

Docket: 2024-1365(GST)APP

BETWEEN:

CHARLES LAM,

APPLICANT,

and

HIS MAJESTY THE KING,

Respondent.

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Application heard on January 15, 2025 at Ottawa, Ontario

Before: The Honourable Justice Randall S. Boccock  
(with Cantonese/English interpretation)

Appearances:

For the Appellant:                      The Appellant himself

Counsel for the Respondent:      Gabriel Caron

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**ORDER**

WHEREAS the Court has published its reasons for order in this appeal on this date;

NOW THEREFORE THIS COURT ORDERS THAT:

1. The application for an extension of time to file a notice of objection concerning a notice of (re)assessment dated February 2016 is hereby dismissed because the Applicant did not file such an application for extension on or before May 23, 2017;

2. There shall be no costs.

Signed at Ottawa, Ontario, this 23<sup>rd</sup> day of January 2025.

“R.S. Bocock”

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Bocock J.

Citation: 2025 TCC 15  
Date: 20250123  
Docket: 2024-1365(GST)APP

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CHARLES LAM,

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### **REASONS FOR ORDER**

Bocock J.

#### *Introduction to application for extension to file a notice of objection*

[1] Charles Lam (“Mr. Lam”) brings this application to extend the time to file a notice of objection. The objection he seeks to file relates to a Notice of (Re)Assessment (“NoA”) dated February 26, 2016. The NoA disallowed Mr. Lam’s a previously refunded GST/HST new housing rebate of \$22,296.77 and interest of \$1,040.10 for a total of \$23,336.37 (the “Rebate”). In keeping with this Judge’s usual practice, these reasons, which would otherwise be delivered orally, are published to add clarity for the Applicant who required Cantonese/English interpretation during the hearing.

#### *Reasons of Mr. Lam for lateness in filing application*

[2] For reasons described below, Mr. Lam did not file his Notice of Objection (“NOO”) with the Canada Revenue Agency (“CRA”) until March 20, 2024. Once received, the Minister’s agents refused to accept the NOO on the basis it was not filed within 90 days of the sending of the NoA. For relief, Mr. Lam applies to this Court for an extension of the time to file a NOO (“Extension Application”).

[3] Mr. Lam offered the following reasons for his almost seven-year delay in filing the NOO and subsequent Extension Application:

- i. Mr. Lam was not a resident of Canada when the NoA was sent to him at the property to which the Rebate applies (the “Rebate Property”);
- ii. The tenant, to whom responsibility for forwarding important mail at the Rebate Property fell, did not forward it to or identify the NoA for Mr. Lam;
- iii. The NoA became lodged among the ordinary mail and bills of Mr. Lam;
- iv. When Mr. Lam returned to Canada in April 2017, he did not know of the NoA itself, but he stated he encountered someone at the door “demanding payment for taxes” from him;
- v. Mr. Lam tried to telephone the CRA during 2017 but, according to him, the CRA was never able to describe any taxes owing when referencing his social insurance number. At some point, in 2018, the CRA even stated no further action would be taken with respect to “any tax debt” he owed; and,
- vi. Ultimately in 2024, among his ordinary mail, Mr. Lam discovered the original NoA, at which point he filed the NOO and then this Extension Application.

*Why Mr. Lam says an extension to file should be granted to him*

[4] Mr. Lam asserts he should be entitled to the Extension Application allowing him to file his NOO because:

- i. He did not discover the NOA until March, 2024;
- ii. The threatening encounter at the door in 2017 frightened him from providing further information or taking further action;
- iii. The CRA’s own confusion between his social insurance number and business registration number is not his fault and camouflaged the outstanding (re)assessment;
- iv. As a non-resident, he was not present in Canada when the NoA was sent;

- v. The negligence of the tenant at the Rebate Property should not disentitle Mr. Lam from contesting the NoA because, although it was sent, he did not receive or have notice of it until March, 2024; and,
- vi. The gap in any action by CRA from July 28, 2018 to February 2024 lulled Mr. Lam into believing the matter concerning the Rebate disallowance was closed.

*Statutory provisions applicable*

[5] The statutory references applicable to the Extension Application are found in the *Excise Tax Act* (“ETA”) as follows [**emphasis added**]:

300. (1) After making an assessment, the Minister shall **send** to the person assessed a notice of the assessment.

301(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.

303.(1) Where no objection to an assessment is filed under section 301 . . . within the time limit otherwise provided, a person may make an application to the Minister to extend the time for filing a notice of objection . . . and the Minister may grant the application.

304.(1) A person who has made an application under section 303 may apply to the Tax Court to have the application granted after either

- (a) the Minister has refused the application, or

[....]

304(5) No application shall be granted under this section unless

- (a) the application was made under subsection 303(1) **within one year after the expiration of the time otherwise limited by this Part for objecting** . . . and

[....]

*Applicable case law*

[6] The jurisprudence interpreting the above-noted deadlines concerning filing objections and extension applications is longstanding and crystal clear. Once the Minister proves, on balance, the NoA has been sent, no obligation or requirement exists that the taxpayer actually receive it: *Rossi v HMQ* 2015 FCA 267 at para. 7 referencing *Canada v Bowen* [1992] 1 FC 311 (CA); *Schafer v Canada* [2000] FCA No 1480; and *Grunwald v HMQ* 2005 FCA 421. The Respondent tendered evidence that the NoA was sent; Mr. Lam, by his own word, indicated he received it and produced the original as sent by the Minister in his own documents.

[7] Once the NoA is sent, the timeline described above commences. As such, Mr. Lam had until May 23, 2016 to file his NOO. When he missed that date, his Extension Application deadline was May 23, 2017. Once that date passed without Mr. Lam filing his Extension Application, the Court's discretion, power or ability at law to grant any relief irrevocably dies: *Dutka v HMQ* 2020 TCC 21 at para. 31 and 32; *Smith v MNR* [1989] 1 CTC 2413 (FCA).

*“R.Conclusion*

[8] The policy reasons for the imposition, duration and existence of the 90 day objection and one year extension application deadlines were decided by Parliament. Parliament chose them as such, it did so directly, clearly and unequivocally: where a (re)assessment is sent to a taxpayers, the timeline commences and can only be stopped by taxpayer action. Neither the Courts nor the Minister may grant an extension after these deadlines have expired. The topical words “No application shall be granted” (for the Minister) and “No Order shall issue” (for the Court) rivet the Minister and the Court's attention to the absolute “no exceptions” nature of this legislative prohibition.

[9] Therefore, despite some sympathetic facts in Mr. Lam's case and the undoubted hardship the debt causes, the Extension Application is dismissed.

Signed at Ottawa, Ontario, this 23<sup>rd</sup> day of January 2025.

“R.S. Boccock”

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Boccock J.

CITATION: 2025 TCC 15

COURT FILE NO.: 2024-1365(GST)APP

STYLE OF CAUSE: CHARLES LAM AND HIS MAJESTY  
THE KING

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: January 15, 2025

REASONS FOR ORDER BY: The Honourable Justice Randall S. Boccock

DATE OF ORDER: January 23, 2025

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Gabriel Caron

COUNSEL OF RECORD:

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