

Docket: 2011-3956(IT)I

BETWEEN:

HERVIN BROWN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on May 15, 2012 at London, Ontario

Before: The Honourable Justice Wyman W. Webb

Appearances:

Agent for the Appellant: Peter Tindall

Counsel for the Respondent: Serena Sial

ORDER

The Motion of the Respondent to quash the Appellant's appeals in relation to the assessments issued for his 2007, 2008 and 2009 taxation years is granted and these appeals are quashed, without costs.

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

“Wyman W. Webb”

Webb J.

Citation: 2012TCC209
Date: 20120612
Docket: 2011-3956(IT)I

BETWEEN:

HERVIN BROWN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Webb J.

[1] The Appellant filed a Notice of Appeal in which the Appellant purported to appeal the assessments issued in relation to the Appellant's 2007, 2008 and 2009 taxation years. At the commencement of the hearing the Respondent brought a motion to quash the Appellant's appeals on the basis that the Appellant had not served any notice of objection in relation to any such assessment prior to commencing his appeal.

[2] The following is a list of the dates that the Appellant's liability under the *Act* was assessed¹ for each of the years referred to in the Notice of Appeal:

Taxation Year	Date of Assessment
2007	July 10, 2008
2008	May 20, 2010
2009	July 19, 2010

[3] The Appellant submitted a notice of objection in relation to these taxation years on November 29, 2011. The time period within which a notice of objection may be served in relation to an assessment is set out in subsection 165(1) of the *Act*. This subsection, prior to December 15, 2010, provided as follows²:

¹ The Appellant has not been reassessed in relation to any of these taxation years.

² Effective December 15, 2010, the word "sending" was substituted for the word "mailing".

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

(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.

[4] The notice of objection submitted November 29, 2011 was not served within the time period (as provided in subsection 165(1) of the *Act*) within which a notice of objection could have been served in relation to the assessment of the Appellant's 2007, 2008 or 2009 taxation years. The Minister informed the Appellant of this and also informed the Appellant that he could make an application to extend the time within which a notice of objection could be served in relation to the assessment of his 2009 taxation year. On January 23, 2012 (which was after the Appellant had filed his Notice of Appeal to this Court on December 6, 2011) the Appellant wrote to the Canada Revenue Agency to request an extension of time to serve the notice of objection dated November 29, 2011. Unless the application to extend the time to serve the notice of objection is granted either by the Minister or by this Court (if the Minister does not grant the application and the Appellant makes an application to this Court within the time as provided in section 166.2 of the *Act*), the Appellant does not have a valid notice of objection that has been served.

[5] Subsection 169(1) of the *Act*, prior to December 15, 2010, provided as follows:

169. (1) Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied after either

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

(b) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed,

but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed³ to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

[6] In *Bormann v. The Queen*, 2006 DTC 6147, the Federal Court of Appeal stated as follows:

3 Section 169(1) of the *Income Tax Act* obliges a taxpayer to serve Notice of Objection in order to appeal an assessment. In other words, service of a Notice is a condition precedent to the institution of an appeal.

4 As mentioned, the appellant did not serve a Notice of Objection nor is there evidence that the appellant made an application to the Ministry to extend the time to file a Notice of Objection.

5 Once it is clear that no application for an extension of time was made, the law is clear that there is no jurisdiction in the Tax Court to further extend the time for equitable reasons.

Minuteman Press of Canada Company Limited v. M.N.R., 88 DTC 6278, (F.C.A.).

6 As a result, there is no basis upon which it can be said that the Tax Court Judge erred in quashing the appellant's appeals for the 1992 to 1998 taxation years.

[7] Therefore a valid notice of objection must have been served before an appeal to this Court may be instituted. Since the Appellant did not serve a valid notice of objection with respect to any assessment issued in relation to any of his 2007, 2008 or 2009 taxation years, before he filed his Notice of Appeal to this Court on December 6, 2011, he failed to satisfy the “condition precedent to the institution of an appeal” and his appeals in relation to the assessments issued for these taxation years are quashed.

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

“Wyman W. Webb”

Webb J.

³ Effective December 15, 2010, the word “sent” replaced the word “mailed”.

CITATION: 2012TCC209

COURT FILE NO.: 2011-3956(IT)I

STYLE OF CAUSE: HERVIN BROWN AND HER MAJESTY
THE QUEEN

PLACE OF HEARING: London, Ontario

DATE OF HEARING: May 15, 2012

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

DATE OF ORDER: June 12, 2012

APPEARANCES:

Agent for the Appellant: Peter Tindall
Counsel for the Respondent: Serena Sial

COUNSEL OF RECORD:

For the Appellant:

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Firm:

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