

Docket: 2011-1225(IT)I

BETWEEN:

SIGNA HENNIG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on December 12, 2011 at Edmonton, Alberta

By: The Honourable J.M. Woods

Appearances:

Agent for the Appellant: Ronald J. Agar

Counsel for the Respondent: Gregory Perlinski

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**JUDGMENT**

The appeal with respect to an assessment made under the *Income Tax Act* by notice number 714144 is dismissed. Each party shall bear their own costs.

Signed at Ottawa, Ontario, this 27th day of April 2012.

“J. M. Woods”

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Woods J.

Citation: 2012 TCC 141  
Date: 20120427  
Docket: 2011-1225(IT)I

BETWEEN:

SIGNA HENNIG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Woods J.

[1] The issue in this appeal is whether Signa Hennig was correctly assessed under section 160 of the *Income Tax Act* with respect to dividends paid to her from a corporation that had an outstanding tax debt.

[2] The amount at issue, excluding interest, is \$22,230.02.

[3] On a preliminary matter, at the opening of the hearing I raised an issue as to whether this matter should be bumped up from the informal procedure to the general procedure due to the amount at issue exceeding \$12,000. Upon consent of the parties, I directed that the general procedure apply.

[4] The factual assumptions made by the Minister of National Revenue in issuing the assessment are reproduced below. These facts are not in dispute.

13. In determining the Appellant's tax liability for the tax liability of the Corporation, the Minister made the following assumptions of fact:
  - (a) Hennig Trucking Ltd (the "Corporation") was a trucking company;
  - (b) The Appellant's husband died December 9, 1992;
  - (c) The Appellant continued to operate the business of the Corporation for approximately 10 years;

- (d) The Appellant was the 100% shareholder in the Corporation for the fiscal years of March 31, 2001 and March 31, 2002
- (e) The Corporation ceased operating in 2002 and a dividend of \$108,000 was paid to the Appellant;
- (f) At the time that the Corporation paid the dividend to the Appellant it was indebted to the Minister for corporate taxes as set out in attached Schedule A; and
- (g) No consideration was provided by the Appellant for the dividend of \$108,000.

### Discussion

[5] The technical requirements to impose liability under section 160 are satisfied in this case by the assumptions made by the Minister and which were not challenged by Mrs. Hennig.

[6] Ronald Agar, the accountant for Mrs. Hennig who represented her at the hearing, submits that the assessment is statute barred because it was made beyond the three year limitation period.

[7] The respondent submits that the limitation period has no application to assessments under section 160: *Canada v. Addison & Lyeen Ltd.*, [2007] 2 SCR 793, 2007 SCC 33.

[8] I agree with the respondent on this issue and would refer to paragraph 9 in *Addison & Lyeen*:

9 Nevertheless, we find that judicial review was not available on the facts of this case. As Rothstein J.A. pointed out, the interpretation of s. 160 *ITA* by the majority of the Federal Court of Appeal amounted to reading into that provision a limitation period that was simply not there. The Minister can assess a taxpayer at any time. In the words of Rothstein J.A.:

While in the sense identified by the majority, subsection 160(1) may be considered a harsh collection remedy, it is also narrowly targeted. It only affects transfers of property to persons in specified relationships or capacities and only when the transfer is for less than fair market value. Having regard to the application of subsection 160(1) in specific and limited circumstances, Parliament's intent is not obscure. Parliament

intended that the Minister be able to recover amounts transferred in these limited circumstances for the purpose of satisfying the tax liability of the primary taxpayer transferor. The circumstances of such transactions mak[e] it clear that Parliament intended that there be no applicable limitation period and no other condition on when the Minister might assess. [para. 92]

[9] Mr. Agar also submits that the assessment failed to take into account business expenses that were satisfied by Mrs. Hennig from the dividend.

[10] This argument too must fail. In order to justify a reduction in the assessment, it must be established that the dividend was less than the amount assessed. This was not done. I would also note that Mrs. Hennig was not able to establish that the amount assessed exceeded the portion of the dividend used for personal purposes.

[11] Mr. Agar also submits that the assessment should be vacated because the actions of the CRA were unfair.

[12] Mr. Agar testified that he assumed the Canada Revenue Agency (CRA) agreed to a settlement when they cashed a cheque pursuant to a settlement offer. It appears that he was mistaken in making this assumption.

[13] Mr. Agar also submits that the conduct of the CRA was unfair when they refused to return the money to Mrs. Hennig after the mistake was discovered. This resulted in interest accruing on money borrowed to fund the payment. The CRA have also refused an application to waive interest.

[14] Based on the limited evidence before me, the circumstances in this case appear to be sympathetic. Mrs. Hennig was left to operate her spouse's trucking business after he died. She was ill-equipped to do so and the business suffered as a result. I would also comment that this is not a case of under-reported income. The return was prepared by a chartered accountant and the income was reported.

[15] Unfortunately for Mrs. Hennig, this Court does not have discretion to vacate an assessment based on grounds of fairness, no matter how sympathetic the circumstances.

[16] At the hearing, I provided the parties with a period of time to attempt to settle this matter. As no settlement was reached, the appeal will have to be dismissed.

Signed at Ottawa, Ontario this 27th day of April 2012.

“J. M. Woods”

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Woods J.

CITATION: 2012 TCC 141

COURT FILE NO.: 2011-1225(IT)I

STYLE OF CAUSE: SIGNA HENNIG v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: December 12, 2011

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

DATE OF JUDGMENT: April 27, 2012

APPEARANCES:

Agent for the Appellant: Ronald J. Agar  
Counsel for the Respondent: Gregory Perlinski

COUNSEL OF RECORD:

For the Appellant:

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Firm:

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