

Docket: 2011-3047(IT)APP

BETWEEN:

REAL MICHAUD,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on December 13, 2011 at Edmonton, Alberta

Before: The Honourable Justice J.M. Woods

Appearances:

Agent for the Applicant: Darlene Lafond
Counsel for the Respondent: Paige Atkinson

ORDER

The application, for an Order extending the time within which to serve a notice of objection under the *Income Tax Act* with respect to an assessment for the 2008 taxation year, is dismissed.

Signed at Toronto, Ontario this 23rd day of December 2011.

“J. Woods”

Woods J.

Citation: 2011 TCC 573
Date: 20111223
Docket: 2011-3047(IT)APP

BETWEEN:

REAL MICHAUD,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Woods J.

[1] Real Michaud brings an application to extend time to serve a notice of objection under the *Income Tax Act* with respect to an assessment for the 2008 taxation year.

[2] The Crown objects to the extension on grounds that the provisions of subsection 166.2(5) of the *Act* have not been satisfied. The main provisions, s. 166.2(5) and s. 165(1), are reproduced below.

When application to be granted

166.2(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

(b) the taxpayer demonstrates that

(i) within the time otherwise limited by this Act for serving such a notice or making such a request, as the case may be, 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 object to the assessment or make the request,

- (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, and
- (iii) the application was made under subsection 166.1(1) as soon as circumstances permitted.

Objections to assessment

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 sending of the notice of assessment; and

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

Factual Background

[3] The Minister of National Revenue last reassessed Mr. Michaud's 2008 taxation year by notice dated November 23, 2009.

[4] On or about March 28, 2011, Mr. Michaud requested an adjustment to the 2008 income tax return with respect to medical travel expenses.

[5] By letter dated April 15, 2011, the Minister informed Mr. Michaud that the request was denied on the basis that the expenses did not qualify as "medical expenses."

[6] On July 14, 2011, Mr. Michaud served a notice of objection to the above reassessment. The Minister denied the objection on or about July 25, 2011.

[7] Mr. Michaud filed this application on October 13, 2011.

Analysis

[8] In order for an extension of time to be granted, the conditions set out in s. 166.2(5) of the *Act* must be satisfied.

[9] One of those requirements is that the taxpayer have applied to the Minister for an extension of time within one year after the expiration of the time for objecting: paragraph 166.2(5)(a).

[10] Counsel for the Crown submits that this condition has not been satisfied because Mr. Michaud needed to apply to the Minister for an extension of time no later than June 15, 2011. Even if the notice of objection served on July 14, 2011 is considered to be an application for an extension of time, it is submitted, the application was sent one month late.

[11] The June 15, 2011 deadline was determined by the Minister pursuant to s. 165(1) as being one year following the later of: (1) one year after the filing due date for the tax return (June 15, 2010), and (2) 90 days after the notice of assessment was sent (February 21, 2010).

[12] Several of the arguments that were made on behalf of Mr. Michaud are based on considerations of fairness. It is submitted that the Canada Revenue Agency (the “CRA”) invited Mr. Michaud to make a request for an adjustment to the income tax return and did not inform him that it was necessary to file a notice of objection. It is also submitted there were mitigating factors for failing to meet the deadline. It is further submitted that the appeal clearly has merit because a similar claim for Mr. Michaud’s spouse was allowed by the CRA.

[13] Unfortunately, the deadline for making this application cannot be ignored on grounds of fairness, even if the fault lies with the CRA: *Carlson v. The Queen*, 2002 DTC 6893 (FCA), para 13 and *Moulton v The Queen*, [2002] 2 CTC 2395. As stated by Bowman C.J. in *Moulton*, it may be shocking for taxpayers to learn that they cannot rely on advice provided by the CRA.

[14] The agent for Mr. Michaud submitted that the condition in s. 166.2(5)(b)(ii) is satisfied because it is just and equitable that the application be granted. The problem with this submission is that this is an additional requirement, not an alternate requirement. All of the conditions in s. 166.2(5) must be satisfied.

[15] The agent for Mr. Michaud also referred to the Bill of Rights to the effect that taxpayers should only have to bear the proper amount of tax. This argument, if

accepted, would erase the deadlines for objections and appeals that Parliament has prescribed. This cannot be the intent of the Bill of Rights.

[16] The agent for Mr. Michaud also submits that the *Act* permits taxpayers to object to determinations in addition to assessments. It is suggested that the Minister made such a determination when the CRA rejected Mr. Michaud's request to make an adjustment for medical expenses. It is suggested that an objection may be served with respect to this determination which was made on April 15, 2011.

[17] I disagree with this submission. The *Act* does contemplate that appeals may be taken from determinations, but only with respect to certain matters, such as GAAR determinations, loss determinations and determinations of child tax benefits. I was not referred to any provision that would allow for an objection or appeal of a determination to deny a claim for medical expenses.

[18] Finally, the agent for Mr. Michaud suggests that she may have sent a letter to the CRA on or about May 22, 2010 with the necessary information to support the expense claimed. Even if such a letter could be construed as an application to extend time to file a notice of objection, there was insufficient evidence to establish that a letter was actually sent.

[19] For all these reasons, I would conclude that Mr. Michaud did not make an application to extend time within the required deadline. The application will be dismissed.

Signed at Toronto, Ontario this 23rd day of December 2011.

"J. Woods"

Woods J.

CITATION: 2011 TCC 573

COURT FILE NO.: 2011-3047(IT)APP

STYLE OF CAUSE: REAL MICHAUD and HER MAJESTY
THE QUEEN

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: December 13, 2011

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

DATE OF ORDER: December 23, 2011

APPEARANCES:

Agent for the Appellant:	Darlene Lafond
Counsel for the Respondent:	Paige Atkinson

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Ontario