

Docket: 2017-7(IT)I

BETWEEN:

RICHARD STERRITT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on April 13, 2018, at Toronto, Ontario

Before: The Honourable Justice B. Russell

Appearances:

For the Appellant:                      The Appellant himself  
Counsel for the Respondent:        Derek Edwards

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**JUDGMENT**

The appeal from the assessment raised April 20, 2015 under the *Income Tax Act* (Canada) for the Appellant's 2003 taxation year is dismissed, without costs, on the basis of this Court's non-jurisdiction in the matter sought to be appealed.

Signed at Ottawa, Canada, this 20<sup>th</sup> day of June 2018.

“B. Russell”

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Russell J.

Citation: 2018TCC117

Date: 20180620

Docket: 2017-7(IT)I

BETWEEN:

RICHARD STERRITT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Russell J.

[1] Mr. Sterritt, the Appellant, has appealed the April 20, 2015 assessment under the *Income Tax Act* (Canada) (Act) of his 2003 taxation year. His return for that taxation year was filed years later, on February 3, 2014. The return claimed a refund of \$9,415 (rounded) for overpayment of taxes. The Appellant served a notice of objection claiming payment of his reported refund. In her August 30, 2016 response to the objection the Minister of National Revenue (Minister) confirmed the assessment, and informed the Appellant that as his 2003 tax return had not been filed within 10 calendar years of the end of the 2003 taxation year, a refund for overpayment of tax could not be made.

[2] The Appellant is in this Court requesting that the Minister be ordered to pay to him his claimed 2003 refund for overpayment of taxes.

[3] At the hearing of this appeal the Appellant and his neighbour Ms. Jean Jamieson each testified. In 2003 he had employment income and also a loss from operation of his farm. His testimony was that in 2003 “mad cow disease” was rampant, he had recently gotten divorced, he had just taken over care of his aging parents and he had considerable expenses pertaining to division of assets with his ex-spouse. These matters, he testified, all contributed to his not filing his tax returns for 2003 and succeeding years until February 3, 2014, after the Minister had commenced action to compel the Appellant to file his delinquent returns including for the 2003 taxation year. The Appellant however was of the mind that

due to remittances of tax related to his off-farm employment income, and non-capital losses from 2002 that he thought could be carried forward, he did not actually owe any additional tax for the taxation years following his 2002 taxation year.

[4] He stated that in 2013 a Canada Revenue Agency (CRA) official requested that he file his late returns together, all at the same time, and he and the official agreed on a deadline extending into February 2014 for the Appellant to do so. The Appellant accordingly did wait to have all his late returns prepared, before filing them altogether on February 3, 2014, within the deadlined period. The Appellant states now that if that CRA officer had told him that there was a 10 year limit for payment of refunds the Appellant could and would have filed his 2003 return prior to December 31, 2013 so as to have been within that 10 year period.

[5] As stated the Appellant is asking that the Minister be ordered to pay to him his claimed 2013 refund.

[6] However, this Court does not have jurisdiction to so order. The jurisdiction of this Court, in respect of the Act, is to hear appeals from assessments and reassessments (*Tax Court of Canada Act*, section 12).

[7] It is clear that the Minister declined to make this refund due to paragraph 164(1.5)(a) of the Act, which provides:

Exception

(1.5) Notwithstanding subsection (1), the Minister may, on or after sending a notice of assessment for a taxation year, refund all or any portion of any overpayment of a taxpayer for the year

(a) if the taxpayer is an individual (other than a trust) or a graduated rate estate for the year and the taxpayer's return of income under this Part for the year was filed on or before the day that is 10 calendar years after the end of the year;

(b) where an assessment or a redetermination was made under subsection 152(4.2) or 220(3.1) or 220(3.4) in respect of the taxpayer; or

(c) to the extent that the overpayment relates to an assessment of another taxpayer under subsection 227(10) or (10.1) (in this paragraph referred to as the "other assessment"), if the taxpayer's return of income under this Part for

the taxation year is filed on or before the day that is two years after the date of the other assessment and if the other assessment relates to

(i) in the case of an amount assessed under subsection 227(10), a payment to the taxpayer of a fee, commission or other amount in respect of services rendered in Canada by a non-resident person or partnership, and

(ii) in the case of an amount assessed under subsection 227(10.1), an amount payable under subsection 116(5) or (5.3) in respect of a disposition of property by the taxpayer.

[8] As indicated, seeking that the Minister be ordered to issue the refund is not an aspect of deciding if an assessment or reassessment or a notice of loss determination as right or wrong. Thus it is not within the jurisdiction of this Court. It likely is within the jurisdiction of Ontario's Superior Court of Justice as the Appellant resides in Ontario and as well within the jurisdiction of the Federal Court.

[9] Here, the Appellant's dissatisfaction is not with the assessment itself, which is not inconsistent with the Appellant's filing position. Rather, he is dissatisfied with the Minister's accompanying decision to not pay out the claimed refund.

[10] Accordingly, the appeal is dismissed, without costs.

Signed at Ottawa, Canada, this 20<sup>th</sup> day of June 2018.

"B. Russell"

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Russell J.

CITATION: 2018TCC117  
COURT FILE NO.: 2017-7(IT)I  
STYLE OF CAUSE: RICHARD STERRITT AND HER  
MAJESTY THE QUEEN  
PLACE OF HEARING: Toronto, Ontario  
DATE OF HEARING: April 13, 2018  
REASONS FOR JUDGMENT BY: The Honourable Justice B. Russell  
DATE OF JUDGMENT: June 20, 2018

APPEARANCES:

For the Appellant: The Appellant himself  
Counsel for the Respondent: Derek Edwards

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Nathalie G. Drouin  
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