

Docket: 2011-1861(IT)APP

BETWEEN:

JOSEPH LETENDRE,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Application heard on December 14, 2011 at Edmonton, Alberta

Before: The Honourable Justice J.M. Woods

Appearances:

Agent for the Applicant:           Wanda Flett  
Counsel for the Respondent:       Paige Atkinson

---

**ORDER**

The application, for an Order extending the time within which to serve a notice of objection under the *Income Tax Act* with respect to an assessment for the 2004 taxation year, is dismissed.

Signed at Toronto, Ontario this 29th day of December 2011.

“J. M. Woods”

---

Woods J.

Citation: 2011 TCC 577  
Date: 20111229  
Docket: 2011-1861(IT)APP

BETWEEN:

JOSEPH LETENDRE,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR ORDER**

Woods J.

[1] Joseph Letendre brings an application under the *Income Tax Act* to extend the time for filing a notice of objection to an assessment. The relevant taxation year is 2004.

[2] The Crown submits that the application should be dismissed because the last assessment was issued outside the normal reassessment period and there is no right to object in these circumstances.

[3] The Crown relies on s. 165(1.2) and s. 152(4.2) of the *Act*, which are reproduced in part below.

**165.(1.2) Limitation on Objections.** Notwithstanding subsections 165(1) and 165(1.1), no objection may be made by a taxpayer to an assessment made under subsection 118.1(11), 152(4.2), 169(3) or 220(3.1) nor, for greater certainty, in respect of an issue for which the right of objection has been waived in writing by the taxpayer.

**152.(4.2) Reassessment with taxpayer's consent.** Notwithstanding subsections (4), (4.1) and (5), for the purpose of determining, at any time after the end of the normal reassessment period of a taxpayer who is an individual (other than a trust) or

a testamentary trust in respect of a taxation year, the amount of any refund to which the taxpayer is entitled at that time for the year, or a reduction of an amount payable under this Part by the taxpayer for the year, the Minister may, if the taxpayer makes an application for that determination on or before the day that is ten calendar years after the end of that taxation year,

(a) reassess tax, interest or penalties payable under this Part by the taxpayer in respect of that year; [...]

### Factual Background

[4] Mr. Letendre failed to file an income tax return for the 2004 taxation year within the proper time. Accordingly, the Minister of National Revenue issued an initial assessment without reviewing a return. The assessment was made on June 8, 2006.

[5] Mr. Letendre subsequently filed an income tax return for the 2004 taxation year on March 1, 2010.

[6] Since the return was made outside the normal reassessment period, the Minister considered that the return was a request by Mr. Letendre for adjustments that could be made by an assessment pursuant to s. 152(4.2) of the *Act*. Reassessments under that provision were issued on April 7, 2010 and October 6, 2010 and Mr. Letendre was notified that there was no right to object (CRA letter dated April 6, 2010). An affidavit filed by the Crown states that the latter reassessment reflects the income tax return that was filed on March 1, 2010.

[7] Mr. Letendre then applied to the Canada Revenue Agency (the “CRA”) for an extension of time to file a notice of objection for the 2004 taxation year, by notice dated March 27, 2011. The request was denied.

[8] Mr. Letendre then filed a similar application with the CRA which appears to have been forwarded to the Tax Court of Canada on June 2, 2011. It is this application that is at issue.

Discussion

[9] The legislative provisions above make it clear that Mr. Letendre is precluded from objecting to the last assessment issued for the 2004 taxation year. Since that assessment nullified previous assessments, this application must be dismissed.

[10] By the time that Mr. Letendre filed an income tax return on March 1, 2010, the three-year deadline for issuing assessments had already passed. Assessments of tax after that period are limited by s. 152(4) of the *Act*. Accordingly, the Minister could only make tax adjustments in Mr. Letendre's favour pursuant to the provisions of s. 152(4.2).

[11] In these circumstances, it is clear that Mr. Letendre is not permitted to make a formal objection to the last assessment: subsection 165(1.2) of the *Act*.

[12] Although this is sufficient to dispose of this application, I would also comment briefly concerning a garnishment issue. Mr. Letendre submits that the CRA has not provided a satisfactory accounting for taxes that were garnisheed from Mr. Letendre's wages payable by Big D Contracting. The agent for Mr. Letendre submitted at the hearing that this likely is the only item in dispute. When this matter was raised at the hearing, counsel for the respondent undertook to follow up with the CRA regarding the garnishment issue.

[13] As for this application, it will be dismissed.

Signed at Toronto, Ontario this 29th day of December 2011.

“J. M. Woods”

---

Woods J.

CITATION: 2011 TCC 577

COURT FILE NO.: 2011-1861(IT)APP

STYLE OF CAUSE: JOSEPH LETENDRE and HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: December 14, 2011

REASONS FOR ORDER BY: The Honourable Justice J.M. Woods

DATE OF ORDER: December 29, 2011

APPEARANCES:

Agent for the Applicant: Wanda Flett  
Counsel for the Respondent: Paige Atkinson

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

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