

Docket: 2007-587(IT)I

BETWEEN:

GAIL L. BÉLANGER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on July 13, 2007, at Moncton, New Brunswick.

Before: The Honourable Justice François Angers

Appearances:

Agent for the Appellant: René Bélanger

Counsel for the Respondent: Claude Lamoureux

JUDGMENT

The appeal from the assessment dated March 31, 2006 made under the *Income Tax Act* is allowed and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 18th day of October 2007.

"François Angers"

Angers J.

Citation: 2007TCC502

Date: 20071018

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BETWEEN:

GAIL L. BÉLANGER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Angers J.

[1] This is an appeal from an assessment dated March 31, 2006, made by the Minister of National Revenue (the Minister). The Notice of Assessment informed the appellant that she had been assessed an amount of \$6,248.12 as her income tax liability in respect of the amount of \$15,606.44 she had received on January 1, 1998 out of a registered retirement income fund (RRIF) of her late mother, Lillis V. Bartlett. The appellant having duly filed an objection, her assessment was confirmed by the Minister on November 9, 2006.

[2] The appellant's mother passed away on December 15, 1997. She was the last annuitant of a RRIF and the appellant was one of the designated beneficiaries of the said RRIF, of which her share was the amount referred to above, and on this amount she was assessed as previously indicated.

[3] The appellant testified that her mother intended her children to receive her RRIF directly and not through her estate. The appellant also testified that it was her mother's intention that the taxes payable on the RRIF be paid by her estate. A copy of her mother's will does direct the executor of her estate to pay her just debts and to pay out of the capital of the trust property such Canadian or provincial income tax as may from time to time be payable.

[4] The Canada Revenue Agency (the Agency) attempted over a number of years to collect from the estate the taxes owed on the RRIF, but without success. The assessment under appeal in this case was therefore issued against the appellant under the provisions of subsection 160.2(2) of the *Income Tax Act* (the Act), which provides as follows:

(2) Joint and several liability in respect of amounts received out of or under RRIF
– Where

(a) an amount is received out of or under a registered retirement income fund by a taxpayer other than an annuitant (within the meaning assigned by subsection 146.3(1) under the fund, and

(b) that amount or part thereof would, but for paragraph 146.3(5)(a), be included in computing the taxpayer's income for the year of receipt pursuant to subsection 146.3(5),

the taxpayer and the annuitant are jointly and severally liable to pay a part of the annuitant's tax under this Part for the year of the annuitant's death equal to that proportion of the amount by which the annuitant's tax for the year is greater than it would have been if it were not for the operation of subsection 146.3(6) that the amount determined under paragraph (b) is of the amount included in computing the annuitant's income by virtue of that subsection, but nothing in this subsection shall be deemed to limit the liability of the annuitant under any other provision of the Act.

[5] The appellant submits that the Agency's failure to collect the tax owed from the estate and its attempt to collect it from the beneficiaries are not fair. She further argues that the amount of tax payable should be determined through the filing of a tax return by the estate, which the estate has failed to do. The appellant is asking this Court to hold the executor of the estate of her late mother accountable for any liability of the estate and to appoint a new executor. With regard to these latter requests, this Court has no jurisdiction to hold the executor of the estate accountable or to appoint a new executor.

[6] The issue to be decided is whether the appellant is liable for income tax of \$6,248.12 in respect of the amount of \$15,606.44 she received on January 1, 1998 out of her mother's RRIF as her share of the said RRIF.

[7] Benefits received by a taxpayer in a year under a RRIF must be included in computing the income of that taxpayer for that year under subsection 146.3(5). Paragraphs 146.3(5)(a)(b) and (c) of the Act provide exceptions that can reduce

this income inclusion, but none of these was raised in argument nor are they applicable in this case. Subsection 146.3(6) of the Act provides that when the last annuitant under a RRIF dies, that annuitant is deemed to have received, immediately before death, an amount under the RRIF equal to the fair market value of the property of the fund at the time of the death. The fair market value of the property of the fund (the benefits) thus deemed to have been received by the appellant's mother must be included in her income pursuant to subsection 146.3(5).

[8] This therefore makes the estate liable for any income tax owed on these benefits, for the appellant's mother is deemed to have received the funds before she died.

[9] The Act also has provisions that render the annuitant (or the estate in the case at bar) and a taxpayer other than the annuitant jointly and severally liable in respect of amounts received out of or under a RRIF. See subsection 160.2(2) *supra*.

[10] Subsection 160.2(3) allows the Minister to assess the appellant at any time for any amount payable under section 160.2 but does not indicate any obligation on the Minister to attempt to collect that amount from the estate before issuing the assessment. Subsection 160.2(3) reads as follows:

160.2(3) Minister may assess recipient

The Minister may at any time assess a taxpayer in respect of any amount payable by virtue of this section and the provisions of this Division are applicable, with such modifications as the circumstances require, in respect of an assessment made under this section as though it had been made under section 152.

That, in my opinion, makes the appellant liable with respect to the tax payable.

[11] The appellant questions the amount of tax assessed and payable under the joint liability provisions. The amount of tax payable, according to the appellant, must be determined through the filing of a tax return by the estate. Although the evidence does not enable us to say with certainty whether the estate has filed a tax return or not, the appellant has testified that none was filed by the executor of the estate.

[12] Subsection 160.2(2), quoted above, provides for the joint and several liability of the annuitant and the taxpayer to pay the annuitant's tax for the year of

the annuitant's death. The annuitant's tax for which they are liable is equal to the tax liability of the estate, including the benefits from the RRIF, less the result of a second calculation of the tax liability of the estate, but this time excluding any benefits that would normally have to be included by virtue of subsection 146.3(6) of the Act. The difference between the two tax calculations is the amount which the appellant and the annuitant (estate) are jointly and severally liable to pay.

[13] The evidence does not disclose how the Minister calculated the appellant's tax liability, which comes to roughly 40% of the amount received by her. Subsection 160.2(2) is clear in indicating that the annuitant or the estate in this case, must first be assessed for the tax on the benefits from the RRIF in order that the amount of tax payable under the joint liability provisions may be determined.

[14] The appellant is of the firm belief that no tax returns were filed for the estate and I accept her evidence in that regard. The appellant is liable, but the amount for which she is liable must be determined pursuant to the provisions of the Act. I therefore allow the appeal and refer the assessment back to the Minister for reconsideration and reassessment in accordance with these reasons.

Signed at Ottawa, Canada, this 18th day of October 2007.

"François Angers"

Angers J.

CITATION: 2007TCC502

COURT FILE NO.: 2007-587(IT)I

STYLE OF CAUSE: Gail L. Bélanger and Her Majesty The Queen

PLACE OF HEARING: Moncton, New Brunswick

DATE OF HEARING: July 13, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice François Angers

DATE OF JUDGMENT: October 18, 2007

APPEARANCES:

Agent for the Appellant: René Bélanger

Counsel for the Respondent: Claude Lamoureux

COUNSEL OF RECORD:

For the Appellant:

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