

Federal Court



Cour fédérale

Date: 20180207

Docket: T-1407-16

Citation: 2018 FC 141

Toronto, Ontario, February 7, 2018

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

COLIN MORRISON

Applicant

and

**CRA AND ATTORNEY GENERAL OF
CANADA**

Respondents

JUDGMENT AND REASONS

[1] The present Application concerns a second level review decision made by a Delegate of the Minister of National Revenue, dated July 22, 2016, wherein the Applicant's request for relief from penalties and interest under s. 220(3.1) of the *Income Tax Act*, RSC, 1985, c 1 (5th Supp.) (*ITA*) was rejected. A Taxpayer Relief Officer (Officer) of the Canada Revenue Agency (CRA) analysed the evidence presented on the application and made a recommendation to the Minister's Delegate. In reaching the decision under review the Minister's Delegate relied on the

recommendation. Therefore the recommendation requires analysis to determine whether the decision is reasonable.

[2] The Applicant's accountant prepared and filed the Applicant's tax return for the 2014 taxation year. The CRA acting on behalf of the Minister, noted that the Applicant failed to report T4 income in the amount of \$47,770 on his 2014 tax return. Based on this omission, the Minister assessed a penalty pursuant to s. 163(1) of the *ITA* in the amount of 10% of the unreported amount.

[3] Critical evidence was tendered on January 4, 2016 for a first level request to the Minister to exercise discretion pursuant to subsection 220(3.1) of the *ITA* to cancel the applied penalty and waive outstanding interest. In the *Request for Taxpayer Relief* form, the Applicant made the following request:

I had a new accountant who took over this year and he failed to include the T4 in the tax return, and I had no idea that it was not included in the return, and I would not have knowingly left it out.

(Respondent's Record, p. 11)

[4] In addition, the Applicant's accountant accepted responsibility for the error:

[...] I am the one who did the tax return for the individual and being the first year of the return I thought I had included everything in the return when it was done, and the client did not know at the time that it was not included, and somehow I missed this T4. I am taking full responsibility and do not want the client punished for my error, even though it is the client's responsibility, they had full trust that I included everything in the return and I thought I had. I would like some leancy [*sic*] here as the client will pay the amount of the debt off that is owed, but I would ask that the penalties be waived knowing this information.

(Respondent's Record, p. 12)

[5] A rejection was delivered on the first level review.

[6] The Applicant's accountant submitted a request for a second level review on April 28, 2016:

We disagree with the first review for a number of reasons, mainly the client is being punished because the amount of penalties and interest in this case are quite severely larger than it would normally be because of the nature of the T4 amounts. If this was a T3 from three years ago that was left out then the penalties and interest would be severely less but because it was a larger amount the amount that is being penalized is based on those amounts, which we consider unfair. My client has always done the returns on time and has paid any amounts owing forthwith on time with no issues. Furthermore with the amount that are currently outstanding the client has already made arrangements with the CRA to pay those amounts back. Furthermore this will put a financial strain on the client which was unintended to begin with.

I would ask that you reconsider the decision that was made and look at the history that the client has always been on time paying their taxes and has done so before the deadline each year. These circumstances were beyond the control of the tax payer, and even if the tax payer had the opportunity to review the return, he would not have realized the error, because he would not have understood the complexities of the return, as this is not just a T4 situation but also a business with many credits and expenses and fluctuations in income to not have known [*sic*].

Also I would like you to consider the fact the CRA recognizes the issues in this and have created an import [*sic*] CRA information tool, just to combat this ongoing problem, which I think is in the right direction that the CRA is doing. So again I would ask to reconsider this decision.

(Respondent's Record, p. 29)

[7] In assessing taxpayer relief pursuant to s. 220(3.1) of the *ITA*, the CRA's Income Tax Information Circular, No. IC07-1R1, provides administrative guidelines for when the Minister

may exercise discretion and grant relief. The Guidelines are comprehensive. With respect to the present request for relief, the following elements are relevant:

Circumstances that may warrant relief from penalties and interest

23. The minister of national revenue may grant relief from penalties and interest where the following types of situations exist and justify a taxpayer's inability to satisfy a tax obligation or requirement:

- a) extraordinary circumstances;
- b) actions of the CRA;
- c) inability to pay or financial hardship.

[...]

Factors used in arriving at the decision

33. Where circumstances beyond a taxpayer's control, actions of the CRA, inability to pay, or financial hardship has prevented the taxpayer from complying with the act, the following factors will be considered when determining if the minister's delegate will cancel or waive penalties and interest:

- a) whether the taxpayer has a history of compliance with tax obligations;
- b) whether the taxpayer has knowingly allowed a balance to exist on which arrears interest has accrued;
- c) whether the taxpayer has exercised a reasonable amount of care and has not been negligent or careless in conducting their affairs under the self-assessment system;
- d) whether the taxpayer has acted quickly to remedy any delay or omission.

[Emphasis added]

[8] The Officer who conducted the second level review made the following key finding:

In addition, our records show that the amount omitted for the 2014 tax year represents a large amount of his employment earnings. Since he remitted the slip information to his accountant, he was aware of this income. Consequently, this fact does not allow me to conclude that he was prevented from ensuring that all income from all his slips were reported and that he did not notice this important discrepancy in his income.

[Emphasis added]

(Respondent's Record, p. 36)

[9] Thus, the focus of the Officer's decision was on the Applicant's responsibility to exercise care to ensure that all income was reported, and to supply evidence that he was prevented from doing so. Because the Applicant could not establish that he was prevented from meeting his obligation, the Officer denied the Applicant's request for relief.

[10] I find that the Officer's decision is well supported by the evidence presented, and accordingly, I find that the decision is reasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that the present Application is dismissed.

I make no award of costs.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1407-16

STYLE OF CAUSE: COLIN MORRISON v CRA AND ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 6, 2018

JUDGMENT AND REASONS: CAMPBELL J.

DATED: FEBRUARY 7, 2018

APPEARANCES:

Colin Morrison

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Sebastien Budd

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Attorney General of Canada

FOR THE RESPONDENTS