

## Erickson v The Queen, 2012 TCC 398

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### CCA - Application of Half Year Rule When Property Acquired in Year 1 Only Becomes Available for Use in Year 2.

*Erickson v The Queen*, [2012 TCC 398](#)

At issue was whether the taxpayer could claim full CCA in the first taxation year that a fishing boat became available for use when the boat was purchased in the preceding taxation year.

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The Court held that one exception to the half-year rule for CCA is where the property was deemed to have become available for use pursuant to either of paragraph 13(27)(b) or 13(28)(c) - the two-year rule. In this case, the board was available for use in the first taxation year and was not deemed to have become available in the second year after purchase, as such the half-year rule applied.

### FACTS

The Taxpayer purchased a fishing boat in 2005, but the boat was not available for use until 2006. He claimed that the 50% rule didn't apply. The MNR reassessed on the basis that the half-year rule did apply.

### ANALYSIS

The Taxpayer was replying on a CRA publication. In the publication it stated that;

. . . The half-year rule does not apply when the available for use rules . . . denies [*sic*] a CCA claim until the second tax year after the year you acquire the property

The Minister argued that this passage doesn't help the taxpayer because his CCA claim was deferred until 2006, which is the first taxation year following the acquisition and not the second taxation year following the acquisition.

The TCC noted that the half-year rule is implemented by subsections 1100(2) and (2.4) of the Regulations, the former which reads:

## Property Acquired in the Year

1100 (2) The amount that a taxpayer may deduct for a taxation year under subsection (1) in respect of property of a class in Schedule II is to be determined as if the undepreciated capital cost to the taxpayer at the end of the taxation year (before making any deduction under subsection (1) for the taxation year) of property of the class were reduced by an amount equal to 50 percent of the amount, if any, by which

(a) the total of all amounts, each of which is an amount added

(i) because of element A in the definition “undepreciated capital cost” in subsection 13(21) of the Act in respect of property that was acquired in the year or that became available for use by the taxpayer in the year, or

(ii) because of element C or D in the definition “undepreciated capital cost” in subsection 13(21) of the Act in respect of an amount that was repaid in the year,

to the undepreciated capital cost to the taxpayer of property of a class in Schedule II, **other than**

(iii) property included in paragraph 1(v), in paragraph (w) of Class 10 or in any of paragraphs (a) to (c), (e) to (i), (k), (l) and (p) to (s) of Class 12,

(iv) property included in any of Classes 13, 14, 15, 23, 24, 27, 29, 34 and 52,

(v) where the taxpayer was a corporation described in subsection (16) throughout the year, property that was specified leasing property of the taxpayer at that time,

(vi) property that was deemed to have been acquired by the taxpayer in preceding taxation year by reason of the application of paragraph 16.1(1)(b) of the Act in respect of a lease to which the property was subject immediately before the time at which the taxpayer last acquired the property, and

(vii) property considered to have become available for use by the taxpayer in the year by reason of paragraph 13(27)(b) or 28(c) of the Act

### **exceeds**

(b) the total of all amounts, each of which is an amount deducted from the undepreciated capital cost to the taxpayer of property of the class

(i) because of element F or G in the definition “undepreciated capital cost” in subsection 13(21) of the Act in respect of property disposed of in the year, or

(ii) because of element J in the definition “undepreciated capital cost” in subsection 13(21) of the Act in respect of an amount the taxpayer received or was entitled to

receive in the year.

[Emphasis added.]

The Court noted that the 50% rule doesn't apply to property that is deemed to have become "available for use" by reason of paragraphs 13(27)(b) or 28(c) of the ITA (deem property to become available for use in the second year following the acquisition).

The Court concluded that the appellant was entitled to claim CCA starting in 2006, which is the first year of the acquisition of the fishing boat, and the half-year rule does apply in the 2006 year.

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