

Docket: 2011-2100(IT)APP

BETWEEN:

DAVID REIMER,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on September 7, 2011, at Winnipeg, Manitoba

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Applicant:

The Applicant himself

Counsel for the Respondent:

Rosanna Slipperjack-Farrell

ORDER

The application by the Applicant for an extension of the time within which notices of objection in relation to the reassessments made under the *Income Tax Act* for the Applicant's 2005 and 2006 taxation years may be served is dismissed, without costs.

Signed at Ottawa, Canada, this 14th day of September, 2011.

“Wyman W. Webb”

Webb, J.

Citation: 2011TCC426
Date: 20110914
Docket: 2011-2100(IT)APP

BETWEEN:

DAVID REIMER,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Webb, J.

[1] The Applicant has made an application to extend the time to serve notices of objection in relation to the reassessments issued in relation to his 2005 and 2006 taxation years. The Applicant was reassessed on June 7, 2007 in relation to the Applicant's 2005 taxation year and on February 22, 2008 in relation to the Applicant's 2006 taxation year. Neither reassessment is related to the matter to which the Applicant wants to serve a notice of objection.

[2] On or about March 2, 2009 the Applicant wrote to the Canada Revenue Agency to request that his tax returns for 2005 and 2006 be amended to include a claim for one of his daughters as a dependent. The claim was for a tax credit as determined pursuant to the provisions of paragraph 118(1)(b) of the *Income Tax Act* (the "Act") and possibly a claim for a tax credit as provided in subsection 118.3(2) of the *Act*. The provisions of the *Act* were not identified in the letter but there was a reference to a claim for the "equivalent to spouse" tax credit and a reference to one of his daughters having a permanent disability.

[3] The Canada Revenue Agency responded by letter dated April 7, 2009 indicating that the requested adjustments could not be made as the Applicant did not indicate what he wanted to adjust. The letter also referred the Applicant to Form T1-ADJ "T1 Adjustment Request". The Applicant indicated during the hearing that he did complete this form, but a copy of this form was not submitted during the hearing.

Over the course of 2009 and 2010 there were several letters written by the Canada Revenue Agency to the Applicant. Copies of any correspondence written by the Applicant to the Canada Revenue Agency were not introduced. It appears that the adjustment requests made by the Applicant were not allowed by the Canada Revenue Agency because another person had claimed these tax credits in relation to the same individual.

[4] On or about January 17, 2011 the Applicant wrote a letter in which he indicated that he was appealing the decision of the Canada Revenue Agency as set out in a letter dated November 10, 2010. No letter dated November 10, 2010 from the Canada Revenue Agency was introduced at the hearing. There was a copy of a letter from the Canada Revenue Agency dated November 2, 2010 that was attached to the Notice of Appeal. Presumably the decision from which the Applicant was appealing was the decision to not amend his tax returns for 2005 and 2006 as requested. It appears that the Canada Revenue Agency treated the Applicant's letter that was dated January 17, 2011¹ as a notice of objection.

[5] By letter dated February 7, 2011 the Canada Revenue Agency informed the Applicant that his notices of objection in relation to the assessments or reassessments issued with respect to his 2005, 2006, 2007 and 2008 taxation years had not been served within the time provided in the *Act* for serving notices of objection. The Applicant then submitted (by letter dated March 4, 2011) a request to extend the time to serve notices of objection in relation to the assessments or reassessments issued with respect to his 2005, 2006 and 2008 taxation years. The application to extend the time to serve a notice of objection in relation to the assessment or reassessment issued with respect to his 2008 taxation year was granted. The application to extend the time to serve notices of objection in relation to the reassessments issued with respect to his 2005 and 2006 taxation years was denied and the Applicant appealed this decision to deny this request to extend the time to serve notices of objection in relation to the reassessments issued with respect to his 2005 and 2006 taxation years to this Court.

[6] Section 166.2 of the *Income Tax Act* (the "*Act*") provides in part as follows:

166.2 (1) A taxpayer who has made an application under subsection 166.1[(1)] may apply to the Tax Court of Canada to have the application granted after either

(a) the Minister has refused the application, or

¹ In the Affidavit of the Appeals Officer that was filed in this matter the letter from the Applicant dated January 17, 2011 is described as a notice of objection.

(b) 90 days have elapsed after service of the application under subsection 166.1(1) and the Minister has not notified the taxpayer of the Minister's decision,

but no application under this section may be made after the expiration of 90 days after the day on which notification of the decision was mailed to the taxpayer.

...

(5) No application shall be granted under this section unless

(a) the application was made under subsection 166.1(1) within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection or making a request, as the case may be; and ...

[7] The application under subsection 166.1(1) of the *Act* (which is referred to in paragraph 166.2(5)(a) above) is the application to the Minister to extend the time to serve a notice of objection. The time within which a notice of objection may be served (without an extension of time) is set out in subsection 165(1) of the *Act*. This subsection provides in part as follows:

165. (1) A taxpayer who objects to an assessment under this Part may serve on the Minister a notice of objection, in writing, setting out the reasons for the objection and all relevant facts,

(a) where the assessment is in respect of the taxpayer for a taxation year and the taxpayer is an individual ..., on or before the later of

(i) the day that is one year after the taxpayer's filing-due date for the year, and

(ii) the day that is 90 days after the day of mailing of the notice of assessment; and

(b) in any other case, on or before the day that is 90 days after the day of mailing of the notice of assessment.

[8] Since the Applicant was reassessed in relation to 2005 on June 7, 2007 and in relation to 2006 on February 22, 2008 it is clear that the application to the Minister dated March 4, 2011 was not made within one year after the expiration of the time otherwise provided for filing notices of objection to these reassessments and therefore, as a result of the provisions of paragraph 166.2(5)(a) of the *Act*, the Applicant's application to extend the time within which notices of objection may be served in relation to the reassessments issued with respect to his 2005 and 2006

taxation years cannot be granted. It is also not possible to construe the letter dated March 2, 2009 as an application to extend the time to serve a notice of objection in relation to 2006. By March 2, 2009, the time within which a notice of objection could have been served or a request to extend the time to serve a notice of objection in relation to the reassessment issued for 2005 had expired as had the time within which a notice of objection could have been served under section 165 of the *Act* in relation to the reassessment issued for 2006. While the Applicant could, in March 2009, have filed an application to extend the time to serve a notice of objection in relation to the reassessment related to 2006 issued on February 22, 2008, the Applicant's letter of March 2, 2009 requested an amendment to his tax returns, did not refer to a notice of objection and did not include the information that would be required to be included in such a request as set out in subsection 166.1(2) of the *Act*. This subsection provides as follows:

(2) An application made under subsection (1) shall set out the reasons why the notice of objection or the request was not served or made, as the case may be, within the time otherwise limited by this Act for doing so.

[9] As a result I find that the Applicant did not request an extension of time to serve notices of objection to the reassessments issued in relation to 2005 and 2006 until 2011. Therefore the application by the Applicant for an extension of the time within which notices of objection may be served in relation to the reassessments issued under the *Act* for the Applicant's 2005 and 2006 taxation years is dismissed, without costs.

Signed at Ottawa, Canada, this 14th day of September 2011.

“Wyman W. Webb”

Webb, J.

CITATION: 2011TCC426

COURT FILE NO.: 2011-2100(IT)APP

STYLE OF CAUSE: DAVID REIMER AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: September 7, 2011

REASONS FOR JUDGMENT BY: The Honourable Justice Wyman W. Webb

DATE OF JUDGMENT: September 14, 2011

APPEARANCES:

For the Applicant:	The Applicant himself
Counsel for the Respondent:	Rosanna Slipperjack-Farrell

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Myles J. Kirvan
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