

**Date: 20021016**

**Docket: A-812-00**

**Neutral Citation: 2002 FCA 391**

**CORAM: DESJARDINS  
DÉCARY  
NOËL J.J.A.**

**BETWEEN:**

**GERTRUD NEUHAUS**

**Applicant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Hearing held at Ottawa, Ontario, October 16, 2002.

Judgment delivered at the hearing at Ottawa, Ontario, October 16, 2002.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NOËL J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered at the hearing at Ottawa, Ontario,  
October 16, 2002)**

**NOËL J.A.**

[1] The applicant appealed to the Tax Court of Canada, alleging that the assessments issued against her did not take into account the tax withheld at source by her employer.

[2] The Tax Court of Canada judge dismissed the appeal. She concluded that the amounts assessed by the Minister represented wages earned by the applicant on which no tax had been

levied. She added that since the applicant did not dispute the income determined by the Minister in accordance with the assessments or the computation of the tax pertaining thereto, she had no jurisdiction to rule on the issue of whether the tax had or had not been withheld.

[3] The jurisdiction of the Tax Court of Canada to hear an appeal from an assessment is covered in section 169 of the *Income Tax Act*:

Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied after either (a) the Minister has confirmed the assessment or reassessed, or (b) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed, but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

Lorsqu'un contribuable a signifié un avis d'opposition à une cotisation, prévu à l'article 165, il peut interjeter appel auprès de la Cour canadienne de l'impôt pour faire annuler ou modifier la cotisation :

a) après que le ministre a ratifié la cotisation ou procédé à une nouvelle cotisation;

b) après l'expiration des 90 jours qui suivent la signification de l'avis d'opposition sans que le ministre ait notifié au contribuable le fait qu'il a annulé ou ratifié la cotisation ou procédé à une nouvelle cotisation;

toutefois, nul appel prévu au présent article ne peut être interjeté après l'expiration des 90 jours qui suivent la date où avis a été expédié par la poste au contribuable, en vertu de l'article 165, portant que le ministre a ratifié la cotisation ou procédé à une nouvelle cotisation.

(Emphasis added)

[4] In this case, the applicant is not seeking to have the disputed assessments vacated or varied. Rather, she is claiming that the taxes as assessed by the Minister have already been paid by way of a deduction at source (see subsection 227(9.4), which *inter alia* makes the employer liable for the taxes owing by an employee up to and including the amounts deducted from the salary and not remitted). In these circumstances, the judge below rightly held that she did not have jurisdiction and it was therefore wrong for her to consider the dispute on its merits.

[5] The problem raised by the applicant is a collection problem. In this regard, section 222 assigns jurisdiction to the Federal Court in these words:

All taxes, interest, penalties, costs and other amounts payable under this Act are debts due to Her Majesty and recoverable as such in the Federal Court ...

Tous les impôts, intérêts, pénalités, frais et autres montants payables en vertu de la présente loi sont des dettes envers Sa Majesté et recouvrables comme telles devant la Cour fédérale [...]

[6] Insofar as the applicant claims to have already paid the taxes being claimed from her, she may assert her rights in the Federal Court when the Minister attempts to recover the sums he considers payable. We wish to emphasize that in *Suermont v. The Queen*, recently decided by this Court (2001 D.T.C. 5389), the issue of jurisdiction had not been raised.

[7] The application for judicial review will be dismissed. In the circumstances, there is no need to award costs.

“Marc Noël”

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Judge

Certified true translation

Suzanne M. Gauthier, C. Tr., LL.L.

**FEDERAL COURT OF CANADA**  
**APPEAL DIVISION**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**FILE NO:** A-812-00

**STYLE:** GERTRUD NEUHAUS v. HER MAJESTY THE QUEEN

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** OCTOBER 16, 2002

**REASONS FOR JUDGMENT:** NOËL J.A.

**DATE OF REASONS:** OCTOBER 16, 2002

**APPEARANCES:**

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