

Docket: 2013-395(IT)I

BETWEEN:

SARAH TAYLOR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 10, 2014 at Hamilton, Ontario

By: The Honourable Justice Judith Woods

Appearances:

Agent for the Appellant: Len Coughlan
Counsel for the Respondent: Gregory B. King

JUDGMENT

It is ordered that the appeal with respect to an assessment made under the *Income Tax Act* for the 2011 taxation year is dismissed. The parties shall bear their own costs.

Signed at Toronto, Ontario this 1st day of April 2014.

“J.M. Woods”

Woods J.

Citation: 2014 TCC 102

Date: 20140401

Docket: 2013-395(IT)I

BETWEEN:

SARAH TAYLOR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] Sarah Taylor withdrew funds from a registered retirement savings plan (RRSP) in 2011. She submits that the withdrawals qualify for the pension credit that is provided for in subsection 118(3) of the *Income Tax Act*.

[2] Ms. Taylor began withdrawing funds from an RRSP when her spouse died in 2008. According to the terms of the RRSP, Ms. Taylor was permitted total discretion with respect to the timing and amounts of withdrawals.

[3] In order to minimize withdrawal fees, Ms. Taylor decided to withdraw funds only once a year. In the relevant taxation year, however, she withdrew funds a second time in order to make an unusual tax payment. The two withdrawals in 2011 are in the amounts of \$12,500 and \$6,250.

[4] The accountant for Ms. Taylor, Len Coughlan, submits that the RRSP withdrawals qualify for the pension credit starting in 2011 when Ms. Taylor reached the age of 65.

Discussion

[5] The question to be decided in this appeal is whether the RRSP withdrawals are “annuity payments” as required by the definition of “pension income” in subsection 118(7) of the *Act*, at clause (a)(ii).

[6] In the *Act*, the term “annuity” has been ascribed the following inclusive meaning pursuant to subsection 248(1):

“**annuity**” includes an amount payable on a periodic basis whether payable at intervals longer or shorter than a year and whether payable under a contract, will or trust or otherwise;

[7] The Crown submits that the payments to Ms. Taylor do not satisfy this definition because the RRSP does not require payments on a periodic basis.

[8] Mr. Coughlan, on the other hand, submits that the payments are payable on a periodic basis because they are payable on a recurring basis at the direction of Ms. Taylor.

[9] In my view, the position of the Crown is the correct one. Withdrawals made by Ms. Taylor from her RRSP are not annuity payments because they are not obligated to be made on a recurring basis. Under the terms of the plan, it is possible for Ms. Taylor to require that the fund be paid out in one lump sum.

[10] Both the ordinary meaning of the term “annuity,” and the specific meaning described in the *Act*, require that the RRSP fund be paid out at intervals.

[11] In this regard, the Canadian Oxford Dictionary (2004 ed.) defines “annuity” as follows:

1 a yearly grant or allowance. 2 an investment of money entitling the investor to a series of equal annual sums. 3 a sum payable for a particular year.

[12] The additional meaning of “annuity” for purposes of the *Act* simply requires that an amount be payable on a periodic basis whether at intervals longer or shorter than a year.

[13] The phrase “payable on a periodic basis” has been interpreted as a payment obligation that recurs at intervals: *Tossell v The Queen and Peterson*, 2005 FCA 223, at para. 31. Although this decision concerned the meaning of this phrase in the

context of provisions dealing with child support, it should have the same meaning in this context.

[14] The RRSP at issue in this appeal required payments to be made to Ms. Taylor at her discretion. There was no obligation to make payments on a recurring basis and Ms. Taylor could have directed that the entire RRSP fund be paid out to her in one lump sum.

[15] Mr. Coughlan submits that there should be a generous interpretation of the term “annuity” in this context which provides tax relief for pensioners. He also submits that the definition of “annuity” in the *Act* is broad enough to apply where the RRSP administrator is obligated by the holder to make recurring payments. As I understand it, Mr. Coughlan submits that the term “otherwise” in the phrase “whether payable under a contract, will or trust or otherwise” is broad enough to encompass a direction by the RRSP holder.

[16] I cannot agree with this interpretation. If Parliament had intended that periodic RRSP withdrawals made at the discretion of the holder qualify for the pension credit, it would have said so directly. The purpose of the legislation is not as broad as Mr. Coughlan suggests.

[17] I have sympathy for Ms. Taylor’s circumstances. However, I conclude that the withdrawals that she made are not annuity payments, and that they do not qualify for the pension credit. The appeal will be dismissed.

Signed at Toronto, Ontario this 1st day of April 2014.

“J.M. Woods”

Woods J.

CITATION: 2014 TCC 102

COURT FILE NO.: 2013-395(IT)I

STYLE OF CAUSE: SARAH TAYLOR AND HER MAJESTY
THE QUEEN

PLACE OF HEARING: Hamilton, Ontario

DATE OF HEARING: March 10, 2014

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

DATE OF JUDGMENT: April 1, 2014

APPEARANCES:

Agent for the Appellant: Len Coughlan
Counsel for the Respondent: Gregory B. King

COUNSEL OF RECORD:

For the Appellant:

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