

Date: 20060222

Docket: A-685-04

Citation: 2006 FCA 83

**CORAM: RICHARD C.J.
LÉTOURNEAU J.A.
SEXTON J.A.**

BETWEEN:

MARK W. BORMANN

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Ottawa, Ontario, on February 21, 2006.

Judgment delivered at Ottawa, Ontario, on February 22, 2006.

REASONS FOR JUDGMENT OF THE COURT BY:

SEXTON J.A.

CONCURRED IN BY:

RICHARD C.J.
LÉTOURNEAU J.A.

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REASONS FOR JUDGMENT

SEXTON J.A.

[1] The appellant appeals from a decision of the Tax Court, which quashed his appeals from assessments for the 1992 to 1998, and the 2001 and 2002 taxation years (Docket: 2004-1150(IT)G).

[2] The appellant did not file valid Notices of Objection to the respective Notices of Assessment for the 1992 to 1998 tax years nor did he apply to the Minister for an extension of time for serving Notices of Objection. The relevant sections of the *Income Tax Act* are:

166.1. (1) Where no notice of objection to an assessment has been served under section 165, nor any request under subsection 245(6) made, within the time limited by those provisions for doing so, the taxpayer may apply to the Minister to extend the time for serving the notice of objection or making the request.

166.1. (1) Le contribuable qui n'a pas signifié d'avis d'opposition à une cotisation en application de l'article 165 ni présenté de requête en application du paragraphe 245(6) dans le délai imparti peut demander au ministre de proroger le délai pour signifier l'avis ou présenter la requête.

169. (1) Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied after either

169. (1) Lorsqu'un contribuable a signifié un avis d'opposition à une cotisation, prévu à l'article 165, il peut interjeter appel auprès de la Cour canadienne de l'impôt pour faire annuler ou modifier la cotisation:

(a) the Minister has confirmed the assessment or reassessed, or

a) après que le ministre a ratifié la cotisation ou procédé à une nouvelle cotisation;

(b) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed,

b) après l'expiration des 90 jours qui suivent la signification de l'avis d'opposition sans que le ministre ait notifié au contribuable le fait qu'il a annulé ou ratifié la cotisation ou procédé à une nouvelle cotisation;

but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

toutefois, nul appel prévu au présent article ne peut être interjeté après l'expiration des 90 jours qui suivent la date où avis a été expédié par la poste au contribuable, en vertu de l'article 165, portant que le ministre a ratifié la cotisation ou procédé à une nouvelle cotisation.

[3] Section 169(1) of the *Income Tax Act* obliges a taxpayer to serve Notice of Objection in order to appeal an assessment. In other words, service of a Notice is a condition precedent to the institution of an appeal.

[4] As mentioned, the appellant did not serve a Notice of Objection nor is there evidence that the appellant made an application to the Ministry to extend the time to file a Notice of Objection.

[5] Once it is clear that no application for an extension of time was made, the law is clear that there is no jurisdiction in the Tax Court to further extend the time for equitable reasons.

Minuteman Press of Canada Company Limited v. M.N.R., 88 D.T.C. 6278, (F.C.A.).

[6] As a result, there is no basis upon which it can be said that the Tax Court Judge erred in quashing the appellant's appeals for the 1992 to 1998 taxation years.

[7] During the 2001 and 2002 tax year, there was no federal tax, interest or penalty assessed for those years against the appellant. As such, the assessments for the 2001 and 2002 tax years were nil assessments.

[8] The jurisprudence is clear that a tax payer can neither object to nor appeal from a nil assessment.

The Queen v. Consumers' Gas Co., 87 D.T.C. 5008 (F.C.A.)
The Queen v. Bowater Mersey Paper Co. Ltd., 87 D.T.C. 5382 (F.C.A.)

[9] There is thus no basis for disturbing the findings of the Tax Court that the appeals for the 2001 and 2002 years should be quashed.

[10] The appeal should be dismissed without costs.

“J. Edgar Sexton”

J.A.

“I agree
J. Richard C.J.”.

“I agree
Gilles Létourneau J.A.”.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-685-04

APPEAL FROM AN ORDER OF THE TAX COURT DATED SEPTEMBER 17, 2004

STYLE OF CAUSE: Mark W. Bormann v. Her Majesty
the Queen

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: February 21, 2006

REASONS FOR JUDGMENT BY: SEXTON J.A.

CONCURRED IN BY: RICHARD C.J.
LETOURNEAU J.A.

DATED: February 22, 2006

APPEARANCES:

Mr. Mark W. Bormann FOR THE APPELLANT

Mr. Steven Leckie FOR THE RESPONDENT

SOLICITORS OF RECORD:

Self-represented FOR THE APPELLANT
Renfrew, Ontario

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Ottawa, Ontario