

Docket: 2006-3094(IT)I

BETWEEN:

CLARK M. STODDARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 25, 2007, at Yarmouth, Nova Scotia.

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Lindsay Holland

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2005 taxation year is dismissed.

Signed at Halifax, Nova Scotia, this 27th day of June 2007.

“Wyman W. Webb”

Webb J.

Citation: 2007TCC380
Date: 20070627
Docket: 2006-3094(IT)I

BETWEEN:

CLARK M. STODDARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb J.

[1] The Appellant was injured in 1974. In 2005 the Workers' Compensation Board of Nova Scotia rendered a decision entitled "Extended Earnings Replacement Benefit Decision" which provided in part as follows:

The worker will receive a Retroactive Extended Earnings Replacement Benefit payment of \$101,417.24. This Retroactive payment will cover the period of time from February 1, 1996 to September 1, 2001, when the worker had attained the age of 65 years.

[2] The total amount that the Appellant received from the Workers' Compensation Board in 2005 was \$113,089.36 (which included the \$101,417.24 referred to above).

[3] As a result of receiving this large lump sum payment in one year from the Workers' Compensation Board, the Appellant was required to repay the Old Age Security benefits that he had received in that year. The Appellant appealed on the basis that he should not be required to repay the Old Age Security that he received in 2005 because the Workers' Compensation payments related to earlier years and in particular, as noted in the decision of the Workers' Compensation Board, to the period from February 1, 1996 to September 1, 2001.

[4] Unfortunately for the Appellant the repayment of Old Age Security benefits is based on the Appellant's income for the particular year in question, not his taxable income. The requirement to repay Old Age Security benefits is contained in part in I.2 of the *Income Tax Act* ("Act"). Subsection 180.2(2) provides the requirement to repay all or a portion of the Old Age Security benefits received based on the formula as set out in that subsection. The determination of the amount to be repaid is based on the individual's adjusted income for the year. Adjusted income is defined in subsection 180.2(1) of the *Act* as meaning an individual's income under Part I for the year, subject to certain adjustments, none of which is applicable in this case.

[5] Paragraph 56(1)(v) requires the Appellant to include in his income the amount received from the Workers' Compensation Board. This paragraph provides as follows:

56(1) Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,

...

(v) compensation received under an employees' or workers' compensation law of Canada or a province in respect of an injury, a disability or death;

[6] Therefore this paragraph clearly provides that the amount, when received from the Workers' Compensation Board, was to be included in determining the Appellant's income. It is not based on when the amounts were receivable or the years to which the amount relates but only on the year in which the amount was actually received.

[7] The Appellant was entitled to a deduction in computing his taxable income under paragraph 110(1)(f) for the amount received from the Workers' Compensation Board and hence the Appellant was not required to pay any income tax on the amount. Unfortunately for the Appellant though, the amount that is used to determine the amount, if any, of the Old Age Security Benefits that should be repaid, is based on the income of the Appellant and not the taxable income of the Appellant.

[8] Therefore even though the lump sum amount received in 2005 related to a number of years that were before 2005, because the amount was not received until 2005, the amount was not included in the income of the Appellant until 2005, and hence he is required to repay the Old Age Security benefits received in 2005.

[9] As Paris J. stated in *Fenner v. The Queen*, [2006] 4 C.T.C. 2399, 2006 DTC 3222:

[t]his Court has consistently found that lump sum retroactive awards of Workmen's Compensation benefits are required to be included in an individual's income for the purposes of calculating Part I.2 tax.

[10] As a result the appeal is dismissed.

Signed at Halifax, Nova Scotia, this 27th day of June 2007.

“Wyman W. Webb”

Webb J.

CITATION: 2007TCC380
COURT FILE NO.: 2006-3094(IT)I
STYLE OF CAUSE: CLARK M. STODDARD AND HER
MAJESTY THE QUEEN
PLACE OF HEARING: Yarmouth, Nova Scotia
DATE OF HEARING: June 25, 2007
REASONS FOR JUDGMENT BY: The Honourable Justice Wyman W. Webb
DATE OF JUDGMENT: June 27, 2007

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Lindsay Holland

COUNSEL OF RECORD:

For the Appellant:

Name:
Firm:

For the Respondent:

John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada