

Federal Court



Cour fédérale

**Date: 20160531**

**Docket: T-1013-15**

**Citation: 2016 FC 604**

**Ottawa, Ontario, May 31, 2016**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**JAMES T. GRENON**

**Applicant**

**and**

**THE MINISTER OF NATIONAL REVENUE  
AND CANADA REVENUE AGENCY**

**Respondents**

**JUDGMENT AND REASONS**

I. Overview

[1] In 2013, the Minister of National Revenue obtained a court order (a so-called “jeopardy order”) allowing the Canada Revenue Agency (CRA) to take immediate steps to collect taxes owed by Mr James T Grenon. Without a jeopardy order, collection of taxes cannot take place until the taxpayer has been given an opportunity to appeal or object to a tax assessment. As a result of the order, the CRA collected \$12.75 million from Mr Grenon in March 2014.

[2] However, in August 2014, the jeopardy order was set aside on the consent of the parties.

In March 2015, the \$12.75 million was returned to Mr Grenon.

[3] Mr Grenon sought interest on his payment for the period it was held by the Minister (March 27, 2014 until March 13, 2015). The Minister refused on the basis that interest is not payable on funds paid as a consequence of a jeopardy order, even if the order is subsequently set aside. Mr Grenon argues that the Minister's decision was unreasonable and contrary to the *Income Tax Act*, RSC 1985, c 1 (5<sup>th</sup> Supplement) (see Annex for provisions cited). He asks me to quash the Minister's decision and order the Minister to pay the interest owed forthwith.

[4] In my view, the Minister's decision was not unreasonable. It was based on a defensible interpretation of the relevant provisions of the Act. Therefore, I must dismiss this application for judicial review.

[5] The sole issue is whether the Minister's decision was unreasonable.

## II. The Statutory Framework

[6] When a taxpayer receives a tax assessment, he or she can object to it or appeal it. However, interest will be added to the assessment unless the taxpayer makes a voluntary payment while pursuing the remedies available. During that process, the taxpayer can ask for the voluntary payment to be returned (*eg*, while his or her appeal to the Tax Court of Canada is pending) according to s 164(1.1). That provision states that where a person has applied to the Minister for a return of a payment, "the Minister shall, where no authorization has been granted

under subsection 225.2(2) in respect of the amount assessed, with all due dispatch repay all amounts paid on account of that amount . . . .”. Interest is payable to the taxpayer on the amount returned (according to s 164(3)).

[7] The reference to s 225.2(2) in s 164(1.1) is important here – it alludes to a jeopardy order. In other words, the Minister’s duty to return funds paid by a taxpayer does not apply if the funds were obtained as a result of a jeopardy order. The obligation in s 164(3) to pay interest would not apply because, while the funds collected under a jeopardy order may be returned, the obligation to do so does not arise from s 164(1.1) itself.

[8] If a jeopardy order is overturned, the taxpayer is entitled to recover the amounts collected under it. There is no specific statutory provision stating that interest must be paid on those funds. However, the judge who overturns the order may make any further orders that he or she considers appropriate in the circumstances (225.2(11) and (12)).

### III. Was the Minister’s refusal to pay interest unreasonable?

[9] Mr Grenon argues that the Act clearly requires the Minister to pay interest on amounts paid out to a taxpayer who, like him, files an objection or an appeal of a tax assessment, according to s 164(1.1) and s 164(3). He points out that, if he is unsuccessful on his appeal, he would have to pay interest on any interest paid to him on a repayment from the Minister (s 164(4)). That provision, he says, would be redundant if there could be no repayment to him under s 164(1.1). Regarding the reference to s 225.2(2) in s 164(1.1), Mr Grenon submits that it does not apply where the jeopardy order has been overturned.

[10] I disagree with Mr Grenon's submissions. In my view, the Minister's interpretation of the relevant provisions was reasonable.

[11] It is clear that s 164(1.1) simply does not apply to funds collected under a jeopardy order. The fact that Mr Grenon has filed an objection and an appeal of his tax assessment does not necessarily bring him within the terms of that provision given its stipulation that it does not apply where a jeopardy order has been granted in respect of the amounts assessed. Therefore, the corresponding obligation to pay interest on amounts repaid under s 164(1.1) does not apply to Mr Grenon, either. Nor does the provision (s 164(4)) requiring unsuccessful appellants to pay interest on payments and interest under s 164(1.1) apply. Contrary to Mr Grenon's submission, the provision is not redundant; it is simply irrelevant to his circumstances.

[12] As for Mr Grenon's other argument – that s 164(1.1)'s inapplicability to funds collected under a jeopardy cannot be sustained when the order has been overturned – I find that his interpretation would require inserting words into the provision that are not there. In effect, Mr Grenon suggests that the section should oblige the Minister to make a repayment to a taxpayer “where no authorization has been granted under subsection 225.2(2) or where an authorization has been granted under subsection 225.2(2) but was subsequently overturned (adding the underlined words)”.

[13] Mr Grenon's interpretation would negate Parliament's intention, as expressed in the Act, to treat voluntary payments more generously than involuntary ones. The former may attract interest; the latter do not.

[14] On the evidence, it appears that Mr Grenon might have believed that if he left in the Minister's hands the funds seized under the nullified jeopardy order, they could be treated as a voluntary payment against the taxes he owed, and could generate interest to his credit. In November 2014, after the jeopardy order had been set aside, he wrote to the CRA and said:

I would prefer to make a considerable payment on these alleged taxes but I require confirmation from CRA that I will be entitled to be repaid, with interest, on request, at any time prior to a court determination adverse to me (this is a normal right of the taxpayer).

[15] In February 2015, the Minister responded saying that interest was not payable on the funds. The Minister acknowledged that Mr Grenon was entitled to make voluntary payments into several other reassessments that were still going through the objection process. However, it appears that the terms Mr Grenon hoped to set for those payments were never fully accepted by the Minister. The directions sought by Mr Grenon were qualified, including the request for interest stated above. As explained, there was no statutory obligation on the Minister to comply with that request. Discussion between the parties broke down, and in February 2015, Mr Grenon communicated an unequivocal request for a refund, in lieu of making voluntary payments.

[16] The Minister concedes that Mr Grenon was entitled to a return of the funds. The Minister was also willing to convert the funds into voluntary payments. Had the funds been returned to Mr Grenon and he then made a voluntary payment towards his taxes, he would have been entitled to interest on them while they were in the Minister's possession. Alternatively, had Mr Grenon delivered an unequivocal direction to make voluntary payments, the Minister would have been in a position to accept those payments. But those are not the facts. After execution of the jeopardy order, the funds remained with the Minister until they were returned to Mr Grenon in March 2015. Mr Grenon never made a voluntary payment that would have triggered the statutory

obligation to pay interest under s 164(3) of the Act. In my view, the funds seized under a jeopardy order could not be treated as if they had been paid by Mr Grenon voluntarily, even though Mr Grenon might have voluntarily left them in the Minister's hands.

[17] Therefore, I cannot conclude that the Minister's decision was unreasonable.

#### IV. Conclusion and Disposition

[18] The Minister reasonably interpreted the Act as imposing no obligation to pay interest in respect of funds seized under a jeopardy order. Therefore, I must dismiss this application for judicial review, with costs.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed,  
with costs.

"James W. O'Reilly"

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Judge

## Annex

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|---|---|
| <i>Income Tax Act</i> , RSC 1985, c 1 (5 <sup>th</sup> Supplement)  | <i>Loi de l'impôt sur le revenu</i> , LRC 1985, c 1 (5e suppl)  |
| Repayment on objections and appeals   | Remboursement sur opposition ou appel   |
| <b>164</b> (1.1) Subject to subsection 164(1.2), where a taxpayer   | <b>164</b> (1.1) Sous réserve du paragraphe (1.2), lorsqu'un contribuable demande au ministre, par écrit, un remboursement ou la remise d'une garantie, alors qu'il a :   |
| (a) has under section 165 served a notice of objection to an assessment and the Minister has not within 120 days after the day of service confirmed or varied the assessment or made a reassessment in respect thereof, or  | a) soit signifié, conformément à l'article 165, un avis d'opposition à une cotisation, si le ministre, dans les 120 jours suivant la date de signification, n'a pas confirmé ou modifié la cotisation ni établi une nouvelle cotisation à cet égard;  |
| (b) has appealed from an assessment to the Tax Court of Canada,   | b) soit appelé d'une cotisation devant la Cour canadienne de l'impôt,   |
| and has applied in writing to the Minister for a payment or surrender of security, the Minister shall, where no authorization has been granted under subsection 225.2(2) in respect of the amount assessed, with all due dispatch repay all amounts paid on account of that amount or surrender security accepted therefor to the extent that | le ministre, si aucune autorisation n'a été accordée en application du paragraphe 225.2(2) à l'égard du montant de la cotisation, avec diligence, rembourse les sommes versées sur ce montant ou remet la garantie acceptée pour ce montant, jusqu'à concurrence de l'excédent du montant visé à l'alinéa c) sur le montant visé à l'alinéa d): |
| (c) the lesser of   | c) le moins élevé des montants suivants :   |
| (i) the total of the amounts so paid and the value of the security, and   | (i) le total des sommes ainsi versées et de la valeur de la garantie,   |
| (ii) the amount so assessed   | (ii) le montant de cette  |



exceeds

cotisation;

(d) the total of

d) le total des montants suivants :

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1013-15

**STYLE OF CAUSE:** JAMES T. GRENON v THE MINISTER OF NATIONAL  
REVENUE AND CANADA REVENUE AGENCY

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** DECEMBER 8, 2015

**JUDGMENT AND REASONS:** O'REILLY J.

**DATED:** MAY 31, 2016

**APPEARANCES:**

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