

Docket: 2012-617(IT)APP

BETWEEN:

HAROLD RILEY,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on May 14, 2012, at London, Ontario

Before: The Honourable Justice Wyman W. Webb

Appearances:

Agent for the Applicant:

Valerie Machan

Counsel for the Respondent:

Serena Sial

ORDER

The Applicant's Application to extend the time for serving notices of objection in relation to the assessments of the Applicant's 2001, 2002 and 2003 taxation years is dismissed, without costs.

Signed at Halifax, Nova Scotia, this 12th day of June 2012.

“Wyman W. Webb”

Webb J.

Citation: 2012TCC208
Date: 20120612
Docket: 2012-617(IT)APP

BETWEEN:

HAROLD RILEY,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Webb J.

[1] The Applicant made an application pursuant to the provisions of section 166.2 of the *Income Tax Act* (the “*Act*”) to extend the time to serve notices of objection to the assessments of the Applicant’s 2001, 2002 and 2003 taxation years.

[2] The Applicant was assessed for these taxation years on the following dates:

Taxation Year	Date of Assessment
2001	April 22, 2002
2002	April 10, 2003
2003	May 10, 2004

[3] The Applicant purported to serve a notice of objection to the assessments of these taxation years on September 22, 2011. The Minister treated this objection as an application to extend the time to serve a notice of objection but since the application was made long after the time within which such an application could have been made, it was not granted. The Applicant then made this application pursuant to section 166.2 of the *Act*.

[4] Subsection 166.2(5) of the *Act* provides that:

(5) No application shall be granted under this section unless

(a) the application was made under subsection 166.1(1) within one year after the expiration of the time otherwise limited by this *Act* for serving a notice of objection or making a request, as the case may be; and

(b) the taxpayer demonstrates that

(i) within the time otherwise limited by this *Act* for serving such a notice or making such a request, as the case may be, the taxpayer

(A) was unable to act or to instruct another to act in the taxpayer's name, or

(B) had a *bona fide* intention to object to the assessment or make the request,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application was made under subsection 166.1(1) as soon as circumstances permitted.

[5] The application under subsection 166.1(1) of the *Act* is the application made to the Minister to request an extension of time to serve the notice of objection which was made by the Applicant in this case on September 22, 2011. The time within which a notice of objection may be served (without an extension of time being granted) is set out in subsection 165(1) of the *Act*. Prior to December 15, 2010 this subsection provided as follows¹:

165. (1) A taxpayer who objects to an assessment under this Part may serve on the Minister a notice of objection, in writing, setting out the reasons for the objection and all relevant facts,

(a) where the assessment is in respect of the taxpayer for a taxation year and the taxpayer is an individual ..., on or before the later of

(i) the day that is one year after the taxpayer's filing-due date for the year, and

¹ Effective December 15, 2010, the word “sending” was substituted for the word “mailing”.

(ii) the day that is 90 days after the day of mailing of the notice of assessment; and

(b) in any other case, on or before the day that is 90 days after the day of mailing of the notice of assessment.

[6] The application to extend the time to serve a notice of objection was not made within one year after the time limited by the *Act* for serving a notice of objection to any of the above assessments and was not made until several years after the time within which a notice of objection could have been served as provided in subsection 165(1) of the *Act*. The Applicant argued that the Minister had not considered the other conditions as set out in the section governing applications to the Minister to extend the time to serve notices of objection. These other conditions are set out in subsection 166.1(7) of the *Act*:

166.1 (7) No application shall be granted under this section unless

(a) the application is made within one year after the expiration of the time otherwise limited by this *Act* for serving a notice of objection or making a request, as the case may be; and

(b) the taxpayer demonstrates that

(i) within the time otherwise limited by this *Act* for serving such a notice or making such a request, as the case may be, the taxpayer

(A) was unable to act or to instruct another to act in the taxpayer's name, or

(B) had a *bona fide* intention to object to the assessment or make the request,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application was made as soon as circumstances permitted.

[7] The conditions as set out in paragraph 166.1(7)(b) of the *Act* (in relation to applications made to the Minister for extensions of time to serve notices of objection) are the same conditions that are set out in paragraph 166.2(5)(b) of the *Act* (in relation to applications made to this Court for extensions of time to serve notices of objection). However, because whether the application is to the Minister or this Court, the conditions in both paragraphs (a) and (b) of either subsection 166.1(7) or 166.2(5)

of the *Act* must be satisfied, if the condition as set out in paragraph (a) of the applicable subsection is not satisfied, the application to extend the time to serve a notice of objection cannot be granted regardless of whether the conditions as set out in paragraph (b) are satisfied. Therefore once it is determined that the condition as set out in paragraphs 166.1(7)(a) and 166.2(5)(a) of the *Act* is not satisfied, it is not necessary to consider whether the conditions as set in paragraphs 166.1(7)(b) and 166.2(5)(b) are satisfied.

[8] Unfortunately there is no discretion to extend the deadlines as set out in the *Act* and the provisions of subsection 166.2(5) of the *Act* are clear that no application may be granted by this Court unless both the requirements of paragraph (a) and (b) are satisfied. In this case the Applicant has failed to satisfy the requirements of paragraph 166.2(5)(a) of the *Act*.

[9] As a result the Applicant's Application to extend the time for serving notices of objection in relation to the assessments of the Applicant's 2001, 2002 and 2003 taxation year is dismissed, without costs.

Signed at Halifax, Nova Scotia, this 12th day of June 2012.

“Wyman W. Webb”

Webb J.

CITATION: 2012TCC208

COURT FILE NO.: 2012-617(IT)APP

STYLE OF CAUSE: HAROLD RILEY AND HER MAJESTY
THE QUEEN

PLACE OF HEARING: London, Ontario

DATE OF HEARING: May 14, 2012

REASONS FOR ORDER BY: The Honourable Justice Wyman W. Webb

DATE OF ORDER: June 12, 2012

APPEARANCES:

Agent for the Applicant: Valerie Machan
Counsel for the Respondent: Serena Sial

COUNSEL OF RECORD:

For the Applicant:

Name:

Firm:

For the Respondent:

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