

BETWEEN:

MICHAEL HAINES,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on August 17, 2010 at Grande Prairie, Alberta

By: The Honourable Justice Judith Woods

Appearances:

For the Applicant: The Applicant himself

Counsel for the Respondent: Robert Neilson

JUDGMENT

The application for an order granting an extension of time to institute an appeal under the *Income Tax Act* for the 2008 taxation year is dismissed. Each party shall bear their own costs.

Signed at Ottawa, Canada this 30th day of August 2010.

“J. M. Woods”

Woods J.

Citation: 2010 TCC 450
Date: 20100830
Docket: 2010-1468(IT)APP

BETWEEN:

MICHAEL HAINES,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] This is an application for an order granting an extension of time to institute an appeal from an assessment made under the *Income Tax Act*. The assessment was issued to the applicant, Michael Haines, for the 2008 taxation year.

[2] Mr. Haines explained the relevant background at the hearing. On the advice of a financial planner, Mr. Haines made substantial withdrawals from his RRSP in 2008 and 2009 in order to purchase a house. He understood that the withdrawals would be included in income. However, he thought that the appropriate tax would be withheld at source. When preparing his 2008 income tax return, he discovered that the source deduction was not sufficient and that there was additional tax to pay.

[3] Mr. Haines seeks relief from this additional tax and states that no one from the Canada Revenue Agency (CRA) has provided him with any assistance. He has no recourse except to apply to this Court.

[4] Furthermore, Mr. Haines referred to media reports that former Prime Minister Brian Mulroney was relieved of half the tax he owed. He is looking for the same type of relief.

[5] Mr. Haines was a few weeks late in filing a notice of appeal. He had incorrectly assumed that the 90 day time period was counted by work days. Accordingly, this application was brought to extend time.

[6] The circumstances that led to the notice of appeal being filed late are sympathetic, but the application nevertheless should be dismissed.

[7] Subsection 167(5) of the *Income Tax Act* sets out several requirements that must be met before an application to extend time may be granted by this Court. One of these requirements is that the applicant must demonstrate that there are reasonable grounds for the appeal. The relevant provision is reproduced below.

167(5) No order shall be made under this section unless

(a) the application is made within one year after the expiration of the time limited by section 169 for appealing; and

(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) there are reasonable grounds for the appeal.

[Emphasis added.]

[8] Mr. Haines has not demonstrated that there are reasonable grounds for the appeal. He has not shown that the appeal has any chance of success.

[9] Mr. Haines does not dispute that the RRSP withdrawals must be included in income, and he does not disagree with how the tax or interest were calculated. Essentially, he is looking for relief on grounds of fairness.

[10] Unfortunately for Mr. Haines, the Tax Court has no power to grant relief on grounds of fairness. Parliament has the power to enact tax legislation, and this Court's mandate is only to ensure that tax assessments conform to the relevant

legislation. It is not in dispute that the assessment is in conformity with the RRSP legislation.

[11] Mr. Haines stated that he was looking for the same type of relief that, according to media reports, was recently granted to former Prime Minister Mulroney.

[12] Unfortunately for Mr. Haines, even if the former Prime Minister's circumstances were similar to his own, it would not be of assistance in this Court. Counsel for the respondent referred me to the following comment of Evans J.A. in *Sinclair v. The Queen*, 2003 FCA 348, 2003 DTC 5624.

[7] In our view, it is not open to the Tax Court to set aside a tax reassessment on the ground that the taxpayer ought to have been given the same favourable treatment as others who are similarly situated.

[13] In the circumstances, this application does not satisfy the legislative requirement set out in s. 167(5)(b)(iv), namely, that the applicant demonstrate that there are reasonable grounds for the appeal.

[14] The application will be dismissed on that basis.

[15] Although the disposition of this application will result in Mr. Haines not being able to pursue an appeal in the Tax Court, there may be other avenues for potential relief that Mr. Haines may wish to explore with the CRA. It is helpful that counsel for the respondent offered to assist Mr. Haines by providing contact information in this regard.

Signed at Ottawa, Canada this 30th day of August 2010.

“J. M. Woods”

Woods J.

CITATION: 2010 TCC 450

COURT FILE NO.: 2010-1468(IT)APP

STYLE OF CAUSE: MICHAEL HAINES and HER MAJESTY
THE QUEEN

PLACE OF HEARING: Grande Prairie, Alberta

DATE OF HEARING: August 17, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice J. M. Woods

DATE OF JUDGMENT: August 30, 2010

APPEARANCES:

For the Applicant: The Applicant himself

Counsel for the Respondent: Robert Neilson

COUNSEL OF RECORD:

For the Applicant:

Name: N/A

Firm:

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