

Docket: 2013-1381(IT)APP

BETWEEN:

LISE A. BRANDO,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Application heard on June 28, 2013 at Ottawa, Ontario

Before: The Honourable Justice Valerie Miller

Appearances:

Agent for the Applicant: Robert Brando  
Counsel for the Respondent: Christopher Kitchen

---

**ORDER**

The application for an extension of time to file a Notice of Objection for the 2004 and 2005 taxation years is dismissed.

Signed at Ottawa, Canada, this 9<sup>th</sup> day of July 2013.

“V.A. Miller”

---

V.A. Miller J.

Citation : 2013TCC223  
Date: 20130709  
Docket: 2013-1381(IT)APP

BETWEEN:

LISE A. BRANDO,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR ORDER**

V.A. Miller J.

[1] This is an application for extension of time to file a notice of objection for the 2004 and 2005 taxation years.

[2] The Applicant was represented at the hearing by her spouse.

[3] The Minister of National Revenue (the “Minister”) has opposed this application on the basis that it was filed with the Court beyond the time period allowed by subsection 166.2(1) of the *Income Tax Act* (“ITA”). That provision reads:

**166.2(1) Extension of time [to object] by Tax Court --** A taxpayer who has made an application under subsection 166.1(1) may apply to the Tax Court of Canada to have the application granted after either

(a) the Minister has refused the application, or

(b) 90 days have elapsed after service of the application under subsection 166.1(1) and the Minister has not notified the taxpayer of the Minister's decision,

but no application under this section may be made after the expiration of 90 days after the day on which notification of the decision was mailed to the taxpayer.

[4] In particular, the Minister stated that this application was filed with the Court more than 90 days after his decision was mailed to the Applicant. In support of its

position, the Minister relied on the affidavit of Lora Reynolds, Litigation Officer with the Canada Revenue Agency (“CRA”).

## **2004**

[5] The Applicant’s 2004 taxation year was assessed by notice dated May 5, 2005 and she did not file a notice of objection with the Minister until September 4, 2012. The Minister advised the Applicant by letter dated October 12, 2012 that the objection was late filed. He also informed the Applicant that an extension of time for filing the objection could not be granted because the application was made more than one year after the expiration of the time otherwise limited for filing the objection. The deadline for filing the notice of objection was April 30, 2006 and the one year after that date was April 30, 2007.

[6] According to subsection 166.2(1), the Applicant had 90 days from October 12, 2012 to file her application with this Court. Her 90 day deadline expired on January 10, 2013 and she did not file her application with the Court until March 20, 2013.

[7] I do not have the jurisdiction to grant the application because it was filed past the limitation periods given in the *ITA*. The application for extension of time for the 2004 taxation year is dismissed.

## **2005**

[8] The Applicant’s 2005 taxation year was assessed by notice dated April 3, 2006 and it was reassessed by notice dated November 30, 2009. The Applicant filed a notice of objection with the Minister for her 2005 taxation year on September 14, 2012. The Minister informed the Applicant that the objection was late filed and because the objection was filed beyond the one year and 90 days otherwise limited by the *ITA*, he could not grant an extension of time to file the notice of objection.

[9] It was the Applicant’s position that she did not receive the notice of reassessment for her 2005 taxation year. Mr. Brando stated that he and his spouse moved in September 2008. At that time, he operated a sole proprietorship from his home and he telephoned the CRA to give them his change of address for the purposes of his GST remittances. He said that he did not know that the income tax and GST sections of CRA were separate. He thought that once he had given CRA his change of address, they would have both his and the Applicant’s change of address for purposes of income tax and GST. He stated that the CRA ought to have looked at his last income tax return to see that he was married to the Applicant.

[10] Mr. Brando argued as well that the notice of reassessment was issued beyond the 3 years permitted in paragraph 152(3.1)(b) of the *ITA* and it is therefore invalid. It was his position that the reassessment was made beyond the time allowed and therefore no other sections of the *ITA* are applicable. He stated that the section of the *ITA* which required him to file a notice of objection with the Minister is not applicable because the notice of reassessment is invalid.

[11] I have concluded from Mr. Brando's evidence that when he telephoned the CRA in 2008, he gave only his change of address. He was not listed as the Applicant's representative at the time and he could not have given her change of address. Aside from the fact that CRA does not have a duty to ascertain if someone has changed their address; CRA cannot change a taxpayer's address because her spouse has changed his address. It was the Applicant's responsibility to keep the CRA informed of her mailing address: *Denelzen v R*, [1998] FCJ No 1450 (FCA).

[12] This court does not have jurisdiction to grant the application for extension of time to file a notice of objection as it was filed beyond the 90 days allowed by subsection 166.2(1) of the *ITA*.

[13] Before this court can review the merits of a reassessment or whether the reassessment was made beyond the time allowed by the *ITA*, the Applicant must have filed a notice of objection to the reassessment and then have filed a notice of appeal in accordance with section 169 of the *ITA*. In the circumstances of this application, the Applicant has missed the time to file a notice of objection for her 2005 taxation year. The application with respect to the 2005 taxation year is also dismissed.

Signed at Ottawa, Canada, this 9<sup>th</sup> day of July 2013.

“V.A. Miller”

---

V.A. Miller J.

CITATION: 2013TCC223

COURT FILE NO.: 2013-1381(IT)APP

STYLE OF CAUSE: LISE A. BRANDO AND  
THE QUEEN

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: June 28, 2013

REASONS FOR ORDER BY: The Honourable Justice Valerie Miller

DATE OF ORDER: July 9, 2013

APPEARANCES:

Agent for the Applicant:	Robert Brando
Counsel for the Respondent:	Christopher Kitchen

COUNSEL OF RECORD:

For the Applicant:

Name:

Firm:

For the Respondent:

William F. Pentney  
Deputy Attorney General of Canada  
Ottawa, Canada