

Citation: 2009TCC609  
Date: 20091209  
Docket: 2009-561(IT)I

BETWEEN:

DEBBIE REZLER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appearances:

For the Appellant: Steven Bromberg  
Counsel for the Respondent: Antonia Paraherakis

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**REASONS FOR JUDGMENT**

**(Delivered orally from the bench on November 5, 2009, in Montreal, Quebec)**

Miller J.

[1] This is an informal procedure case dealing with excess RRSP contributions. The facts are straightforward. The Appellant, Mrs. Rezler, on advice of her investment counsellor, made RRSP contributions of \$14,000 and \$15,000 for the 2003 and 2004 taxation years, respectively. The 2004 contribution was made in early 2005; \$12,272 of the \$14,000 was disallowed for deduction in 2003 and all of the \$15,000 contribution was disallowed for deduction in 2004. Mrs. Rezler was notified by assessment of this result. She attempted to deduct the \$15,000 payment in 2005, given that it was made in the first 60 days of 2005.

[2] The appeals officer testified that the assessments would indicate the taxpayer's RRSP status, including showing excess contributions and the possibility of a Part X.I

excess tax. It was not, however, until 2007 that the Government wrote to the Appellant, seeking the filing of the T1-OVP form for the payment of tax on excess contributions. The Appellant responded by seeking a tax deduction waiver, (T3012-A) for both the \$12,272 contribution for 2003 and the \$15,000 contribution for 2005. As the latter payment of \$15,000 was made within the time period stipulated in the *Act*, the Government approved the tax deduction waiver for the \$15,000, but not for the \$12,272.

[3] The Minister of National Revenue asked the Appellant to submit the Part X.I forms along with payment of the excess tax, which is a 1% per month tax on the excess contributions. The Minister assessed the Appellant pursuant to Part X.I tax on February 27, 2008, also assessing late filing penalties and interest.

[4] The relevant provisions are section 146(8.2) and Part X.I of the *Income Tax Act*. I will not go into detail of these sections, but simply, I confirm that they provide for a 1% per month tax on excess RRSP contributions. They also provide that the taxpayer can withdraw the excess contribution without tax, if the taxpayer does so within 1 year after the year of assessment.

[5] I am satisfied that Mrs. Rezler did make excess contributions of \$12,272 and \$15,000. There is no dispute regarding the excess contributions. I am also satisfied that the Government properly allowed the 2005 tax deduction waiver, and properly disallowed the 2003 tax deduction waiver as it was made out of time.

[6] The issue before me is whether the Part X.I tax on excess contributions, the 1% per month, plus the late filing penalty and interest have been correctly assessed.

[7] The Appellant has one argument, that is that she is being taken advantage of and treated unfairly, because the Government did not make it clear until years after the tax arose, that there was a 1% per month tax on excess contributions, assessing in 2008 for the 2003 to 2006 taxation years.

[8] While I can sympathize with the taxpayer, and indeed agree that it is difficult for a taxpayer to know and appreciate all aspects of our very complicated tax legislation, it does not justify non-compliance with those laws. In Canada, we have a self-assessment system. This does put an onus on the taxpayer to keep records, complete forms, and submit returns and taxes on a timely basis. I acknowledge the Part X.I tax on excess contributions may not be a well-known tax at every taxpayer's fingertips. However, it is the law. There is no requirement on the Government to spell it out in detail for the taxpayer. The Government does provide a summary of the

taxpayer's RRSP status, and Mrs. Rezler would have known on a timely basis that her deductions for her RRSP contributions were disallowed. She sought professional advice to make the contributions, but she did not seek advice as to why it was not allowed. A review of her annual assessments should have alerted her to a problem with these payments. Her agent, her husband, Mr. Bromberg, suggested the Government should have spelled out for Mrs. Rezler that she could be facing this 1% per month penalty. That, however, is not the Government's responsibility.

[9] Mr. Bromberg, the Appellant has not been taken advantage of nor treated unfairly, although I can appreciate why you might think she has been: this is simply applying legislation, albeit complicated legislation. It is regrettable the Government did not assess more quickly, though there is no onus on it to do so. But it is equally regrettable that Mrs. Rezler did not also enquire into the ramifications of a disallowed deduction. If I were to allow this appeal, it would be effectively writing the tax on excess contributions out of the *Act*. I cannot do that. It is unfortunately a harsh lesson learned that in a self-assessment system, there is a responsibility on the taxpayer to determine tax owed, including such taxes as the Part X.I tax. I must dismiss Mrs. Rezler's appeal.

Signed at Ottawa, Canada, this 9th day of December, 2009.

"Campbell J. Miller"

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C. Miller J.

CITATION: 2009TCC609

COURT FILE NO.: 20079-561(IT)I

STYLE OF CAUSE: DEBBIE REZLER and  
HER MAJESTY THE QUEEN

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: November 5, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Campbell J. Miller

DATE OF JUDGMENT: November 10, 2009

APPEARANCES:

For the Appellant: Steven Bromberg  
Counsel for the Respondent: Antonia Paraherakis

COUNSEL OF RECORD:

For the Appellant: n/a

Name:

Firm:

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