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TAX COURT OF CANADA  
*IN RE: THE INCOME TAX ACT*

2005-1387(IT)I  
CITATION: 2007TCC92

BETWEEN:

ROBERT G. BATT,

Appellant;

- and -

HER MAJESTY THE QUEEN,

Respondent.

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Held before Mr. Justice Little in Courtroom No. 602, 6th  
Floor, 701 West Georgia Street, Vancouver, B.C., on Tuesday,  
January 30, 2007.

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APPEARANCES:

Mr. R.G. Batt,

On his own behalf;

Ms. S. Sit,

For the Respondent.

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THE REGISTRAR: M. Netley

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Allwest Reporting Ltd.  
#1200 - 1125 Howe Street  
Vancouver, B.C.  
V6Z 2K8

Per: G. LaPointe

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**REASONS FOR JUDGMENT**

(Delivered Orally in Vancouver, B.C. on January 30, 2007)

JUSTICE: I am going to give my reasons in the appeal of Robert G. Batt. Reasons for judgment are as follows.

(a) Facts. The appellant says that he was a piano teacher providing piano lessons to various students. The appellant also said that he played the organ. When the appellant filed his income tax return for the 2003 taxation year, he attached a note saying that he was going to elect to pay Canada Pension Plan premiums on self-employed and other earnings for the 2003 taxation year, and would do so by completing Form CPT20 before June 15, 2004. The appellant completed Form CPT20 on May 20, 2004 and submitted the form to the Minister.

By notice of assessment dated May 28, 2004, the Minister of National Revenue (the Minister) initially assessed the appellant's 2003 taxation year as filed. The Minister transferred \$1,362.44 of the appellant's refund for the 2003 taxation year to pay part of a debt owing by the appellant to Her Majesty under the Canada Student Loans program. Note: The Minister concluded that the appellant's calculation of the refund was correct. That is, no change in the appellant's tax return was made by that reassessment.

1                   By notice of reassessment dated August 23<sup>rd</sup>,  
2 2004, the Minister reassessed the appellant to take into  
3 account his election to pay additional CPP premiums. In  
4 this reassessment, the Minister requested that the  
5 appellant pay the amount of \$474.99 as CPP premiums. By a  
6 letter dated August 27, 2004, the appellant requested that  
7 the Minister return the amount of \$474.99, the amount  
8 transferred to Canada Student Loan to offset his CPP  
9 liability. On November 19, 2004, the appellant filed a  
10 notice of objection to the notice of assessment issued on  
11 August 27, 2004. On December 8, 2004, the Minister  
12 notified the appellant that his objection for the 2003  
13 taxation year was invalid. A notice of motion to strike  
14 out the notice of objection was filed by counsel for the  
15 respondent. This notice of motion was dismissed by my  
16 colleague, Justice Bowie.

17                   The issues before the court are (1) whether  
18 the Minister properly calculated the appellant's liability  
19 to pay the amount of \$474.99 in CPP payments; (2) whether  
20 the appellant was liable to pay interest for the 2003 year  
21 of \$7.15.

22                   My analysis and decision is as follows.  
23 During the hearing, counsel for the respondent stated that  
24 a further development has occurred. Counsel for the  
25 respondent noted that by notice of reassessment dated in

1 July 2006, the Minister indicated that for the 2003 and  
2 subsequent years, the appellant was an employee of St.  
3 Helen's Anglican Church, and therefore the Appellant and  
4 the church were required to make CPP payments. In Exhibit  
5 A-1, the accountant indicated that as a result of the  
6 change made by the Minister, the appellant was entitled to  
7 a refund of \$252.44 for the 2003 year. Counsel for the  
8 respondent said that a refund has not been issued because  
9 the appellant has filed an appeal for the 2003 year.

10 Counsel for the respondent also noted that  
11 the appellant did not file an appeal to the Minister's  
12 decision regarding his status as an employee, and the  
13 deadline for filing an appeal has now passed. In her  
14 argument, counsel for the respondent said that what the  
15 appellant has requested in his appeal is not within the  
16 jurisdiction of the Tax Court. Ms. Sit referred to  
17 Section 171(1) of the *Income Tax Act*. Section 171(1) of  
18 the *Income Tax Act* provides as follows:

19 "The Tax Court of Canada may dispose of an  
20 appeal by (a) dismissing it, or (b) allowing  
21 it, and (i) vacating the assessment, (ii)  
22 varying the assessment, or (iii) referring the  
23 assessment back to the Minister for  
24 reconsideration and reassessment."

25 In support of her position, Ms. Sit

1 referred to the following court decisions: (1) *Power v.*  
2 *Canada*; (2) *MacMillan Holdings*; and (3) *McGuire v. Card*  
3 [phonetic].

4 In this situation, the Minister has  
5 accepted the appellant's tax return as filed. That is,  
6 the Minister has agreed with the appellant's calculation  
7 of the refund in the amount of \$1,437.44. The problem, as  
8 argued by the appellant, is that the Minister applied the  
9 refund (less \$75) to the appellant's Canada Student Loan  
10 program, and the Minister did not apply a payment of  
11 \$474.99 from the refund to the CPP obligation that the  
12 appellant had for 2003.

13 In my opinion, the appellant is basically  
14 asking the court to order the Minister to apply \$474.99 of  
15 the refund to his CPP obligations.

16 The jurisdiction of this court is to hear  
17 and determine an appeal from a tax assessment. The court  
18 does not have power or authority to compel the Minister to  
19 apply a portion of a refund against the appellant's CPP  
20 obligation. I regret that the court cannot assist the  
21 appellant in connection with his appeal. However, I ask  
22 that the Minister review the calculations on the following  
23 points:

24 (1) Determine why the \$75 deduction was  
25 made and ensure that the calculation is correct. There

1 was some conflicting comments on this point. The  
2 appellant suggested that the \$75 deduction related to  
3 possibly a GST quarterly payment. Counsel for the  
4 respondent said that it may have been made because there  
5 was no other amount owing on the student loan. The  
6 appellant said this is not correct. So this point should  
7 be clarified by the Minister in terms of reviewing the  
8 appellant's position.

9 (2) The Minister should also issue the  
10 refund of \$252.44 for the 2003 year, as is shown on  
11 Exhibit A-1. A-1 is the calculations of the accountant.

12 I have also concluded that the court does  
13 not have the authority to waive any interest. According  
14 to the reply (paragraph 8), the interest involved was  
15 \$7.15.

16 The appeal for the 2003 year is dismissed  
17 without costs. Thank you.

18  
19 I HEREBY CERTIFY THAT THE FOREGOING  
20 is a true and accurate transcript  
21 of the proceedings herein to the  
22 best of my skill and ability.

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G. LaPointe, COURT REPORTER

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2 CITATION: 2007TCC92  
3 COURT FILE NO.: 2005-1387(IT)I  
4 STYLE OF CAUSE: Robert G. Batt and  
5 Her Majesty the Queen  
6 PLACE OF HEARING: Vancouver, British Columbia  
7  
8 DATE OF HEARING: January 30, 2007  
9 REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little  
10 DATE OF JUDGMENT: March 6, 2007  
11  
12 APPEARANCES:  
13 For the Appellant: The Appellant himself  
14 Counsel for the Respondent: Selena Sit  
15  
16 COUNSEL OF RECORD:  
17 For the Appellant:  
18 Name:  
19 Firm:  
20  
21 For the Respondent: John H. Sims, Q.C.  
22 Deputy Attorney General of Canada  
23 Ottawa, Canada  
24  
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