Federal Court Cour fédérale

Date: 20150910

Docket: T-2628-14

Citation: 2015 FC 1057

Montréal, Quebec, September 10, 2015

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

GARY FORD

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Mr. Gary Ford, the applicant, seeks judicial review of the August 20, 2014 decision by Mr. Doug Fleming, Director at the Canada Revenue Agency [CRA], who, acting on behalf of the Minister of National Revenue, refused to grant him the second level taxpayer relief he sought under subsection 152(4.2) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [the Act].

[2] For the reasons that follow, this application is dismissed.

[3] As a preliminary matter, the Court accedes to the respondent's request that the respondent's name be changed from the Minister of National Revenue to the Attorney General of Canada, in line with common practice. The style of cause has been amended accordingly.

I. Background

[4] Mr. Ford is a Canadian citizen who, in 1994, moved to the United States for work and returned to Canada to settle in the house he had bought in LaSalle, Ontario in June 2001.

[5] The set of facts that led to the August 2014 decision initiated on December 17, 2003, when Mr. Ford filed Canadian income tax returns under the Voluntary Disclosures Program [VDP] for taxation years 2000, 2001 and 2002.

[6] In those returns, Mr. Ford declared that he resided in Ontario, Canada during each of those taxation years, and did not declare any change in address. Mr. Ford namely claimed significant rental expenses related to his former rental property in the United States, property he purchased on March 4, 1998, and disposed of on March 1, 2000 (para 15 of the applicant's affidavit) although he contends having continued to receive proceeds from said disposition in the 2001 and 2002 taxation years.

[7] In January 2004, Mr. Ford was assessed by the CRA for the years 2000, 2001 and 2002, based on the information he declared in the income tax returns he filed under the VDP.

[8] On August 18, 2004, the CRA asked Mr. Ford for all documentation to support the rental losses claimed in each taxation year and gave him 90 days to respond.

[9] On November 18, 2004, Mr. Ford requested an adjustment to his 2001 return in order to increase the rental expenses he had initially claimed.

[10] On April 19, 2005, Mr. Ford was reassessed by the CRA, and the late filing penalties were cancelled, based on the fact that he had filed under the VDP.

[11] In June 2005, given that the amount of rental expenses claimed were significant, the CRA undertook an audit process. As part of this process, the CRA requested clarifications and supporting documentation but was unable to reach either Mr. Ford or his representative, Mr. Stevens.

[12] On August 8, 2005, the CRA sent Mr. Ford a letter requesting precise documentation and completion of a rental questionnaire.

[13] On September 28, 2005, having received no response, the CRA sent Mr. Ford another letter advising him that it would disallow the totality of the claimed rental expenses and reassess his returns unless he submitted the requested information within 30 days.

[14] On January 9, 2006, having received no information from Mr. Ford or his representative, the CRA reassessed Mr. Ford for the 2000, 2001 and 2002 taxation years. Taxable dividends, capital gains and disallowed rental expenses were added to his income.

[15] Mr. Ford did not object to these reassessments.

[16] On April 16, 2007, Mr. Stevens wrote to the CRA and requested an adjustment on behalf of Mr. Ford. For the first time, he then alleged that Mr. Ford had been a resident of the United States until June 2001. However, to support this allegation, Mr. Stevens provided only a handwritten note from Mr. Ford dated March 24, 2007 in which he indicated namely that he resided in Canada as of June 1, 2001. No other documents were provided to the CRA.

[17] By letters dated October 15, 2007 and March 25, 2008, the CRA again requested supporting documentation, and neither Mr. Ford nor Mr. Stevens responded.

[18] On May 6, 2008, the CRA consequently denied the request for adjustment.

[19] On November 22, 2010, Mr. Ford applied for relief under subsection 152(4.2) of the Act with respect to the 2000, 2001 and 2002 taxation years, but, once again, submitted no documents to support his application.

[20] On May 19, 2011, the CRA again asked Mr. Ford to forward the required supporting documentation; in fact, it asked for the very same documents it had requested back in 2005. The CRA provided Mr. Ford with 30 days to respond, but he failed to do so.

[21] On June 28, 2011, the CRA denied Mr. Ford's application for relief under subsection 152(4.2) of the Act as he had failed to provide the necessary documentation, and informed him that he could ask the director of his Tax Services Office for a review.

[22] On June 19, 2012, Mr. Ford applied for the second level relief, again under subsection 152(4.2) of the Act. For the first time, along with his application, he included some documents, hence answers to the rental questionnaire the CRA had sent him in 2005, evidence of legal fees paid to two American attorneys in 2002, and statements relating to mortgage payments made in 2000, 2001 and 2002, although he had then already disposed of the rental property.

[23] On August 20, 2014, Mr. Fleming, acting as the Minister's delegate, denied the second level application, which is the decision challenged here.

II. Issue

[24] The Court must decide if the Minister's delegate erred in exercising his discretion and in denying the second level application for relief Mr. Ford filed under subsection 152(4.2) of the Act, the text of which is annexed hereto.

III. Standard of Review

[25] The Court agrees with the parties that the standard of reasonableness governs this application, given the discretionary nature of decisions reached under subsection 152(4.2) of the Act and the existing jurisprudence (*Hoffman v Canada (Attorney General)*, 2010 FCA 310 at para 5; *Canada (Attorney General) v Abraham*, 2012 FCA 266 at para 33 [*Abraham*]).

[26] When reviewing a decision against the standard of reasonableness, the Court will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process", as well as "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

IV. Decision under Review

[27] In his August 20, 2014 decision, Mr. Fleming informs Mr. Ford that granting him relief would not give effect to the intention of the legislation. He first refers to paragraph 8 of the relevant CRA information circular, *IC07-1: Taxpayer Relief Provisions* [the Information Circular], which states:

> The legislation gives the CRA the ability to administer the income tax system fairly and reasonably by helping taxpayers to resolve issues that arise through no fault of their own, and to allow for a common-sense approach in dealing with taxpayers who, because of personal misfortune or circumstances beyond their control, could not comply with a statutory requirement for income tax purposes.

[28] Mr. Fleming goes on to outline that Mr. Ford declared himself a resident of Canada on the income tax returns he filed under the VDP in December 2003 for taxation years 2000, 2001 and 2002, and that the main concept behind a voluntary disclosure is that the taxpayer attests to the fact that the information contained in those returns is accurate and complete.

[29] Mr. Fleming also reminds Mr. Ford that the CRA attempted to contact him and his representative on numerous occasions to no avail. Given the information before the CRA, Mr. Ford's requests for adjustments were denied; he was reassessed, and disallowed certain rental expenses. Mr. Fleming recalls that Mr. Ford submitted a first level taxpayer relief request on November 22, 2010 without attaching the relevant supporting documentation; once again, attempts made by the CRA to reach Mr. Ford or his representative to discuss the matter were unsuccessful. Hence, the request was denied. Given these facts, granting second level relief would not meet the intent of the legislation referred to in paragraph 8 of the Information Circular.

[30] Mr. Fleming also refers to paragraph 73 of the Information Circular, which clarifies that the taxpayer relief provisions are not intended as a substitute for the normal objection and appeals process, and that Mr. Ford did not take advantage of the opportunity he had to file an objection to his reassessment. Mr. Ford's second level request for taxpayer relief essentially disputes the correctness of the reassessment, which cannot be permitted; Mr. Ford should have objected to his reassessment within the timeframe established by the Act.

V. Submissions of the Parties

A. *Applicant's submissions*

[31] Mr. Ford submits two main arguments. First, the Minister's delegate erred by fettering the exercise of his discretion and second, his decision to deny relief was otherwise not reasonable.

(a) *The Minister's delegate fettered his discretion*

[32] Mr. Ford submits that the Minister's delegate improperly fettered his discretion by treating paragraph 73 of the Information Circular as a rule of law rather than as a guideline, which is contrary to the spirit of the legislation (*White v Canada (Attorney General)*, 2011 FC 556 at para 66).

[33] Mr. Ford further submits that subsection 152(4.2) of the Act provides the Minister with very broad powers to grant relief to those who request it. He argues that the explanatory notes from when the subsection was introduced buttress his interpretation of the provision. He draws our attention to the Federal Court of Appeal decision in *Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299 [*Stemijon*], which states at paragraph 60 that decision-makers who are given a broad discretion under the law "cannot fetter the exercise of their discretion by relying exclusively on an administrative policy", and at paragraph 24 that a decision which results from fettered discretion is necessarily unreasonable. Mr. Ford contends that Mr.

Fleming's decision was unreasonable because he treated paragraph 73 of the Information Circular as a binding rule.

[34] Moreover, Mr. Ford submits that paragraph 73 does not recommend refusing his application for relief. The decision-maker unreasonably concluded that he was seeking reconsideration of his reassessments without having used the normal appeals process. Yet, according to Mr. Ford, the issues which are relevant to his application for relief were never decided in the reassessments, since the CRA did not have the proper documentation.

[35] Mr. Ford asserts that, for reasons unknown, Mr. Stevens never sent these documents to the Minister on his behalf. He recalls that the Minister and her delegates were amenable to receiving supporting documents in the past, but that, when Mr. Ford finally submitted the documents as part of the second level review of his relief application, the Minister refused to consider them by reasoning that this was an attempt to circumvent the appeals process. Mr. Ford contends that the Minister acted in a contradictory fashion, as she had previously exercised her discretion broadly by indicating a willingness to accept the documents – until they were actually provided, when she decided to fetter her discretion on the basis of an administrative policy.

(b) *The decision is not reasonable*

[36] Mr. Ford also disputes Mr. Fleming's reasoning that the VDP precludes relief under subsection 152(4.2). There is no language within the Act which excludes the application of subsection 152(4.2) to taxation years which were assessed under the VDP. Moreover, Mr. Ford

alleges that he believed the voluntary disclosures were complete and accurate at the time he filed them, and that he only discovered his errors and omissions afterwards.

[37] Mr. Ford acknowledges that the CRA made unsuccessful attempts to gather documents from him in the past. He says that he does not know why Mr. Stevens never forwarded the documents he had provided him to the CRA. He suggests that this issue arose through no fault of his own and, therefore, that his case falls within the ambit of paragraph 8 of the Information Circular.

[38] Finally, Mr. Ford insists that the Minister's contradictory approach to the receiving of his documentation offends the requirement of acting with common sense, which is entrenched in paragraph 8 of the Information Circular. In addition, he contends that this approach fails to meet the standard of intelligibility required by *Dunsmuir*, above, at para 47.

B. *Respondent's submissions*

[39] The respondent submits that the relief under section 152(4.2) is discretionary and must rest on evidence, and that the dismissal of Mr. Ford's application for relief is reasonable.

(a) *Discretionary relief must rest on evidence*

[40] The respondent submits that an application for discretionary relief under subsection 152(4.2) of the Act requires evidence that a taxpayer would have been entitled to a refund had he claimed expenses or deductions in a timely manner. Mr. Ford's evidence is weak on both counts.

His allegation that he was a resident of the United States until June 2001 is unsupported. His claim for rental expenses does not show the context in which those expenses incurred.

[41] In the respondent's view, paragraph 8 of the Information Circular accurately represents the general purpose of the relief provisions in the Act. Subsection 152(4.2) is not simply meant for a taxpayer to object to a reassessment after the expiry of the 90-day deadline set out in subsection 165(1) of the Act, the text of which is reproduced in annex. It was enacted to allow taxpayers to claim deductions or refunds of which they were unaware – and that they could have obtained at an earlier date. Therefore, an application for relief requires proof that the deduction would have been granted if it had been claimed in a timely fashion (*Abraham*, above, at para 31). It must be supported by all the relevant documents – unless it is impossible for the taxpayer to obtain these documents, in which case the CRA will issue a refund only if it can validate the claim from its own records (see paragraphs 81-83 of the Information Circular).

(b) *The decision is reasonable*

[42] The respondent argues that the decision under review is reasonable in light of the evidence on record. Mr. Ford presented no evidence to support his allegation that he was a resident of the United States until June 2001. The respondent suggests that he could have provided documents such as a work visa, records of employment, bank account statements, driver's licence, US tax returns or any other relevant documents.

[43] In addition, the respondent argues that there is no evidence to support Mr. Ford's claim that he disposed of his rental property during the 2001 taxation year. He did not submit any

purchase or sales contracts or any invoices for rental fees or repairs. The bank statements he provided simply show that he made payments against a mortgage in 2000, 2001 and 2002, without details.

[44] The respondent submits that Mr. Ford failed to prove that he could have obtained the deductions he seeks had he claimed them earlier. As with all his other applications to the Minister, his second level application for relief was unsupported by evidence. Mr. Ford's continuous disregard for tax authorities and his failure to substantiate his claimed expenses are relevant to the Minister's exercise of discretion.

[45] The respondent disputes Mr. Ford's allegation that he did not have access to the proper documentation until the summer of 2011. In any event, the respondent submits that this argument was made for the first time in this application for judicial review and is therefore inadmissible (*Society of Composers, Authors and Music Publishers of Canada v Canadian Assn of Internet Providers*, 2001 FCA 4 at para 12 [*Society of Composers*]).

[46] The respondent concludes that the decision is reasonable in light of the paucity of Mr. Ford's evidence, the general purposes of the relief provisions and the administrative policy embodied in the Information Circular. The Minister's delegate did not fetter his discretion, nor did he take irrelevant factors into account. His decision should not be disturbed.

VI. Analysis

[47] Mr. Fleming, acting for the Minister, offered three grounds for rejecting Mr. Ford's request. First, he stated that the request fell outside the bounds of the legislative intention as expressed in paragraph 8 of the Information Circular namely, to help taxpayers resolve issues which arose through personal misfortune or through no fault of their own. Second, and linked to the first, he recalled Mr. Ford's history of failing to provide supporting documents in various requests and in response to the CRA's requests. Third, he stated that the request was an attempt to circumvent the normal objection and appeals process, in contravention of paragraph 73 of the Information Circular.

[48] As Justice Sharlow stated in *Lanno v Canada (Customs and Revenue Agency)*, 2005 FCA 153 at para 2, subsection 152(4.2) of the Act is "part of a statutory scheme, referred to as the 'fairness provisions' or the 'fairness package', that gives the tax authorities the discretion to grant relief against the operation of certain provisions of the *Income Tax Act*".

[49] Subsection 152(4.2) of the Act authorizes the Minister to exercise his or her discretion to offer relief to a taxpayer beyond the strict timelines for reassessment. Due to the discretionary nature of this relief, it cannot be claimed as of right by the taxpayer. In *Abraham*, above, at paras 9, 27 and 31, Justice Stratas of the Federal Court of Appeal described the nature and operation of this provision and it is noteworthy to reproduce these passages:

> [9] Subsection 152(4.2) of the *Income Tax Act* is part of the taxpayer relief sections of the Act. As can be seen from the text of subsection 152(4.2), set out below, the Minister has the discretion

> to reassess an individual after the expiration of the normal reassessment period for a year, if the individual requests the reassessment to reduce the tax payable or permit a claim for a tax refund for that year. When the Minister exercises that discretion in the taxpayer's favour, the taxpayer is relieved from the usual requirement that a request for a reassessment can only be made within a particular period of time.
>
> [...]
>
> [27] It must be recalled that under subsection 152(8) of the *Income Tax Act*, in the absence of a reassessment following a timely objection or a successful appeal, an assessment is final and binding. Later, the taxpayer may discover an error in the assessment, but it is too late – the taxpayer has no entitlement to have the error corrected. Rather, recourse is to be had under subsection 152(4.2) of the *Income Tax Act* – a request, not for an entitlement, but for an exercise of discretion. There is nothing in subsection 152(4.2) that requires the Minister to exercise his discretion in favour of the taxpayer if the taxpayer would be entitled to a tax benefit if he or she claimed within the regular reassessment period. In the words of this Court in *Lanno v. Canada (Customs and Revenue Agency)*, 2005 FCA 153 at paragraph 6, "[t]he granting of relief is discretionary, and cannot be claimed as of right."
>
> [...]
>
> [31] Seen in this way, subsection 152(4.2) of the *Income Tax Act* is like any other section that vests a broad discretion in a decision-maker, a discretion founded upon legal and factual matters. Here, the Minister (or, in this case, the Delegate) must, in the words of section 71 of *Information Circular 07-1-Taxpayer Relief Provisions*, be "satisfied that such a refund or reduction would have been made if the return or request had been filed on time" – this is the component in the discretion that has some legal content – and may take into account a number of other factors, many of which are also enumerated in the Information Circular.
>
> [Emphasis added]

[50] The respondent argues that Mr. Ford's request was denied mainly because he offered insufficient evidence to substantiate it, although Mr. Fleming did not expressly mention this. In

fact, Mr. Fleming mentioned Mr. Ford's failure to provide corroborating documents in past requests, but did not explicitly comment upon the evidence which Mr. Ford included in his second level request for discretionary relief. On judicial review, the Court cannot entertain justifications offered after the fact by counsel for the Attorney General (*Stemijon*, above, at para 41), and will confine its analysis to the reasoning expressed in the decision under review.

[51] In regards to Mr. Ford's argument that the Minister's delegate fettered his discretion by restricting his analysis to the Information Circular, I note that the rule against the fettering of discretion does not prevent a decision-maker from making any use of an administrative policy. The Federal Court of Appeal distinguished permissible and impermissible uses of such policies in *Stemijon*, above, at paras 59-60:

> [59] Policy statements play a useful and important role in administration: *Thamotharem v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 198, [2008] 1 F.C.R. 385. For example, by encouraging the application of consistent principle in decisions, policy statements allow those subject to administrative decision-making to understand how discretions are likely to be exercised. With that understanding, they can better plan their affairs.
>
> [60] However, as explained in paragraphs 20-25 above, decision-makers who have a broad discretion under a law cannot fetter the exercise of their discretion by relying exclusively on an administrative policy: *Thamotharem*, *supra* at paragraph 59; *Maple Lodge Farms*, *supra* at page 6; *Dunsmuir*, *supra* (as explained in paragraph 24 above). An administrative policy is not law. It cannot cut down the discretion that the law gives to a decision-maker. It cannot amend the legislator's law. A policy can aid or guide the exercise of discretion under a law, but it cannot dictate in a binding way how that discretion is to be exercised.
>
> [Emphasis added]

[52] Furthermore, in *Lanno* at para 6, the Federal Court of Appeal accepted that decisions taken under subsection 152(4.2) “combin[e] fact finding with a consideration of the policy of tax administration, and sometimes questions of law” [emphasis added]. It is uncontroversial that the decision-maker may turn his mind to administrative policies in this context.

[53] In my view, Mr. Fleming did not fetter his discretion when referring to paragraph 8 of the Information Circular. Instead, he relied on that policy statement to guide the exercise of his discretion. Paragraph 8 does not express a hard and fast rule for deciding taxpayer relief requests; on the contrary, it instructs decision-makers to exercise their discretion so as to assist taxpayers facing issues which arose through “personal misfortune” or “through no fault of their own”. These are broad, open-ended categories which invite the decision-maker to examine the particular facts of each request. A decision-maker who orients the exercise of his discretion in line with this policy does not thereby commit a reviewable error.

[54] I am satisfied that it was reasonable for Mr. Fleming to conclude that Mr. Ford’s tax issues did not flow from personal misfortune or from an error for which he could not be faulted. Mr. Ford never explained why he declared Canadian residence throughout the 2000, 2001 and 2002 taxation years in his voluntary disclosures.

[55] Mr. Fleming also pointed to Mr. Ford’s failure to provide supporting documentation in the past, despite CRA’s numerous requests. Again, this failure was left unexplained in Mr. Ford’s application, and I am thus satisfied it was reasonable for Mr. Fleming to conclude that Mr. Ford’s issues did not arise from personal misfortune or through no fault of his own.

[56] In this proceeding, Mr. Ford explains that he did not know that his then representative Mr. Stevens had withheld information from the CRA, or why he did so thus suggesting this problem arose through no fault of his own. However, this argument was never put before the Minister's delegate, even though his second level request for relief was submitted by a lawyer who is not affiliated with Mr. Stevens. I cannot give any weight to his explanation, as on judicial review, the Court's role is to determine whether the decision-maker rendered a decision that is reasonable on the facts and arguments that were before him. It is not the venue to present new evidence and arguments in order to try the issues *de novo* (*Society of Composers*, above, at para 12; see also *Gitxsan Treaty Society v Hospital Employees' Union*, [2000] 1 FCR 135, [1999] FCJ No 1192 (FCA) at para 15).

[57] Mr. Ford did claim the rental expenses from the onset and it is thus <u>not</u> a situation where the claim was not presented. It is rather a situation whereby he did not submit any documents to support his claims and did not respond to CRA's numerous demands for documentation. In addition, he presented requests for adjustments that also remained unsubstantiated despite CRA's numerous requests for supporting documents.

[58] The issue of his alleged residency in the United States until June 2001 was brought up for the first time in April 2007, and was examined as part of the request for adjustment. However, it remained unsubstantiated, and it was thus reasonable for the Minister's delegate to deny relief.

[59] Mr. Ford ultimately included a few documents and pieces of information in support of his second level relief application, but did so leaving out the bulk of the requested information, the nature and context of the expenses.

[60] Thus, I am satisfied Mr. Ford's application for second level relief amounts to an objection to or an appeal of the CRA's reassessment, contrary to the guidance of paragraph 73 of the Information Circular, and that the Minister's delegate's decision is reasonable as it forms part of the possible outcomes given the facts and the law.

[61] For these reasons, the Court's intervention is not warranted.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The costs are granted to the respondent.
3. The style of cause is changed from the Minister of National Revenue to the Attorney General of Canada.

"Martine St-Louis"

Judge

Annex

152. (4.2) Notwithstanding subsections (4), (4.1) and (5), for the purpose of determining – at any time after the end of the normal reassessment period, of a taxpayer who is an individual (other than a trust) or a graduated rate estate, in respect of a taxation year – the amount of any refund to which the taxpayer is entitled at that time for the year, or a reduction of an amount payable under this Part by the taxpayer for the year, the Minister may, if the taxpayer makes an application for that determination on or before the day that is 10 calendar years after the end of that taxation year,

(a) reassess tax, interest or penalties payable under this Part by the taxpayer in respect of that year; and

(b) redetermine the amount, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 122.7(2) or (3), 122.8(2) or (3), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

152. (4.2) Malgré les paragraphes (4), (4.1) et (5), pour déterminer, à un moment donné après la fin de la période normale de nouvelle cotisation applicable à un contribuable – particulier (sauf une fiducie) ou succession assujettie à l'imposition à taux progressifs – pour une année d'imposition, le remboursement auquel le contribuable a droit à ce moment pour l'année ou la réduction d'un montant payable par le contribuable pour l'année en vertu de la présente partie, le ministre peut, si le contribuable demande pareille détermination au plus tard le jour qui suit de dix années civiles la fin de cette année d'imposition, à la fois :

a) établir de nouvelles cotisations concernant l'impôt, les intérêts ou les pénalités payables par le contribuable pour l'année en vertu de la présente partie;

b) déterminer de nouveau l'impôt qui est réputé, par les paragraphes 120(2) ou (2.2), 122.5(3), 122.51(2), 122.7(2) ou (3), 122.8(2) ou (3), 127.1(1), 127.41(3), ou 210.2(3) ou (4), avoir été payé au titre de l'impôt payable par le contribuable en vertu de la présente partie pour l'année ou qui est réputé, par le paragraphe 122.61(1), être un paiement en trop au titre

des sommes dont le contribuable est redevable en vertu de la présente partie pour l'année.

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) if the assessment is in respect of the taxpayer for a taxation year and the taxpayer is an individual (other than a trust) or a graduated rate estate for the year, 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 sending of the notice of assessment; and

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

165. (1) Le contribuable qui s'oppose à une cotisation prévue par la présente partie peut signifier au ministre, par écrit, un avis d'opposition exposant les motifs de son opposition et tous les faits pertinents, dans les délais suivants :

a) s'il s'agit d'une cotisation, pour une année d'imposition, relative à un contribuable qui est un particulier (sauf une fiducie) ou une succession assujettie à l'imposition à taux progressifs pour l'année, au plus tard au dernier en date des jours suivants :

(i) le jour qui tombe un an après la date d'échéance de production qui est applicable au contribuable pour l'année,

(ii) le quatre-vingt-dixième jour suivant la date d'envoi de l'avis de cotisation;

b) dans les autres cas, au plus tard le quatre-vingt-dixième jour suivant la date d'envoi de l'avis de cotisation.

FEDERAL COURT

SOLICITORS OF RECORD

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