Docket: 2016-2903(IT)I

BETWEEN:

WAYNE OWEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 4, 2018, at Toronto, Ontario.

Before: The Honourable Gaston Jorré, Deputy Judge

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Derek Edwards

JUDGMENT

For the attached reasons for judgment, the appeal from the reassessment made under the *Income Tax Act* for the 2012 taxation year is dismissed without costs.

Signed at Ottawa, Ontario, this 9th day of May 2018.

"Gaston Jorré"

Jorré D.J.

Citation: 2018 TCC 90
Date: 20180509
Docket: 2016-2903(IT)I

BETWEEN:

WAYNE OWEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Jorré D.J.

[1] Mr. Owen appeals from a reassessment of his 2012 taxation year. The facts are straightforward.

[2] His father resided in the United States of America and passed away in 2011. Among other assets his father had a U.S. individual retirement account or IRA. The Appellant and his siblings were the beneficiaries of the IRA.

[3] The Appellant's share was rolled over to an IRA in his name and the funds were distributed to him in 2012. When the funds were distributed, amounts were withheld for United States income taxes.

[4] The issue is whether the payment from the IRA should be included in his 2012 income.

[5] The Canada Revenue Agency added the amount to the Appellant's income; the Agency also took account of the United States taxes withheld and allowed a foreign tax credit.

[6] The Appellant's position is that the amount received from the IRA should not be subject to tax because it is an inheritance.

[7] While the Appellant received the funds as a result of his father's death and while generally the receipt of an amount distributed from an estate does not in itself trigger tax, there are two important considerations here.

[8] First, the Appellant received the amount as a distribution from an IRA and not from his father's estate. Second, such a distribution is covered by specific provisions of the *Income Tax Act* and *Income Tax Regulations*.

[9] The first relevant provision is clause 56(1)(*a*)(i)(C.1) of the Act; the relevant portions are:

> 56(1) . . . there shall be included in computing the income of a taxpayer . . .,
>
> (*a*) any amount received by the taxpayer . . ., on account or in lieu of payment of, or in satisfaction of,
>
> (i) a superannuation or pension benefit including, without limiting the generality of the foregoing,
>
> . . .
>
> (C.1) . . . any payment out of . . . a foreign retirement arrangement established under the laws of a country, except to the extent that the amount would not, if the taxpayer were resident in the country, be subject to income taxation in the country,
>
> but not including
>
> . . .

[10] None of the exceptions following "but not including" have application here.

[11] In subsection 248(1) of the Act "foreign retirement arrangement" is defined to mean "a prescribed plan or arrangement" and section 6803 of the *Income Tax Regulations* states that:

> . . . a prescribed plan or arrangement is a plan or arrangement to which subsection 408(a), (b) or (h) of the *United States' Internal Revenue Code* . . . applies.

[12] Subsection 408(a) of the *Internal Revenue Code* defines what constitutes an individual retirement account.

[13] The payment from the IRA to the Appellant is clearly a "payment out of" a "foreign retirement arrangement" within the meaning of clause 56(1)(*a*)(i)(C.1).

[14] The amount distributed to the Appellant was not an amount that would not be subject to income tax in the United States if the Appellant had been a resident of the United States.

[15] As a result the distribution must be included in the income pursuant to subsection 56(1).

[16] The result of this legislation is to treat the IRA distribution in much the same way as if it were a distribution from an RRSP of his father. However, because U.S. tax was withheld the Appellant benefited from a foreign tax credit.[1]

[17] Accordingly, the reassessment is correct and the appeal is dismissed without costs.

Signed at Ottawa, Ontario, this 9th day of May 2018.

"Gaston Jorré"

Jorré D.J.

[1] The basic situation here is the same as in the decisions of Justice Rowe in *Kaiser v. The Queen*, 95 D.T.C. 13 (TCC), Justice Hogan in *Gill v. The Queen*, 2012 TCC 302, and Justice D'Auray in *McKenzie v. The Queen*, 2017 TCC 56. Those three decisions held that the IRA distribution was to be included in the income.

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REASONS FOR JUDGMENT BY:	The Honourable Gaston Jorré, Deputy Judge
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APPEARANCES:	
For the Appellant:	The Appellant himself
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COUNSEL OF RECORD:	
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