

BETWEEN:

TRACY SUTHERLAND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on February 8, 2011 at Winnipeg, Manitoba

Before: The Honourable Justice Wyman W. Webb

Appearances:

Agent for the Appellant: Leslie Sutherland
Counsel for the Respondent: Larissa Benham

JUDGMENT

The Appellant's Application to extend the time for serving a notice of objection in relation to the reassessment of the Appellant's 2005 taxation year is dismissed without costs.

Signed at Ottawa, Ontario, this 16th day of March, 2011.

“Wyman W. Webb”

Webb, J.

Citation: 2011TCC170
Date: 20110316
Docket: 2010-3418(IT)APP

BETWEEN:

TRACY SUTHERLAND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb, J.

[1] The Appellant was reassessed in relation to his tax liability for 2005 on April 1, 2009. The Appellant did not serve a notice of objection within the time specified by subsection 165(1) of the *Income Tax Act* (the “Act”), i.e. within 90 days of April 1, 2009. The Applicant applied to the Minister under section 166.1 of the *Act* to request an extension of time to serve the notice of objection. This application was made on July 9, 2010. This application was refused by the Minister and the Applicant then made this application pursuant to section 166.2 of the *Act*.

[2] Paragraph 166.2(5)(a) of the *Act* provides that:

(5) No application shall be granted under this section unless

(a) the application was made under subsection 166.1(1) within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection or making a request, as the case may be; and

...

[3] The application under subsection 166.1(1) of the *Act* is the application made to the Minister to request an extension of time to serve the notice of objection which was made by the Applicant in this case on July 9, 2010 which was more than one

year after the time limited by the *Act* for serving a notice of objection. Since subsection 165(1) of the *Act* provides that the time within which an individual may serve a notice of objection is the later of one year after the individual's filing due date for the particular year and 90 days from the date of the mailing of the notice of assessment, in this case, since the taxation year in issue is 2005, the Applicant would have had one year and 90 days from April 1, 2009 to apply for an extension of time to serve the notice of objection. He did not do so within this period of time. He stated that he thought that his accountant was looking after this but his accountant was ill and died at the end of March 2010.

[4] Unfortunately there is no discretion to extend the deadlines as set out in the *Act* and the provisions of subsection 166.2(5) of the *Act* are clear that no application may be granted by this Court unless both the requirements of paragraph (a) and (b) are satisfied. In this case the Applicant has failed to satisfy the requirements of paragraph 166.2(5)(a) of the *Act*.

[5] As a result the Appellant's Application to extend the time for serving a notice of objection in relation to the reassessment of the Appellant's 2005 taxation year is dismissed without costs.

Signed at Ottawa, Ontario, this 16th day of March, 2011.

“Wyman W. Webb”

Webb, J.

CITATION: 2011TCC170

COURT FILE NO.: 2010-3418(IT)APP

STYLE OF CAUSE: TRACY SUTHERLAND AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: February 8, 2011

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

DATE OF JUDGMENT: March 16, 2011

APPEARANCES:

Agent for the Appellant: Leslie Sutherland
Counsel for the Respondent: Larissa Benham

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

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