

Docket: 2011-941(GST)I

BETWEEN:

XIAO LING LI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on August 23, 2011 at Vancouver, British Columbia

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant:	The Appellant Herself
Counsel for the Respondent:	Holly Popenia

ORDER

The Respondent's motion to quash the Appellant's appeal filed on April 1, 2011 in relation to the assessment issued under the *Excise Tax Act* dated January 31, 2011 is allowed and this appeal is quashed, without costs.

Signed at Winnipeg, Manitoba, this 7th day of September 2011.

“Wyman W. Webb”

Webb, J.

Citation: 2011TCC416
Date: 20110907
Docket: 2011-941(GST)I

BETWEEN:

XIAO LING LI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Webb, J.

[1] Prior to the commencement of the hearing of the Appellant's appeal, the Respondent brought a motion to quash the Appellant's appeal on the basis that the Appellant had not filed a notice of objection to the assessment that the Appellant was attempting to appeal. The Appellant was assessed for goods and services tax (GST) for the period from January 1, 2005 to December 31, 2007 by a notice of assessment dated January 31, 2011. On April 1, 2011 the Appellant filed a Notice of Appeal to this Court in relation to this assessment. The Appellant acknowledged that she did not file a notice of objection to this assessment prior to filing the notice of appeal to this Court.

[2] Subsections 301(1.1), (3) and (4) and sections 302 and 306 of the *Excise Tax Act* ("Act") provide as follows:

(1.1) Any person who has been assessed and who objects to the assessment may, within ninety days after the day notice of the assessment is sent to the person, file with the Minister a notice of objection in the prescribed form and manner setting out the reasons for the objection and all relevant facts.

...

(3) On receipt of a notice of objection, the Minister shall, with all due dispatch, reconsider the assessment and vacate or confirm the assessment or make a reassessment.

(4) Where, in a notice of objection, a person who wishes to appeal directly to the Tax Court requests the Minister not to reconsider the assessment objected to, the Minister may confirm the assessment without reconsideration.

...

302. Where a person files a notice of objection to an assessment and the Minister sends to the person a notice of a reassessment or an additional assessment, in respect of any matter dealt with in the notice of objection, the person may, within ninety days after the day the notice of reassessment or additional assessment was sent by the Minister,

(a) appeal therefrom to the Tax Court; or

(b) where an appeal has already been instituted in respect of the matter, amend the appeal by joining thereto an appeal in respect of the reassessment or additional assessment in such manner and on such terms as the Tax Court directs.

...

306. A person who has filed a notice of objection to an assessment under this Subdivision may appeal to the Tax Court to have the assessment vacated or a reassessment made after either

(a) the Minister has confirmed the assessment or has reassessed, or

(b) one hundred and eighty days have elapsed after the filing of the notice of objection and the Minister has not notified the person that the Minister has vacated or confirmed the assessment or has reassessed,

but no appeal under this section may be instituted after the expiration of ninety days after the day notice is sent to the person under section 301 that the Minister has confirmed the assessment or has reassessed.

[3] Both sections 302 and 306 include a prerequisite that a person must have filed a notice of objection to an assessment before the person may appeal the assessment to this Court. It is also clear that the notice of objection is filed with respect to a particular assessment. The Appellant had argued that a notice of objection had previously been filed in relation to another assessment that, although it is not entirely clear, may be for the same GST for which the Appellant was assessed on January 31, 2011. The Appellant stated that the GST assessed was in relation to a business that the Appellant stated was her former spouse's business, although this issue is not raised in her notice of appeal.

[4] It is clear that the Appellant had not filed any notice of objection to the assessment dated January 31, 2011 (which was the first assessment for this GST issued in the name of the Appellant) prior to filing her notice of appeal to this Court in relation to this assessment. As a result the condition precedent to filing an appeal to this Court from this assessment had not been satisfied and her appeal is quashed.

[5] Following the filing of the notice of appeal the Appellant did file a notice of objection to this assessment on or about June 6, 2011. A Notice of Confirmation in relation to this notice of objection was sent on July 26, 2011 and therefore the Appellant is still within the 90 day period from the date of this confirmation to appeal this assessment to this Court as provided in section 306 of the *Act*. However the Appellant will need to file a new Notice of Appeal.

[6] The Respondent's motion to quash the Appellant's appeal filed on April 1, 2011 in relation to the assessment issued under the *Excise Tax Act* dated January 31, 2011 is allowed and this appeal is quashed, without costs.

Signed at Winnipeg, Manitoba, this 7th day of September 2011.

“Wyman W. Webb”

Webb, J.

CITATION: 2011TCC416
COURT FILE NO.: 2011-941(GST)I
STYLE OF CAUSE: XIAO LING LI AND THE QUEEN
PLACE OF HEARING: Vancouver, British Columbia
DATE OF HEARING: August 23, 2011
REASONS FOR ORDER BY: The Honourable Justice Wyman W. Webb
DATE OF ORDER: September 7, 2011

APPEARANCES:

For the Appellant: The Appellant Herself
Counsel for the Respondent: Holly Popenia

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada