

[OFFICIAL ENGLISH TRANSLATION]

APPLICATION UNDER SECTION 166.2 OF THE
INCOME TAX ACT (OBJECTION)

2002-3290(IT)APP

BETWEEN:

YVES LAMARRE,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on October 9, 2002, at Montréal, Quebec, by
the Honourable Judge Louise Lamarre Proulx

Appearances

For the Applicant:

The Applicant himself

Agent for the Respondent:

Yacine Agnaou (Student-at-law)

ORDER

Upon application for an order to grant an application to extend the time for serving a Notice of Objection to the assessment made under the *Income Tax Act* for the 2000 taxation year, the application is dismissed in accordance with the attached Reasons for Order.

Signed at Ottawa, Canada, this 18th day of October 2002.

"Louise Lamarre Proulx"

J.T.C.C.

[OFFICIAL ENGLISH TRANSLATION]

Date: 20021018
Docket: 2002-3290(IT)APP

BETWEEN:

YVES LAMARRE,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Lamarre Proulx, J.T.C.C.

[1] This is an application under subsection 166.2(1) of the *Income Tax Act* ("the Act") to grant an application to extend the time for serving a Notice of Objection to a reassessment.

[2] The reassessment is dated December 27, 2001, and is for the 2000 taxation year. According to the respondent's Reply, the time limit under subsection 165(1) of the Act expired on April 30, 2002. (I accept this date even though it appears to me to be one month later.)

[3] On July 15, 2002, the applicant sent the Minister of National Revenue ("the Minister") an application to extend the time for serving a Notice of Objection to the above-mentioned reassessment. On July 26, 2002, the Minister served on the applicant a refusal to extend the time. The present application to grant the application to the Minister to extend the time was filed on August 22, 2002.

[4] This application, signed by Marie Claire Faulkner, C.A., for the applicant, reads as follows:

[TRANSLATION]

...

Subject: Extension of time, 2000
247 597 685

I am writing in reply to your letter dated July 26, 2002. I am applying to the Tax Court of Canada for a review of my 2000 file. I am convinced that my claim for a credit for support payments made to Carmelle Melançon for the 2000 year is justified. My rights were explained to me when I filed my 2001 return.

I hope that this letter will be considered and that my file will be reviewed as a result.

...

[5] The applicant explained that he received a letter from the Canada Customs and Revenue Agency ("the CCRA") dated October 18, 2001; this letter was adduced by the Respondent as Exhibit I-2.

[6] This letter reads as follows:

[TRANSLATION]

Subject: Your 2000 income tax return

We regularly implement review programs that play an important role in the self-assessment taxation system. We are writing in order to inform you that we have selected your return for review. However, in order to verify the accuracy of your assessment, we need more information.

	Amount Subject to Review
Other deductions	\$ 4,003.00
Support payments	\$10,028.00

OTHER DEDUCTIONS

In support of the deduction you claimed:

- for legal costs, please provide us with receipts or documents specifying the amounts paid, the date of payment, and the reason the costs were paid. If the costs incurred include an amount to obtain a court order for child or spousal support, we need a copy of the order and a copy of a statement from your lawyer specifying the portion of the costs incurred for child or spousal support.

SUPPORT PAYMENTS

In support of the deduction you claimed, please provide the following information:

- receipts confirming all child or spousal support payments made during the year. If you send us photocopies of cashed cheques, copy both sides of each cheque. If you paid the support to a provincial agency, please provide us with one of the following documents: copies of the cashed cheques, a bank statement, a statement of account from your employer, receipts from the beneficiary, or a letter from the agency. The documents must clearly identify the beneficiary, the payor, and the amounts of the support payments.

Please send us the requested information within 30 days following the date of this letter, using the enclosed label. Be sure to write the reference number of the letter and your Social Insurance Number on your documents. If you do not respond to our request, we shall have to make a reassessment on the basis of the information we have available.

If you have any questions about this letter, please contact one of our officers in the Processing Review Section, Jonquière Tax Centre. The telephone number is (418) 699-0735, extension 3200, for local calls, or 1-888-699-0735, extension 3200, for long-distance calls. You may also contact our office by facsimile at (418) 699-0730.

[7] The applicant stated that he brought this letter to Ms. Faulkner, the accountant, and asked her to send out the required documents.

[8] On December 27, 2001, a Notice of Reassessment was sent to the applicant (Exhibit I-1). I quote two paragraphs from the [TRANSLATION] “explanation of changes and other important information”:

...

Since we have not received a response to our recent letter, we have reviewed your return. If you send us the necessary information, we shall re-examine your return in order to determine whether it may be adjusted.

We allow your deduction for support payments. However, according to our files, the maximum deductible amount for which you are eligible is \$3,033. You may request a reassessment by submitting receipts in support of the total amount of support payments you made.

...

[9] The applicant stated that he brought the Notice of Reassessment to the accountant and that she was surprised. She apparently told him that she had sent the required documents to the CCRA. The applicant apparently then asked her to take care of the Notice of Reassessment.

[10] The Notice of Objection signed by the applicant was received by the CCRA on June 11, 2002 (Exhibit I-3).

[11] Exhibit I-4 is a letter from the CCRA dated June 25, 2002, informing the applicant that the Notice of Objection was served late and providing the usual information about making an application to extend the time.

[12] Exhibit I-5 is the present application to extend the time. It is dated July 15, 2002, and is signed by the applicant. It is typed and appears to have been prepared at the accountant's office. It reads as follows:

[TRANSLATION]

...

Subject: Extension of time for Notice of Objection
247 597 685

To the Chief of Appeals:

I hereby apply for an extension of time for my 2000 Notice of Objection.

Because of circumstances beyond my control, I was unable to serve the said Notice of Objection within the prescribed time. I firmly believe that my application is in order and relevant. I did not know that for the 2000 year I could claim a credit for support payments made to Carmelle Melançon, 240 158 931.

Please take this letter into consideration.

Yours truly,

...

[13] By registered letter dated July 26, 2002 (Exhibit I-6), the CCRA refused the application to extend the time, for the following reasons:

[TRANSLATION]

...

Subject: Application to extend time for serving objection –
2000 taxation year

We are writing to inform you that we are unable to grant your application for the reasons outlined below.

You have not demonstrated that during the time limit for serving an objection:

- you were unable to act or to instruct another to act in your name
- OR
- you had a *bona fide* intention to object to the assessment.

If you disagree with this decision, you may apply to the Tax Court of Canada for reconsideration. The Court must receive your application at one of the addresses indicated below within 90 days following the date this letter was mailed.

...

Conclusion

[14] I have reproduced the letter dated October 18, 2001, in its entirety (in paragraph 6 of these Reasons) because, in my opinion, it explains clearly the documents that must be sent. As well, if the taxpayer needs further explanations, the letter indicates toll-free telephone numbers.

[15] I have also reproduced the letter from the CCRA dated July 26, 2002, in its entirety (in paragraph 13 of these Reasons) because this letter explains the reasons for the refusal.

[16] The application to grant the application to extend the time has been reproduced above, in paragraph 4 of these Reasons. It should be noted that the application does not explain why, during the time limit for serving the Notice of Objection, the applicant was unable to act or to instruct another to act in his name. The same shortcoming existed in the application to the Minister, reproduced in paragraph 13 of these Reasons.

[17] Nor does the application set out any of the facts stated by the applicant at the hearing. These facts are as follows: (1) following the letter dated October 18, 2001, the applicant had instructed Ms. Faulkner to send the required documents to the CCRA; (2) following the assessment, the applicant went to see Ms. Faulkner and asked her what was happening and she apparently answered that she did not understand since she had sent everything; and (3) the applicant purportedly then instructed Ms. Faulkner to serve the Notice of Objection to the assessment, which apparently she did not do.

[18] We must also take into account the fact that the accountant was not present at the hearing.

[19] On the balance of the evidence adduced, it is not possible to believe the applicant's version of the facts or that he acted with diligence. The application to

extend the time that was served by the accountant does not corroborate the applicant's statements at all. I have no evidence before me that the applicant instructed the accountant to act within the time prescribed. If that were the case and it was indeed the accountant who did not act within the prescribed time, she should have been present at the hearing to explain why, although instructed to act, she was unable to do so within the time limit. As well, the evidence adduced shows a lack of follow-up by the applicant that is the result of either carelessness or lack of intent to appeal within the prescribed time.

[20] The application must therefore be dismissed.

Signed at Ottawa, Canada, this 18th day of October 2002.

" Louise Lamarre Proulx "

J.T.C.C.