

Docket: 2010-810(IT)APP

BETWEEN:

ANGELINA SCHOENNE,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on September 28, 2010 at Yellowknife,
Northwest Territories

Before: The Honourable Justice L.M. Little

Appearances:

For the Applicant:	The Applicant Herself
Counsel for the Respondent:	Marla Teeling

ORDER

Upon hearing the Application for an Order extending the time within which a Notice of Objection to the assessments made under the *Income Tax Act* for the 2005, 2006 and 2007 taxation years may be served;

And upon hearing what was alleged by the parties;

The Application for the 2005 and 2006 taxation years is dismissed, without costs.

During the hearing, Counsel for the Respondent advised the Court that the Applicant's request to extend the time within which to file a Notice of Objection for the 2007 taxation year was granted by the Minister of National Revenue.

Signed at Vancouver, British Columbia, this 25th day of March 2011.

“L.M. Little”

Little J.

Citation: 2011 TCC 189
Date: 20110325
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BETWEEN:

ANGELINA SCHOENNE,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Little J.

A. FACTS

[1] The Minister of National Revenue (the “Minister”) reassessed the Applicant for the 2005 and 2006 taxation years by Notices of Reassessment dated and mailed to the Applicant on January 9, 2007 and November 26, 2007, respectively.

[2] On December 7, 2009, the Applicant served upon the Minister an application to extend the time within which the Applicant may file a Notice of Objection with respect to the 2005, 2006 and 2007 taxation years.

[3] By letter dated December 18, 2009, the Minister notified the Applicant that:

- a) the Minister had granted the Applicant a time extension for the 2007 taxation year; and
- b) the Minister could not grant the application to extend the time within which to file a Notice of Objection for the 2005 and 2006 taxation years since the application was not made within one year after the expiration of the time frame otherwise permitted for filing a Notice of Objection pursuant to paragraph 166.1(7)(a) of the *Income Tax Act* (the “Act”).

[4] The application to extend the time was received by the Court on March 17, 2010.

B. ISSUE

[5] Should the Applicant be allowed to file Notices of Objection for the 2005 and 2006 taxation years.

C. ANALYSIS AND DECISION

[6] The deadline for filing the Notice of Objection for the 2005 taxation year was 90 days from January 9, 2007, i.e., on or before April 5, 2007.

[7] If the Applicant had filed an application to extend the time for filing a Notice of Objection for the 2005 taxation year, the Applicant should have filed an application to extend the time within one year of April 5, 2007, i.e., on or before April 5, 2008.

[8] The deadline for filing the Notice of Objection for the 2006 taxation year was 90 days from November 26, 2007, i.e., on or before February 22, 2008.

[9] If the Applicant had filed an application to extend the time for filing a Notice of Objection for the 2006 taxation year, the Applicant should have filed an application to extend the time within one year of February 25, 2008, i.e., on or before February 22, 2009.

[10] As noted above, the application for an extension of time to file a Notice of Objection for the 2005 and 2006 taxation years was not filed by the Applicant until March 17, 2010.

D. CONCLUSION

[11] In this situation, the application to extend the time within which to file the Notice of Objection, that was filed by the Applicant for the 2005 and 2006 taxation years, should be dismissed because:

- a) the application was not made under subsection 166.1(1) of the *Act* within one year after the expiration of the time otherwise limited by

the *Act* for serving a Notice of Objection or making a request, as required by paragraph 166.2(5)(a) of the *Act*; and

- b) the Applicant has not demonstrated that within the time otherwise limited by the *Act* for serving such a notice or making a request, that she was unable to act or instruct another to act in the Applicant's name, as required by clause 166.2(5)(b)(i)(A) of the *Act*.

[12] The *Income Tax Act* is very specific on when an application to extend the time to file a Notice of Objection should be filed, i.e., within one year after the time limitation established to file the Notice of Objection. In this situation, the Applicant failed to meet the one year plus 90 day deadline for the 2005 and 2006 taxation years. I do not have the power or authority to extend the one year plus 90 day deadline. I must therefore dismiss the Application that was filed for the 2005 and 2006 taxation years. As I have noted above, the Minister has granted the Applicant's request to extend the time to file a Notice of Objection for the 2007 taxation year.

[13] Before concluding my Reasons, I must comment on this situation.

[14] The Applicant stated that she had received T-4 slips issued by Labatts Brewery ("Labatts") for the 2005 and 2006 taxation years, but she maintained that she had never received any money from Labatts. The Applicant said that she understood that the amounts shown on the T-4 slips were as follows (approximate):

- a) 2005 - \$5,000;
- b) 2006 - \$5,000.

[15] The Applicant had earlier testified that her former husband was employed at the Yellowknife Curling Club, in Yellowknife, Northwest Territories and the Liquor Board of the Northwest Territories told him that he could not be the representative for Labatts because of a conflict between his employment contract and the fact that Labatts was a large Canadian Brewery. (Transcript, page 6)

[16] The Applicant also testified that her former husband had signed contracts with Labatts naming the Applicant as the representative of Labatts. The Applicant stated that she advised her former husband that she would not agree to represent Labatts and she denies that she was ever the representative of Labatts. (Transcript, page 12)

[17] The Applicant also said that she has encountered serious financial problems, including the financial problem concerning the payments made by Labatts to her former husband but taxed in her hands.

[18] The Applicant also stated that in addition to paying tax on the Labatts' payment, she lost her gift shop and she lost her interest in the commercial building where the gift shop was located.

[19] As noted above, the Canada Revenue Agency (the "CRA") has accepted the Notice of Objection filed by the Applicant for the 2007 taxation year. It is not clear in the evidence that was filed but it is possible that some portion of the payments made by Labatts related to the 2007 taxation year. I suggest that officials of the CRA should review the records of Labatts to determine if any portion of the payment made by Labatts in 2007 was related to the Applicant.

[20] During the hearing, the Applicant said regarding the 2007 taxation year:

... I felt that there may be an accumulation of problem that might have gone into 2007, so I wanted them to look at the whole picture up to where I was speaking with Mr. Foisy.

(Transcript, page 36)

[21] During the hearing, I asked Counsel for the Respondent the following question:

JUSTICE LITTLE: ... Has the department looked into that in terms of talking to Labatt's or trying to accept it or did they just sort of go on the T-4 slip and not worry about it?

MS. TEELING: I believe on this file they went with the T-4 end.

JUSTICE LITTLE: Nothing else?

MS. TEELING: Nothing further.

(Transcript, pages 29 and 30)

[22] Before concluding my comments, I believe that this may be a situation where the Minister should seek a remission of debt under section 23 of the *Financial Administration Act*, RSC 1985, c F-11, (the "FAA"). Parliament has enacted legislation that permits, at the discretion of the Governor-in-Council, there to

be granted a remission of taxes, penalties or other debts owed to the Crown. Section 23 of the *FAA* reads as follows:

Definitions

23. (1) In this section,

“other debt”

“other debt” means any amount owing to Her Majesty, other than a tax or penalty or an amount in respect of which subsection 24.1(2) applies;

“penalty”

“penalty” includes any forfeiture or pecuniary penalty imposed or authorized to be imposed by any Act of Parliament for any contravention of the laws relating to the collection of the revenue, or to the management of any public work producing tolls or revenue, notwithstanding that part of such forfeiture or penalty is payable to the informer or prosecutor, or to any other person;

“tax”

“tax” includes any tax, impost, duty or toll payable to Her Majesty, imposed or authorized to be imposed by any Act of Parliament.

Remission of taxes and penalties

(2) The Governor in Council may, on the recommendation of the appropriate Minister, remit any tax or penalty, including any interest paid or payable thereon, where the Governor in Council considers that the collection of the tax or the enforcement of the penalty is unreasonable or unjust or that it is otherwise in the public interest to remit the tax or penalty.

Remission of other debts

(2.1) The Governor in Council may, on the recommendation of the Treasury Board, remit any other debt, including any interest paid or payable thereon, where the Governor in Council considers that the collection of the other debt is unreasonable or unjust or that it is otherwise in the public interest to remit the other debt.

...

(Emphasis added)

[23] Thus, the Treasury Board may recommend to the Governor-in-Council that the Applicant's tax debt be remitted. If the Governor-in-Council considers that the collection of the tax debt is unreasonable or unjust or that it is in the public interest to remit the tax debt, it may so order.

[24] In this case, a strong argument can be made that the collection of the Applicant's tax debt is indeed unreasonable and unjust.

[25] The request to extend the time within which the Applicant may file Notices of Objection for the 2005 and 2006 taxation years is dismissed, without costs.

Signed at Vancouver, British Columbia, this 25th day of March 2011.

“L.M. Little”

Little J.

CITATION: 2011 TCC 189

COURT FILE NO.: 2010-810(IT)APP

STYLE OF CAUSE: ANGELINA SCHOENNE AND THE QUEEN

PLACE OF HEARING: Yellowknife, Northwest Territories

DATE OF HEARING: September 28, 2010

REASONS FOR ORDER BY: The Honourable Justice L.M. Little

DATE OF ORDER: March 25, 2011

APPEARANCES:

For the Applicant:	The Applicant Herself
Counsel for the Respondent:	Marla Teeling

COUNSEL OF RECORD:

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 Name:

 Firm:

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