

Docket: 2003-2185(IT)APP

BETWEEN:

VIET HUNG NGUYEN,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

---

Application heard on August 11, 2003, at Montréal, Quebec

Before: The Honourable Justice P.R. Dussault

Appearances:

For the Applicant:

The Applicant himself

Counsel for the Respondent:

Stéphanie Côté  
Agathe Cavanagh (Student-at-law)

---

### ORDER

The application filed for an order to extend the time in which appeals from the assessments made under the *Income Tax Act* for the 1997, 1998 and 1999 taxation years may be instituted is dismissed in accordance with the attached Reasons for Order.

Signed at Ottawa, Canada, this 4th day of September 2003.

"P.R. Dussault"

---

Dussault, J.

Translation certified true  
on this 20<sup>th</sup> day of August 2004.

Sophie Debbané, Revisor

Citation: 2003TCC613  
Date: 20030904  
Docket: 2003-2185(IT)APP

BETWEEN:

VIET HUNG NGUYEN,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

### **REASONS FOR ORDER**

#### **Dussault, J.**

[1] The applicant filed an application to extend the time for instituting an appeal from assessments made under the *Income Tax Act* ("Act") for the 1997, 1998 and 1999 taxation years.

[2] The application was filed on June 16, 2003.

[3] As a result of the applicant's objection, reassessments were made on June 7, 2002, for the 1997 and 1998 taxation years.

[4] With respect to the 1999 taxation year, a reassessment was made on November 1, 2002. The applicant served notice on the Minister of National Revenue of his objection to that assessment on November 8, 2002. The assessment was confirmed on January 2, 2003.

[5] Under subsection 169(1) of the *Act*, the 90-day period for instituting an appeal from the assessment elapsed on September 5, 2002, for the 1997 and 1998 taxation years and on April 2, 2003, for the 1999 taxation year.

[6] The respondent contends that the applicant did not meet any of the conditions stated in subparagraphs 167(5)(b)(i) to (iii) of the *Act*, which provide as follows:

(5) When order to be made.

No order shall be made under this section unless

(a) ...

(b) the taxpayer demonstrates that

(i) within the time otherwise limited by section 169 for appealing the taxpayer

(A) was unable to act or to instruct another to act in the taxpayer's name, or

(B) had a *bona fide* intention to appeal,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application,

(iii) the application was made as soon as circumstances permitted, and

(iv) ...

[7] On June 6, 2001, the applicant filed an amended return for the 1998 taxation year. On July 12, 2001, he filed an amended return for the 1997 taxation year. However, he claims that those returns were not considered and that his bank accounts were seized in July 2001.

[8] In August and September 2001, the applicant says he met with a collection officer on two occasions. He also says he met with the auditor. He said he had been looking for documents or information to resolve the "problem".

[9] The appellant argues that the seizures by the Canada Customs and Revenue Agency left him in a depressive state and that he had also had to deal with family problems. In addition, in April 2002, it was apparently discovered that his spouse was suffering from cancer.

[10] In his testimony, the appellant also asserted that he had been unemployed in the summer of 2002 and that he had started working again in November of that same year.

[11] In response to the applicant's objection, reassessments for the 1997 and 1998 taxation years were made on June 7, 2002. The 90-day period for instituting an appeal elapsed on September 5, 2002. He did not decide to institute an appeal until June 6, 2003, some 284 days, or more than nine months, later. This very long delay was not justified in any way. It is difficult to conclude that the applicant was unable to act during that entire period when he very quickly, in fact on November 8, 2002, served notice of his objection to the assessment made on November 1, 2002, in respect of the 1999 taxation year.

[12] According to his own testimony, the appellant went back to work in November 2002 and worked regularly from January until April 2003. The time to appeal for the 1999 taxation year elapsed on April 2, 2003. He provided no explanation that would allow me to conclude that, during that period, he was unable to act or to instruct another to act in his name, or that, during the same period, he had a *bone fide* intention to appeal for the 1999 taxation year.

[13] In short, I find that the applicant did not demonstrate that his application in respect of the 1997 and 1998 taxation years was made as soon as circumstances permitted.

[14] As to the 1999 taxation year, I find that he did not show that, within the time otherwise limited for appealing, he was unable to act or to instruct another to act in his name, or that he had a *bone fide* intention to appeal.

[15] Accordingly, the appeal is dismissed.

Signed at Ottawa, Canada, this 4th day of September 2003.

"P.R. Dussault"

---

Dussault, J.

Translation certified true  
on this 20<sup>th</sup> day of August 2004.

Sophie Debbané, Revisor