

Citation: 2009TCC271

2008-2972(IT)G

BETWEEN:

WAYNE GORDON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

**CERTIFICATION OF TRANSCRIPT OF
REASONS FOR JUDGMENT**

Let the attached certified transcript of the Reasons for Judgment delivered orally from the Bench at Regina, Saskatchewan, on March 3, 2009, be filed.

“D.W. Beaubier”

Beaubier D.J.

Signed in Edmonton, Alberta on June 3rd, 2009.

TAX COURT OF CANADA

2008-2972 (IT)G

B E T W E E N:

WAYNE GORDON

APPELLANT

- and -

HER MAJESTY THE QUEEN

RESPONDENT

Held before His Honourable Justice D.W. Beaubier at
the Hotel Saskatchewan at Regina, Saskatchewan,
On Tuesday, March 3, 2009

REASONS FOR JUDGEMENT

APPEARANCES:

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Appearing for the Appellant

B. Sittler (Justice Canada)
J. Barber Student-at-Law
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Appearing for the Respondent

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REASONS FOR JUDGMENT

[1] This motion by the Respondent to quash the Appellant's Notice of Appeal for his 2003 taxation year was heard at Regina, Saskatchewan on March 3, 2009.

[2] The basis for the motion is that there was no reassessment from which to object or appeal on a timely basis.

[3] The evidence is that the Appellant filed his original income tax return for 2003 on a timely basis, and it was assessed by a Notice of Assessment dated May 6th, 2004.

[4] After that, the following occurred:

(1) April 16, 2007, the Appellant filed an amended T1 General for 2003 requesting an adjustment for 2003.

(2) January 7th, 2008, the Minister denied that requested (David Gill, Exhibit B).

(3) February 15th, 2008, there was a second denial by the Minister.

(4) May 23, 2008, the Appellant filed a Notice of Objection to these denials, which referred to a Notice of Assessment for 2003 dated March 3, 2008. That alleged Notice of Assessment is not in evidence.

(5) June 4, 2008, the Minister advised the Appellant that the May 23rd, 2008 Notice of Objection was not accepted because it was too late for the Notice of Assessment dated May 6th, 2004.

(6) August 27th, 2008, the Appellant filed this Notice of Appeal for the 2003 year again referring to a Notice of Reassessment dated March 3, 2008; then to the Notice of Assessment dated May 23, 2008; and then to a denial dated June 4, 2008.

[5] In his Affidavit respecting the motion dated 18 February 2009, Mr. Gordon describes a judgment of this Court Number 2004-1889 (IT)G dated September 17th, 2008, and states that he is entitled to a consequential reassessment which has not yet been made for his 2003 taxation year. He further states that his 2004-5-6 years have been reassessed as a result of the judgment and have been objected to.

[6] Mr. Gordon's Affidavit of 18 February 2009 could have contained the reassessment for 2003, which his Notice of Appeal alleges occurred on March 3, 2008. It does not. The Respondent's affiant, Mr. David Gill, stated on 28 November 2008 that there was only a Notice of Assessment of May 6, 2004, and in effect, nothing more for 2003. His evidence is accepted as correct based on the materials before this Court in respect to this Notice of Appeal for 2003.

[7] In his argument, Mr. Gordon's counsel referred to the Minister's letter dated February 29, 2008, (Mr. Gordon, Exhibit B) as, in effect, the reassessment

in appeal dated March 3, but that letter merely states "We are proceeding with a reassessment of the above-mentioned returns as indicated in our proposal letter

Page 4

dated January 7, 2008, sent to your representatives." That does not constitute a reassessment for 2003. The letter refers to the 2003-2006 years inclusive. In fact, there is no evidence that a reassessment has been done for 2003 although apparently some of those other years have been reassessed.

[8] Therefore, in this Court's view, there is no reassessment for 2003 in evidence which may be appealed. In particular, there is no reassessment dated March 3, 2008, or any document which can be construed as such a reassessment.

[9] For this reason, this Notice of Appeal is quashed. However, because of the letter of the Minister of February 29, 2008, there is no order as to costs.

(End of Reasons)

OFFICIAL QUEEN'S BENCH COURT REPORTER'S CERTIFICATE:

I, KIMBERLEY KRESKI, CSR, Official Queen's Bench Court Reporter for the Province of Saskatchewan, hereby certify that the foregoing pages contain a true and correct transcription of my shorthand notes taken herein to the best of my knowledge, skill and ability.

KIMBERLEY KRESKI, CSR

OFFICIAL QUEEN'S BENCH COURT REPORTER