

Docket: 2010-905(IT)I

BETWEEN:

SVEINN S. SVEINSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on December 2, 2010 at Winnipeg, Manitoba

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Dhara Drew

JUDGMENT

The appeal with respect to an assessment made under the *Income Tax Act* for the 2008 taxation year is dismissed.

Signed at Toronto, Ontario this 20th day of January 2011.

“J. M. Woods”

Woods J.

Citation: 2011 TCC 34
Date: 20110120
Docket: 2010-905(IT)I

BETWEEN:

SVEINN S. SVEINSON,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] The appellant, Sveinn Sveinsson, has been reassessed to reduce his entitlement to the age credit under subsection 118(2) of the *Income Tax Act*. The relevant taxation year is 2008.

[2] The calculation of the age credit takes into account a taxpayer's income for the year. The question in this case is whether a lump sum amount received by the appellant under workers' compensation legislation is included in income for this purpose.

[3] The relevant background is this.

[4] The appellant was a long-time employee of Corrections Canada before his retirement in 2001.

[5] Beginning in 1984, the appellant was involved in several violent incidents involving inmates at the prison where he worked. This caused severe symptoms of stress, and for the next 24 years the appellant attempted to obtain redress for the situation.

[6] Ultimately, the appellant was diagnosed with post-traumatic stress disorder, and this was determined to have resulted from the incidents in the prison. Being entitled to workers' compensation, the appellant received a cheque from the Workers' Compensation Board of Manitoba in the amount of \$35,036.74 in mid-December 2008. Part of this amount represented payment in lieu of future payments.

[7] In accordance with the legislative scheme for taxing workers' compensation benefits, the Minister of National Revenue included the workers' compensation payment in the appellant's income, and allowed a deduction for an equivalent amount in computing taxable income. The Minister also considered the amount as income for purposes of the age credit, and the credit was reduced from \$5,276 to \$305.

[8] The scheme of the relevant legislation was described in detail by Little J. in *Nicholas v. The Queen*, 2003 TCC 189, [2003] 3 CTC 2429. The appellant does not take issue with this description, and in particular he does not dispute that the age credit is reduced if the workers' compensation payment is income.

[9] In the appellant's original notice of appeal, relief was sought essentially on grounds of fairness. He stated:

It is strange that although Workers Compensation is allegedly tax free, It [sic] has cost me \$1,379.34 in taxes. It is really sad that those who do need a little extra, like senior citizens for example, who receive an extra exemption, but are then penalized in this manner.

[10] This argument was not pursued at the hearing, and in any event it would not have been possible to grant relief on this basis.

[11] A second argument was raised by the appellant in an amendment to the notice of appeal. The basis for the argument is the following comment in the 2008 General Income Tax and Benefit Guide (the "Guide"), at p. 13:

Amounts that are not taxed

You do not have to include certain amounts in your income, including the following

[...]

- compensation received from a province or territory if you were a victim of a criminal act or a motor vehicle accident;

[12] The above statement by the Canada Revenue Agency appears to provide some

support for the appellant's position. The appellant led a significant amount of evidence at the hearing to establish that he was the victim of criminal acts and that those acts directly led to his illness and resulted in compensation from the Workers' Compensation Board.

[13] The difficulty with the appellant's position is that statements by the Canada Revenue Agency are not legislation and they cannot be applied by this Court if they are not supported by actual legislative provisions.

[14] I would also comment that the Guide is published in order to provide general assistance to taxpayers. It does not purport to describe the legislative provisions in detail.

[15] The provisions that are relevant in this case are s. 81(1)(q) of the *Income Tax Act*, s. 6501(c)(i) of the *Income Tax Regulations*, and s. 6(1) of *The Criminal Injuries Compensation Act (Manitoba)*, 1970. The provisions are reproduced below:

81(1) There shall not be included in computing the income of a taxpayer for a taxation year,

[...]

(q) an amount paid to an individual as an indemnity under a prescribed provision of the law of a province;

6501. For the purposes of paragraph 81(1)(q) of the Act, "prescribed provision of the law of a province" means

[...]

(c) in respect of the Province of Manitoba

(i) subsection 6(1) of *The Criminal Injuries Compensation Act*, S.M. 1970, c. 56, [...]

6(1) Where a person is injured or killed and the injury or death

(a) was caused by any act or omission of another person that occurred in Manitoba and is within the description of any of the criminal offences set out in Schedule 1; or

(b) resulted to the person while he was endeavouring to

(i) arrest any person or preserve the peace, or

(ii) assist a peace officer in carrying out his duties with respect to

law enforcement, in Manitoba;

the board may upon receipt of an application in writing and after a hearing make an order in accordance with this Act for the payment of compensation

(c) to or for the benefit of the injured person;

(d) to a person, in respect of pecuniary loss suffered or expenses incurred by the person, as the result of an injury to a victim where the maintenance of the victim is the responsibility of the person; or

(e) to any one or more of the dependants of a victim.

[16] The lump sum payment received in this case does not qualify for exemption under the above provisions because the payment was made pursuant to workers' compensation legislation and not legislation specifically aimed at criminal injuries.

[17] The relevant provision with respect to the payment made to the appellant is paragraph 56(1)(v) of the *Income Tax Act*. It clearly provides that workers' compensation payments must be included in income. It reads:

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;

[18] Since the relevant legislation clearly provides that the amount at issue must be included in income, I must regretfully dismiss the appeal.

Signed at Toronto, Ontario this 20th day of January 2011.

“J. M. Woods”

Woods J.

CITATION: 2011 TCC 34

COURT FILE NO.: 2010-905(IT)I

STYLE OF CAUSE: SVEINN S. SVEINSON and HER
MAJESTY THE QUEEN

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: December 2, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice J. M. Woods

DATE OF JUDGMENT: January 20, 2011

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Dhara Drew

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm:

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