

Docket: 2009-563(IT)I

BETWEEN:

J. MALCOLM KILLAM,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard by conference call on April 23, 2009

Before: The Honourable Justice Wyman W. Webb

Participants:

For the Appellant: The Appellant himself

Counsel for the Respondent: Susan Wong

ORDER

Upon Motion filed by the Respondent for an Order quashing the Appellant's appeal;

And upon hearing from the parties;

The Respondent's motion is granted and the appeal is quashed.

Signed at Ottawa, Ontario, this 24th day of April 2009.

“Wyman W. Webb”

Webb J.

Citation:2009TCC227
Date: 20090424
Docket: 2009-563(IT)I

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Appellant,

and

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Motion heard by conference call on April 23, 2009

Before: The Honourable Justice Wyman W. Webb

Participants:

For the Appellant: The Appellant himself
Counsel for the Respondent: Susan Wong

REASONS FOR ORDER

[1] This is a motion to quash the Notice of Appeal that was filed by the Appellant on February 18, 2009. The issue under appeal, as stated by the Appellant, was:

This Notice of Appeal relates to Administrative Compliances of Registered E Filers with respect to Form T183 wherein the Ministers Efile Help Desk determined in August of 2008 the Appellant had not complied with Regulation and was informed he would not be approved for the coming year...

[2] The Appellant had filed with his Notice of Appeal a copy of the letter that the Appellant had received from the Canada Revenue Agency confirming the decision of the Efile Help Desk. In this letter it is stated that:

If you feel that discretion was not properly exercised during our administrative review of your request, you can apply to the Federal Court of Canada for a judicial review under

section 18.1 of the Federal Court Act within thirty (30) days of the date of this letter, which is the date of our decision.

[3] The Appellant stated that he had not noticed this reference to the Federal Court in this letter and had simply filed his Notice of Appeal to this Court because he was familiar with this Court in dealing with assessments and reassessments of tax.

[4] The Appellant is seeking a review of the decision by the Canada Revenue Agency that the Appellant is no longer permitted to electronically file income tax returns on behalf of his clients. This appeal does not arise as a result of an assessment or a reassessment issued under the *Income Tax Act* but rather, although the “Regulation” in issue is not identified in the Notice of Appeal, appears to relate to an alleged failure of the Appellant to comply with the provisions of subsection 150.1(4) of the *Income Tax Act*.

[5] This Court was formed by an Act of Parliament. The jurisdiction of this Court is set out in section 12 of the *Tax Court of Canada Act*. This section provides, in part, as follows:

12. (1) The Court has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under the *Air Travellers Security Charge Act*, the *Canada Pension Plan*, the *Cultural Property Export and Import Act*, Part V.1 of the *Customs Act*, the *Employment Insurance Act*, the *Excise Act, 2001*, Part IX of the *Excise Tax Act*, the *Income Tax Act*, the *Old Age Security Act*, the *Petroleum and Gas Revenue Tax Act* and the *Softwood Lumber Products Export Charge Act, 2006* when references or appeals to the Court are provided for in those Acts.

[6] Subsection 169(1) of the *Income Tax Act* provides for appeals to this Court and this section provides as follows:

169. (1) Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied after either

(a) the Minister has confirmed the assessment or reassessed, or

(b) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed,

but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

[7] Section 171 of the *Income Tax Act* also provides as follows:

171. (1) The Tax Court of Canada may dispose of an appeal by

(a) dismissing it; or

(b) allowing it and

(i) vacating the assessment,

(ii) varying the assessment, or

(iii) referring the assessment back to the Minister for reconsideration and reassessment.

[8] Justice Hugessen of the Federal Court of Appeal in *The Queen v. The Consumers' Gas Company Ltd.*, [1987] 1 C.T.C. 79, 72 N.R. 206, 8 F.T.R. 321, [1987] 2 F.C. 60, 87 D.T.C. 5008 stated that:

13 ... What is put in issue on an appeal to the courts under the Income Tax Act is the Minister's assessment...

[9] A taxpayer only has a right to appeal to this Court on matters arising under the *Income Tax Act* in relation to an assessment or a reassessment of tax. In this particular case, the Appellant is not appealing any assessment or reassessment of taxes owing, but rather is seeking a judicial review of a decision made by the Canada Revenue Agency that he is no longer permitted to electronically file tax returns on behalf of his clients. This is not a matter that is within the jurisdiction of this Court.

[10] As a result the Respondent's motion is granted and the appeal is quashed.

Signed at Ottawa, Ontario, this 24th day of April 2009.

“Wyman W. Webb”

Webb J.

CITATION: 2009TCC227

COURT FILE NO.: 2009-563(IT)I

STYLE OF CAUSE: MALCOLM KILLAM AND HER
MAJESTY THE QUEEN

PLACE OF MOTION: Toronto, Ontario

DATE OF MOTION: April 23, 2009

REASONS FOR ORDER BY: The Honourable Justice Wyman W. Webb

DATE OF REASONS: April 24, 2009

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Susan Wong

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

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