

Docket: 2017-3628(IT)I

BETWEEN:

DAVID G. WAY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on common evidence with the appeal of *Deborah A. Way*  
2017-3629(IT)I on September 13, 2018, at Moncton, New Brunswick

Before: The Honourable Justice B. Russell

Appearances:

For the Appellant:                   The Appellant himself  
Counsel for the Respondent:       Rhoda Lemphers

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**JUDGMENT**

The appeal from the reassessment raised December 15, 2016 under the *Income Tax Act* (Canada) for the Appellant's 2015 taxation year is dismissed, without costs.

Signed at Ottawa, Canada, this 28<sup>th</sup> day of September 2018.

“B. Russell”

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Russell J.

Docket: 2017-3629(IT)I

BETWEEN:

DEBORAH A. WAY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on common evidence with the appeal of *David G. Way*  
2017-3628(IT)I on September 13, 2018, at Moncton, New Brunswick

Before: The Honourable Justice B. Russell

Appearances:

Agent for the Appellant: David G. Way  
Counsel for the Respondent: Rhoda Lemphers

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**JUDGMENT**

The appeal from the “nil” reassessment for the 2015 taxation year raised December 15, 2016 under the *Income Tax Act* (Canada) is quashed, without costs.

Signed at Ottawa, Canada, this 28<sup>th</sup> day of September 2018.

“B. Russell”

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Russell J.

Citation: 2018TCC198  
Date: 20180928  
Docket: 2017-3628(IT)I

BETWEEN:

DAVID G. WAY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2017-3629(IT)I

AND BETWEEN:

DEBORAH A. WAY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Russell J.

[1] The appellants David Way and spouse Deborah Way respectively appeal their reassessments under the federal *Income Tax Act* (Act) for their 2015 taxation years. The undisputed evidence at the hearing disclosed that in 2015 Mr. Way made two lump sum withdrawals from his registered retirement savings plan (RRSP) in the amounts of \$8,750 and \$6,732, totalling \$15,482. He did so without intending that these withdrawals be converted into an annuity or a registered retirement income fund. In their 2015 returns Mr. and Mrs. Way jointly elected to split this total of \$15,482 - reported in their 2015 income returns as “pension income”. That is, each of the two appellants reported \$7,741 (half of the \$15,842) as income from the RRSP.

[2] The Minister of National Revenue (Minister) assessed the returns, denying the joint election to split the RRSP income on the basis that Mr. Way in his 2015

taxation year did not receive any “eligible pension income” as referenced in subsections 60.03(1), 118(3), 118(7) and 118(8) of the Act. Accordingly he was assessed the entire \$15,482 RRSP withdrawal as income, and also was disallowed \$1,161 of the age amount he had claimed in computation of federal non-refundable tax credits pursuant to subsection 118(2) of the Act. Also he was denied the pension amount of \$2,000 he had claimed in computing federal non-refundable tax credits for the 2015 taxation year for the same reason - that he had no “eligible pension income” in that taxation year.

[3] He had no eligible pension income because withdrawals from his RRSP itself did not constitute “pension income” as defined in subsection 118(7). The amounts were not payments from, *inter alia*, a pension life annuity or registered retirement income fund.

[4] Thus the claim in his return that the RRSP withdrawals totalling \$15,482 constituted eligible pension income was wrong.

[5] Mr. Way accepted this. He did not contest this.

[6] However, he testified also that he had prepared his and Mrs. Way’s 2015 returns using a tax software program certified by Canada Revenue Agency (CRA). He testified that he had accurately used this program but that the program was faulty because it led him to this error in preparing the two tax returns, and consequently his tax reassessment includes interest at a substantial rate going back to 2015. He said that in this Court he seeks damages from the software provider and or CRA which certified this software, arising from expenses he has incurred from what he claimed faulty software including as reflected in his subject reassessment.

[7] However, this Court does not have jurisdiction for such claims. The jurisdiction of this Court is set out in section 12 of the federal *Tax Court of Canada Act* (TCCA). That jurisdiction in large part is restricted to adjudicating appeals of assessments and reassessments raised under this Act and Part IX of the federal *Excise Tax Act*. In New Brunswick the New Brunswick Small Claims Court and the New Brunswick Court of Queen’s Bench likely have the required jurisdiction for a claim of the nature Mr. Way says he wishes to pursue.

[8] Accordingly the informal procedure appeal Mr. Way has brought in this Court is dismissed, without costs.

[9] The informal procedure appeal brought by Mrs. Way was in respect of a “nil” reassessment - that is, a reassessment reflecting no tax, interest or penalties payable for the 2015 taxation year. It is well established that a nil assessment cannot be appealed. Therefore Mrs. Way’s appeal of her “nil” reassessment is quashed, without costs.

Signed at Ottawa, Canada, this 28<sup>th</sup> day of September 2018.

“B. Russell”

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Russell J.

CITATION: 2018TCC198  
COURT FILE NO.: 2017-3628(IT)I  
2017-3629(IT)I  
STYLE OF CAUSE: DAVID G. WAY AND HER MAJESTY  
THE QUEEN

DEBORAH A. WAY AND HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Moncton, New Brunswick

DATE OF HEARING: September 13, 2018

REASONS FOR JUDGMENT BY: The Honourable Justice B. Russell

DATE OF JUDGMENT: September 28, 2018

APPEARANCES:

For the Appellants: David G. Way  
Counsel for the Respondent: Rhoda Lemphers

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Nathalie G. Drouin  
Deputy Attorney General of Canada  
Ottawa, Canada