a payment made by an employer to an employee for the surrender of his or her option under a

²³ In their Reply, the Respondent took the position that Ventures, in disposing of the Discontinued Theatres, disposed of two distinct businesses (paragraph 21). In closing submissions, the Respondent abandoned that specific argument, acknowledging the Ventures disposed of two component parts of its overall business. I will therefore not consider this issue.

stock option plan to acquire shares of the company is a deductible expense to the company. This conclusion is not based on any specific provision of the *Income Tax Act*. It is simply part of employee compensation and is therefore a cost of doing business under section 9.

23. Why then does a payment to employees who are option holders become a capital expense just because it is made in the course of a corporate reorganization of the parent company? The short answer is that it does not. The business of SDM continued throughout the reorganization of the Imasco corporate structure. SDM, as a separate corporate entity, was not being reorganized. It had payrolls to meet and expenses to pay. It may possibly be that the reason for accelerating the vesting of the stock options was to enable as many employees as possible either to exercise their options or surrender them so that BAT could achieve its goal of obtaining all outstanding shares of Imasco. This does not turn the payment of what is patently a revenue expense into a capital expense.²⁴

[66] Prior to June 2012 there is no dispute that the lease payments made by Ventures for the Discontinued Theatres were business expenses. Just as concluded above, I do not find that the lease payments had been converted into capital payments as a result of being made during a share sale. I therefore reject the Respondent's argument on this issue.²⁵

Is the Payment an expense under s. 9(1) or denied under s. 18(1)(a)?

[67] The Respondent submits that even if I do not agree that the Payment was capital in nature, the amount was not an expense paid to earn income.

[68] As the Respondent correctly points out, the Discontinued Theatres, because of the series of transactions described above, were not going to earn income for Ventures after June 2012.

[69] The Payment was a specific "commutation payment" made to eliminate or reduce a future ongoing expense of a current nature for Ventures.

²⁴ Appellant's Book of Authorities, volume 2, tab 33, citing *Imperial Tobacco Canada Ltd (Shoppers Drug Mart) v The Queen*, 2007 TCC 636 [*Shoppers Drug Mart*] at paras 22-23.

²⁵ This matter is complicated by the fact that Ventures paid their ongoing lease obligations for the Discontinued Theatres, in a lump sum, to AMCNJ as opposed to the lessors. Yet I still find this payment is a revenue expense. I rely upon my analysis in paragraph 72 below in coming to this conclusion.

[70] I accept that Ventures made the Payment to AMCNJ to pay for the upcoming costs of the Discontinued Theatres. Ventures was contractually obliged to pay the expenses whether the theatres were in operation or not. The Payment to AMCNJ was compensation for business expenses Ventures was obliged to pay.

[71] I accept the Appellant's description of the Payment as being "made to compensate New Jersey for taking on the future costs of terminating Ventures' operations at the Discontinued Theatres."

[72] In doing so, I refer to and adopt the words of Justice Boyle in the *Langille* decision:

As a general rule, there is no reason that business shutdown or termination expenses incurred post-closure of operations cease to be deductible business expenses in ordinary commercial and business-like circumstances. If it were otherwise, Canadian businesses, whether manufacturers, mills, mines or otherwise, would be denied recognition of a potentially significant portion of the expenses associated with their taxable revenues. That would not be right and there are no express provisions of the *Income Tax Act* which would require it as a general principle. While no evidence was received on this point, I doubt very much that it would be in accordance with ordinary commercial principles or with Canadian generally accepted accounting principles.²⁶

[73] I also find the comments of Justice Boccock in the *Tournier* decision helpful. That matter dealt with expenses (insurance expenses and storage expenses) incurred by a lawyer long after her practice had wrapped up. The expenses paid were not going to lead to future income. Despite this fact, the Tax Court found that the expenses should be allowed to be deducted from income.

Both the past accrual of future record keeping services, the file storage, and the need to protect presently her insurance coverage for past legal services all represent the enduring and current provision of legal services ("continuing services") beyond the temporal period in which the income was received: the year in which it was otherwise earned and recorded. Put another way, the continuing services provided by Ms. Tournier in 2015 were referable and connected to the income earned in previous years. This is consistent with the notion of unavoidable expenses

²⁶ *Langille v The Queen*, 2009 TCC 398 at para 14.

necessarily expended in future years referable to previous income contemplated in the cases of *Poulin*, *Raegele* and *Langille*²⁷.

[74] While it is agreed that the Payment would not lead to future income, it was paid for lease obligations beyond the temporal period in which the income was received by Ventures, that is pre-June 2012.

[75] Although I typically put little to no weight on what is said in IT bulletins, I do take some solace that the relevant bulletin supports my conclusion:

Paragraph 15 of IT-359R2 states succinctly:

15. An amount a tenant pays to cancel a lease or sublease is deductible by the tenant in computing income from a business or property provided the rent is so deductible.²⁸

Symmetry

[76] The Appellant argues that if they are successful, then symmetry will exist. That is, Ventures will have deducted \$26,610,551.98 in 2012 as an expense, and AMCNJ will have claimed this amount as income.

[77] As a general principle, I would not say that symmetry and fairness must exist. The Appellant's argument is not that it must exist, but that it is to be preferred over "an interpretation that promotes neither".

[78] The Supreme Court of Canada described the symmetry and fairness principle as follows:

41. The approach advanced by the Minister would lead to asymmetry between the vendor's proceeds of disposition and the purchaser's adjusted cost base at the time a forest tenure is acquired. The Minister's position is that the purchaser's adjusted cost base upon acquiring a forest tenure does not include the estimated reforestation obligations assumed. Notwithstanding that, the Minister would have the vendor's proceeds of disposition include the amount paid to the vendor plus an additional amount for the estimated future reforestation obligations assumed by the purchaser.

²⁷ *Tournier v The Queen*, 2018 TCC 229 at para 12. See also *Génier v The Queen*, 2010 TCC 641 at para 29; and *Poulin v The Queen*, 96 DTC 6477 (FCA) [*Poulin*] at para 7. Note that in *Poulin*, the expense was disallowed for other reasons.

²⁸ Canada Revenue Agency, Interpretation Bulletin IT-359R2, "Premiums and Other Amounts with Respect to Leases" (20 December 1983). I do acknowledge the bulletin presumes the payment is to the landlord.

The effect would be to tax the vendor as if the reforestation obligations assumed by the purchaser were part of the sale price, but to tax the purchaser as if the reforestation obligations it assumed were not part of the sale price; see P. W. Hogg, J. E. Magee and J. Li, *Principles of Canadian Income Tax Law* (7th ed. 2010), at p. 322, which explains that a taxpayer's adjusted cost base generally 39 - 1402-6365-0329 includes the purchase price of the property, as well as any expenses or fees required to associated with the acquisition of the property.

42 Counsel for the Minister acknowledged this asymmetry at the oral hearing. Under the Minister's approach, the sale of the High Level Division to Tolko would have resulted in taxable proceeds of \$31 million for DMI (\$20 million received plus \$11 million in assumed reforestation obligations). However, Tolko's adjusted cost base would be \$20 million (just the amount paid). The Minister's asymmetrical approach means that if Tolko sold the forest tenure to a new purchaser the very next day, Tolko would be assessed taxable proceeds of \$31 million (the amount received plus the assumption of the future reforestation costs). That is, Tolko would be assessed \$11 million of taxable income, despite in no way receiving such additional income.

43 The conclusion I have reached—that a purchaser's assumption of reforestation obligations does not form part of the vendor's proceeds of disposition—avoids this asymmetry. Although not dispositive, as Mainville J.A. recognized in his dissent, an interpretation of the Act that promotes symmetry and fairness through a harmonious taxation scheme is to be preferred over an interpretation which promotes neither value.²⁹

[79] As stated above, while symmetry is not dispositive, it is a desirable result.

[80] For the reasons set out above, I allow the appeal and find that the Payment made by Ventures in 2012 was a current expense. The Appellant is allowed the deduction of \$26,510,522 of non-capital losses previously denied by the Minister. The Appellant is also entitled to costs.

Signed this 15th day of January 2026.

“R. MacPhee”

MacPhee J.

²⁹ *Daishowa-Marubeni International Ltd v Canada*, 2013 SCC 29 at paras 41-43.

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