

Docket: 2013-2929(IT)I

BETWEEN:

7547978 CANADA INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Maxim Meunier* (2013-3117(EI)), *Richard Meunier* (2013-3120(EI)), and 7547978 *Canada Inc.* (2013-3121(EI), 2013-3122(EI), (2013-4177(EI))), on September 4 and 5, 2014, and November 10, 2014, at Ottawa, Ontario.

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the appellant: Chantal Donaldson
Counsel for the respondent: Natasha Wallace

JUDGMENT

The appeal from the assessments made by the Minister of National Revenue under the *Income Tax Act*, dated November 6, 2012, in respect of the 2010 and 2011 taxation years is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 7th day of May 2015.

“Réal Favreau”

Favreau J.

Translation certified true
on this 15th day of June 2015

Johanna Kratz, Translator

Citation: 2015 TCC 112

Date: 20150507

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REASONS FOR JUDGMENT

Favreau J.

[1] This is an appeal from assessments made by the Minister of National Revenue (the Minister) under the *Income Tax Act*, R.S.C. 1985 (5th Supp.) c. 1, as amended (the Act), dated November 6, 2012, in respect of the appellant's 2010 and 2011 taxation years.

[2] Under the November 6, 2012, assessments, the Minister imposed a penalty under subsection 162(7) of the Act on the appellant, in the amount of \$1,500 for each taxation year, 2010 and 2011, for the appellant's failure to file T4 slips for 139 employees.

[3] In making the assessments dated November 6, 2012, the Minister relied on the following assumptions of fact:

- (a) The appellant operates a company specialized in merchandizing, sampling and display mounting for big-box stores;
- (b) The appellant's clients are in Quebec and Ontario;
- (c) The appellant's sole shareholder is Richard Meunier Côté;
- (d) The appellant was incorporated in 2010, but prior to that, the company had been operating under the name of Entreprises Darik for over 10 years;
- (e) The appellant's head office is in Quebec;
- (f) The appellant's taxation year ends on December 31 of each year;

- (g) The duties of the appellant's workers consisted of putting up and taking down shelves, and arranging and labelling merchandise;
- (h) The workers' wages varied between \$10 and \$13 an hour;
- (i) The workers were hired and paid directly by the appellant;
- (j) The workers were supervised by a team leader who was also employed by the appellant;
- (k) The place of work, schedule and tasks were determined by the appellant;
- (l) Wages were paid weekly;
- (m) On February 18, 2011, the appellant filed 105 T4A slips in respect of the 2010 taxation year with the Canada Revenue Agency for the workers;
- (n) On February 29, 2012, the appellant filed 70 T4A slips in respect of the 2011 taxation year with the Canada Revenue Agency for the workers;
- (o) The appellant did not file any T4 slips in respect of the 2010 and 2011 taxation years for the workers by the time required by the Act and the Regulations; and
- (p) On or around November 5, 2012, the Minister issued 11 and 69 T4 slips in respect of the 2010 and 2011 taxation years, respectively, for the appellant's workers.

[4] In decisions dated July 6, 2012, the Minister determined that, during the period from June 16, 2010, to December 31, 2011, five of the appellants' workers were employees and that their employment was insurable under the *Employment Insurance Act*, S.C. 1996, c. 23, as amended (the EIA). These decisions were applied to all of the appellant's 139 workers (the workers). Under the assessments dated November 5, 2012, the following amounts were claimed from the appellant:

Year	Employment Insurance	Penalties	Interest	Total
2010	\$11,675.11	\$1,167.61	\$1,103.00	\$13,945.72
2011	\$8,230.06	\$823.00	\$361.00	\$9,414.06
TOTAL	\$19,905.17	\$1,990.61	\$1,464.00	\$23,359.78

[5] The assessments dated November 5, 2012, were appealed before this Court, under docket No. 2013-4177(EI).

[6] The issues are the following:

- (a) Was the Minister correct in imposing a penalty for failure to file T4 slips under subsection 162(7) of the Act in respect of the 2010 and 2011 taxation years?
- (b) In the alternative, is the appellant liable to a penalty for the late filing of T4 slips under subsection 162(7.01) of the Act in respect of the 2010 and 2011 taxation years?

[7] Subsections 162(7) and 162(7.01) of the Act read as follows:

162(7) Failure to comply – Every person (other than a registered charity) or partnership who fails

- (a) to file an information return as and when required by this Act or the regulations, or
- (b) to comply with a duty or obligation imposed by this Act or the regulations

is liable in respect of each such failure, except where another provision of this Act (other than subsection 162(10) or 162(10.1) or 163(2.22)) sets out a penalty for the failure, to a penalty equal to the greater of \$100 and the product obtained when \$25 is multiplied by the number of days, not exceeding 100, during which the failure continues.

162(7.01) Late filing penalty—prescribed information returns – Every person (other than a registered charity) or partnership who fails to file, when required by this Act or the regulations, one or more information returns of a type prescribed for the purpose of this subsection is liable to a penalty equal to the greater of \$100 and

- (a) where the number of those information returns is less than 51, \$10 multiplied by the number of days, not exceeding 100, during which the failure continues;
- (b) where the number of those information returns is greater than 50 and less than 501, \$15 multiplied by the number of days, not exceeding 100, during which the failure continues;
- (c) where the number of those information returns is greater than 500 and less than 2,501, \$25 multiplied by the number of days, not exceeding 100, during which the failure continues;
- (d) where the number of those information returns is greater than 2,500 and less than 10,001, \$50 multiplied by the number of days, not exceeding 100, during which the failure continues; and;
- (e) where the number of those information returns is greater than 10,000, \$75 multiplied by the number of days, not exceeding 100, during which the failure continues.

[8] The duty to file T4 slips is provided for in subsection 200(1) of the *Income Tax Regulations*, which reads as follows:

Every person who makes a payment described in subsection 153(1) of the Act (other than an annuity payment in respect of an interest in an annuity contract to which subsection 201(5) applies) shall make an information return in prescribed form in respect of the payment unless an information return in respect of the payment has been made under sections 202, 214, 237 or 238.

[9] Among the payments described in subsection 153(1) of the Act, salary, wages or other remuneration are specifically referred to in paragraph (a) of this provision.

[10] The time granted to file T4 slips is set out in subsection 205(1) of the *Income Tax Regulations*, which reads as follows:

All returns required under this Part shall be filed with the Minister without notice or demand and, unless otherwise specifically provided, on or before the last day of February in each year and shall be in respect of the preceding calendar year.

[11] The appellant did not file any T4 slips for the remuneration paid to the workers even though it should have done so because the workers were employees for the purposes of the Act, as confirmed by the decision of this Court rendered today in the appeals of *Maxim Meunier (2013-3117(EI))*, *Richard Meunier (2013-3120(EI))*, and *7547978 Canada Inc. (2013-3121(EI), 2013-3122(EI), (2013-4177(EI))*.

[12] The appellant filed T4A slips in respect of the 2010 and 2011 taxation years with the Canada Revenue Agency for the workers, but these slips were incorrect because the remuneration paid to the workers was described as being “Self-employed commissions” or “Fees for services” rather than as employment income and because the expense reimbursements, such as meal allowances, travel expenses, and cash advances made to the workers, were included as being part of the income earned.

[13] The Canada Revenue Agency cancelled the T4A slips prepared by the appellant and issued T4 slips to all the workers, who were reassessed on the basis of the T4 slips.

[14] Since the appellant failed to file T4 slips for its employees by the time required under section 205 of the *Income Tax Regulations*, the Minister was

justified in imposing the penalty provided in subsection 162(7) of the Act in respect of the 2010 and 2011 taxation years.

[15] For these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 7th day of May 2015.

“Réal Favreau”

Judge

Translation certified true
on this 15th day of June 2015

Johanna Kratz, Translator

CITATION: 2015 TCC 112

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STYLE OF CAUSE: 7547978 Canada Inc. and Her Majesty the Queen

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REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau

DATED: May 7, 2015

APPEARANCES:

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Counsel for the respondent: Natasha Wallace

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