

BETWEEN:

WEINBERG FAMILY TRUST,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Motion heard on November 25, 2015, at Toronto, Ontario

Before: The Honourable Justice Valerie Miller

Appearances:

Counsel for the Appellant: Timothy Fitzsimmons  
Counsel for the Respondent: Erin Strashin

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**JUDGMENT**

**WHEREAS** the Respondent has brought a motion for an Order quashing the Notice of Appeal pursuant to paragraph 53(3)(a) of the *Tax Court of Canada Rules (General Procedure)* (the “*Rules*”);

**AND WHEREAS**, the Appellant opposed the motion;

**UPON** hearing the representations made by the parties at the hearing of this motion and considering their written argument;

**THIS COURT ORDERS** that:

The motion is granted and the appeal is quashed.

The Respondent is awarded its costs for this motion.

Signed at Ottawa, Canada, this 12<sup>th</sup> day of February 2016.

“V.A. Miller”

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V.A. Miller J.

Citation: 2016TCC37  
Date: 20160212  
Docket: 2015-1325(IT)G

BETWEEN:

WEINBERG FAMILY TRUST,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

V.A. Miller J.

[1] This is a motion by the Respondent for an Order quashing the Notice of Appeal pursuant to paragraph 53(3)(a) of the *Tax Court of Canada Rules (General Procedure)* (the “*Rules*”). The ground for the motion is that this Court does not have jurisdiction over the subject matter raised in the Notice of Appeal.

[2] The circumstances which gave rise to this motion were as follows.

[3] The Appellant filed its income tax returns for the 2007, 2008, 2009 and 2010 taxation years on the basis that it was a resident of the Province of Alberta. On reassessing the Appellant, the Minister of National Revenue (the “Minister”) determined that the Appellant was a resident of the Province of Ontario and the Minister applied gross negligence penalties for each of the years.

[4] The Appellant filed a Notice of Appeal in this Court with respect to these reassessments and it raised the following issues:

- a) Under which Ontario statute(s) did the Minister assess the Appellant?
- b) Was the Appellant resident in Alberta or Ontario during the 2007, 2008, 2009 and 2010 taxation years?
- c) Are gross negligence penalties applicable for the 2007 to 2010 tax years?

[5] The Appellant has also filed pleadings in the Ontario Superior Court of Justice (the “Ontario Court”) with respect to the same issues and the same taxation years and the Respondent has responded to those pleadings.

### Appellant’s Position

[6] Counsel stated that the Appellant was assessed under both the *Income Tax Act (Ontario)*, RSO 1990, c 12 for the Appellant’s 2007 and 2008 taxation years and the *Taxation Act*, 2007, SO 2007, c 11 Schedule A, for its 2009 and 2010 taxation years (“the Ontario Acts”).

[7] Under both of the Ontario Acts, a taxpayer can raise only certain issues on an appeal and the Ontario Court has jurisdiction to consider only the restricted matters listed in the appeal provisions of the Ontario Acts.

[8] There is no provision in either of the Ontario Acts which explicitly establishes that the Ontario Court has jurisdiction to make a determination in respect of the assessment of gross negligence penalties.

[9] Although counsel for the Appellant agreed that the Ontario Court is “likely the correct forum” to decide the issues in this appeal, he has asked that this appeal be held in abeyance pending the decision from the Ontario Court.

[10] Furthermore, the letter enclosed with the Notice of Confirmation from the Minister directed that if the Appellant wished to appeal the reassessments, it must appeal to the Tax Court of Canada.

### Law

[11] Paragraph 53(3)(a) of the *Rules* provides:

53(3) On application by the respondent, the Court may quash an appeal if

(a) the Court has no jurisdiction over the subject matter of the appeal;

### Analysis and Decision

[12] The Tax Court of Canada is a statutory court and its jurisdiction is limited by the *Tax Court of Canada Act* and the statutes it adjudicates. It has jurisdiction with

respect to provincial income tax only to the extent that the jurisdiction is conferred on it by the provinces: *Gardner v Canada*, 2001 FCA 401 at paragraph 16.

[13] It is clear that this Court does not have jurisdiction to hear appeals where the only issue is residency in the Province of Ontario. That jurisdiction is with the Ontario Courts: See *Income Tax Act*, R.S.O. 1990. c. I.2, s. 23; *Taxation Act*, 2007, S.O. 2007, c. 11, ss. 125; and also see *Gardner (supra)* at paragraph 17.

[14] It is my view that it is also clear that the Tax Court of Canada does not have jurisdiction to decide if a provincial penalty is properly imposed: *Andrew Paving & Engineering Ltd v Minister of National Revenue*, [1984] C.T.C. 2164 (TCC) at paragraph 8 and *Raboud v Canada*, 2009 TCC 99 at paragraph 12.

[15] It is unfortunate that the Canada Revenue Agency misdirected the Appellant to appeal to this Court but that error cannot change the legislation or give this Court jurisdiction to hear this appeal.

[16] The motion is granted and the appeal is quashed.

[17] The Respondent is awarded its costs for this motion.

Signed at Ottawa, Canada, this 12<sup>th</sup> day of February 2016.

“V.A. Miller”

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V.A. Miller J.

CITATION: 2016TCC37  
COURT FILE NO.: 2015-1325(IT)G  
STYLE OF CAUSE: WEINBERG FAMILY TRUST AND HER MAJESTY THE QUEEN  
PLACE OF HEARING: Toronto, Ontario  
DATE OF HEARING: November 25, 2015  
REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller  
DATE OF JUDGMENT: February 12, 2016

APPEARANCES:

Counsel for the Appellant: Timothy Fitzsimmons  
Counsel for the Respondent: Erin Strashin

COUNSEL OF RECORD:

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