

Docket: 2011-1245(IT)I

BETWEEN:

ELI WINTERS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on August 24, 2011 at Vancouver, British Columbia

Before: The Honourable Justice Wyman W. Webb

Appearances:

Agent for the Appellant: Robert Stone
Counsel for the Respondent: Amandeep K. Sandhu

ORDER

The Respondent's motion to quash the Appellant's appeals in relation to the reassessment of his tax liability for 2000, 2001, 2002, 2003, and 2004 is allowed and the Appellant's appeals are quashed, without costs.

Signed at Winnipeg, Manitoba, this 7th day of September 2011.

“Wyman W. Webb”

Webb, J.

Citation: 2011TCC417
Date: 20110907
Docket: 2011-1245(IT)I

BETWEEN:

ELI WINTERS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Webb, J.

[1] The Appellant filed an appeal to this Court in which he indicated that he was appealing the reassessment (or assessment) of his tax liability for the years 2000 to 2004 inclusive. At the commencement of the hearing the agent for the Appellant confirmed that only the years 2001 and 2002 were being pursued by the Appellant. The Respondent brought a motion to quash the Appellant's appeals in relation to the years 2000 to 2004. Since the Appellant was only pursuing the appeals for 2001 and 2002, the appeals in relation to reassessments for the years 2000, 2003 and 2004 are quashed. As a result the motion to quash the appeals in relation to the years 2001 and 2002 will be addressed. The Respondent had brought the motion to quash the Appellant's appeals in relation to 2001 and 2002 on the basis that a valid notice of objection had not been filed in relation to the reassessments issued for either one of these years.

[2] The Appellant's tax liability for 2001 was reassessed on March 14, 2005. The Appellant was reassessed for 2002 on May 17, 2010. The Appellant did not file a notice of objection to either one of these reassessments until December 24, 2010. In that notice of objection the Appellant objected to the reassessment of his 2002 and 2003 taxation years. On January 26, 2011 the Appellant served a notice of objection to the reassessment of his 2001, 2002 and 2003 taxation years.

[3] By letter dated February 24, 2011 the Minister notified the Appellant that his notice of objection in relation to the reassessment issued for 2001 was served after

the expiration of the period of time within which a notice of objection in relation to this reassessment could have been served and after the expiration of the time period within which the Appellant could have requested an extension of time to serve a notice of objection in relation to this reassessment. The minister also noted that, although the notice of objection in relation to the reassessment issued for 2002 was also served after the expiration of the period of time within which a notice of objection in relation to this reassessment could have been served, the Appellant still had time to request an extension of time to serve the notice of objection in relation to the reassessment for 2002. The Appellant did not request an extension of time to serve a notice of objection in relation to the reassessment for 2002 but instead filed an appeal to this Court on April 22, 2011.

[4] Subsection 169(1) of the *Income Tax Act* provides as follows:

169. (1) Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied after either

(a) the Minister has confirmed the assessment or reassessed, or

(b) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed,

but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

[5] In *Bormann v. The Queen*, 2006 DTC 6147, the Federal Court of Appeal stated as follows:

3 Section 169(1) of the *Income Tax Act* obliges a taxpayer to serve Notice of Objection in order to appeal an assessment. In other words, service of a Notice is a condition precedent to the institution of an appeal.

4 As mentioned, the appellant did not serve a Notice of Objection nor is there evidence that the appellant made an application to the Ministry to extend the time to file a Notice of Objection.

5 Once it is clear that no application for an extension of time was made, the law is clear that there is no jurisdiction in the Tax Court to further extend the time for equitable reasons.

Minuteman Press of Canada Company Limited v. M.N.R., 88 DTC 6278, (F.C.A.).

6 As a result, there is no basis upon which it can be said that the Tax Court Judge erred in quashing the appellant's appeals for the 1992 to 1998 taxation years.

[6] In order to appeal to this Court, the Appellant must first serve a valid notice of objection. The notice of objection filed for 2001 was clearly filed well after the expiration of the time within which a notice of objection may be served under the *Act*. Section 165 of the *Act* provides as follows:

165. (1) A taxpayer who objects to an assessment under this Part may serve on the Minister a notice of objection, in writing, setting out the reasons for the objection and all relevant facts,

(a) where the assessment is in respect of the taxpayer for a taxation year and the taxpayer is an individual (other than a trust) or a testamentary trust, on or before the later of

(i) the day that is one year after the taxpayer's filing-due date for the year, and

(ii) the day that is 90 days after the day of mailing of the notice of assessment; and

(b) in any other case, on or before the day that is 90 days after the day of mailing of the notice of assessment.

[7] If a notice of objection is not filed within the time as provided in subsection 165(1) of the *Act*, a taxpayer may request an extension of time to serve the notice of objection as provided in section 166.1 of the *Act*. However, paragraph 166.1(7)(a) of the *Act* provides as follows:

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

(a) the application is made 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;

[8] The notice of objection in relation to the reassessment of the Appellant's 2001 taxation year was served more than 5 years after the date of the reassessment which is long after the expiration of the period of time within which a notice of objection to this reassessment could have been served and long after the expiration of the period of time within which the Appellant could have requested an extension of time to serve this notice of objection. Therefore this notice of objection was not valid and the appeal to this Court related to this reassessment is quashed.

[9] The notice of objection in relation to the reassessment of his 2002 taxation year was served more than 90 days after the date of this reassessment but the time within which the Appellant could have requested an extension of time to serve a notice of objection had not expired when he filed this notice of objection. The Appellant was notified of this but did not make the application to the Minister to request an extension of time to serve the notice of objection as provided in section 166.1 of the *Act*. As a result the Appellant does not have a valid notice of objection to the reassessment issued for 2002 and his appeal to this Court in relation to this reassessment is quashed.

[10] As a result, the Respondent's motion to quash the Appellant's appeals in relation to the reassessment of his tax liability for 2000, 2001, 2002, 2003, and 2004 is allowed and the Appellant's appeals are quashed, without costs.

Signed at Winnipeg, Manitoba, this 7th day of September 2011.

“Wyman W. Webb”

Webb, J.

CITATION: 2011TCC417
COURT FILE NO.: 2011-1245(IT)I
STYLE OF CAUSE: ELI WINTERS AND THE QUEEN
PLACE OF HEARING: Vancouver, British Columbia
DATE OF HEARING: August 24, 2011
REASONS FOR ORDER BY: The Honourable Justice Wyman W. Webb
DATE OF ORDER: September 7, 2011

APPEARANCES:

Agent for the Appellant: Robert Stone
Counsel for the Respondent: Amandeep K. Sandhu

COUNSEL OF RECORD:

For the Appellant:

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Firm:

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