

Docket: 2016-589(IT)I

BETWEEN:

NEPTUNE SERVICE LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion determined pursuant to section 69
of the *Tax Court of Canada Rules (General Procedure)*

By: The Honourable Justice David E. Graham

Written submissions by:

Counsel for the Appellant: Neil E. Bass
Angelo Gentile

Counsel for the Respondent: Leonard Elias

ORDER

Neptune Service Ltd.'s motion to amend its notice of appeal is dismissed.

Signed at Ottawa, Canada, this 8th day of December 2017.

“David E. Graham”

Graham J.

Citation: 2017 TCC 248
Date: 20171208
Docket: 2016-589(IT)I

BETWEEN:

NEPTUNE SERVICE LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Graham J.

[1] Neptune Service Ltd. has brought a motion to amend its notice of appeal. The notice of appeal appeals an income tax assessment issued on July 30, 2014 and confirmed on October 28, 2015 (the “Income Tax Assessment”). Neptune wants to amend the notice of appeal to include a related EI / CPP assessment issued on July 15, 2014 and confirmed on May 28, 2015 (the “EI / CPP Assessment”). The Respondent opposes the motion. For the reasons that follow, the motion is denied.

[2] Before beginning my analysis, I would like to emphasize that Neptune’s counsel before me on the motion were not its counsel during the periods in question.

[3] Neptune had 90 days to appeal the confirmation of the EI / CPP Assessment. That 90 day period ended on August 26, 2015. Neptune did not file an appeal within that period. Unlike appeals from the *Income Tax Act* or the *Excise Tax Act* where the taxpayer has one year from the end of the 90 day deadline to apply for an extension of time to appeal, under the *Employment Insurance Act* and

the *Canada Pension Plan* taxpayers only have 90 days to apply for an extension of time to appeal. For Neptune, that second 90 day period ended on November 24, 2015. Neptune did not file an application for extension of time to appeal within that period.

[4] Neptune had until January 26, 2016 to file a notice of appeal to the confirmation of the Income Tax Assessment. Neptune did not do so. On February 19, 2016, Neptune filed a notice of appeal and a related application for extension of time to appeal the confirmation of the Income Tax Assessment. The Respondent consented to the application for extension of time and the Court ordered an extension. Neither that consent nor the resulting order had any effect on the confirmation of the EI / CPP Assessment.

[5] The notice of appeal and application for extension of time to appeal in respect of the Income Tax Assessment made no reference to the confirmation of the EI / CPP Assessment. Even if those documents had made reference to the confirmation of the EI / CPP Assessment, the Court could not have granted an extension of time to appeal that assessment because the application would have been made after the 90 day extension deadline.

[6] Neptune is seeking to amend its notice of appeal for the Income Tax Assessment in order to include the EI / CPP Assessment. In essence, Neptune is seeking to do indirectly what it cannot do directly. It is indirectly seeking to appeal the EI / CPP Assessment when it is not only out of time to apply for an extension of time to do so now but, more importantly, was out of time to apply for such an extension when it filed the notice of appeal it is seeking to amend. This is not a situation where there has been a slip and, had the taxpayer referred to the proper confirmation in its notice of appeal, it would have been in time to appeal. Even if Neptune's notice of appeal and application for extension filed in respect of the Income Tax Assessment had also referred to the EI / CPP Assessment, Neptune would still have applied too late. The fact that the two assessments arise out of the same factual circumstances does not change my analysis.

[7] In the circumstances, I have no choice but to deny the motion.

Signed at Ottawa, Canada, this 8th day of December 2017.

“David E. Graham”

Graham J.

CITATION: 2017 TCC 248
COURT FILE NO.: 2016-589(IT)I
STYLE OF CAUSE: NEPTUNE SERVICE LTD. v. HER
MAJESTY THE QUEEN
REASONS FOR ORDER BY: The Honourable Justice David E. Graham
DATE OF ORDER: December 8, 2017

WRITTEN SUBMISSIONS BY:

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Angelo Gentile
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