

Federal Court



Cour fédérale

Date: 20170131

Docket: T-1718-15

Citation: 2017 FC 113

Montréal, Quebec, January 31, 2017

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

PETER EASTON

Applicant

and

CANADA REVENUE AGENCY

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] When he completed his 2010 tax return, Mr. Peter Easton, the applicant, erroneously expensed repayment of the mortgage of a condo he had sold that year. As a result, his income tax return indicated he was to be refunded some \$28,000 in taxes, and a deductible amount was carried forward on his 2011 tax return.

[2] In 2012, Mr. Easton was audited by the CRA and his mistake was discovered. In October 2012, Mr. Easton's 2010 and 2011 taxation years were thus reassessed, and rather than being owed the aforementioned amount of money, it was determined he owed slightly over \$49,000 in taxes.

[3] Objections and appeals ensued, with interests accruing on Mr. Easton's tax liability. On July 25, 2013, Mr Easton filed a first Request for Taxpayer Relief [First Request] under subsection 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [Act] for taxation years 2010 and 2011, which was partially granted by the Minister's Delegate, acting on behalf of the Minister of National Revenue [Minister]. On April 17, 2015, Mr. Easton filed a second Request for Taxpayer Relief [Second Request], for taxation years 2010 and 2011, under the same provisions, whereby seeking cancellation of the accrued interests on his tax liability.

[4] Mr. Easton seeks judicial review of the decision rendered on September 21, 2015, by the Minister's Delegate who denied his Second Request.

[5] In a nutshell, Mr. Easton essentially contends that the mistake he made when completing his 2010 tax return, that also impacted his 2011 tax return, was so obvious and important that, although he did not see it, the CRA should have seen it, and immediately correct it, rather than process his tax returns as submitted.

II. Facts

A. *Background*

[6] In particular:

- In the spring of 2011, Mr. Easton completed his 2010 tax return using commercial tax preparation software certified by the CRA. In completing the return, he expensed the amount of \$259,581.26 as discharged mortgage. The software indicated that Mr. Easton was owed a refund of \$28,724.57. Assuming an error, Mr. Easton repeated the calculation several times without obtaining a different result. On May 7, 2011, he filed his return electronically, on the assumption that the Shawinigan Assessment Division of the CRA would correct any error, as it had done in the past;
- On May 15, 2011, the Minister, through the Shawinigan Assessment Division, assessed Mr. Easton's return "as filed", which resulted in a credit to Mr. Easton's account;
- On February 15, 2012, Mr. Easton filed his tax return for 2011, including claiming a deduction of \$14,202 as part of the non-capital loss that the Shawinigan Assessment Division had calculated. The Minister, through the Shawinigan Assessment Division, assessed Mr. Easton's return "as filed", which resulted in a credit to Mr. Easton's account;
- Later in 2012, Mr. Easton received a notice from the Ottawa Tax Office that his 2010 and 2011 taxation years were being audited;
- On April 27, 2012, the Minister issued a proposal letter to Mr. Easton with respect to his 2010 and 2011 taxation years;
- On October 15, 2012, the Minister reassessed Mr. Easton's 2010 and 2011 taxation years. Regarding the reassessment of the 2010 taxation year, the Minister

indicated a capital gain of \$38,597 and taxes owed of slightly over \$49,000, as well as penalties for “gross negligence” ;

- On October 22, 2012, Mr. Easton filed a Notice of Objection with the Appeals Division of the CRA on the belief that the Auditor had erred in not taking into account the mortgage repayment of his 2010 tax return;
- By letter dated November 20, 2012, the CRA advised Mr. Easton that interest continued to accrue on the balance owing in his account and recommended payment of the balance owing to reduce or avoid additional interest;
- On January 2, 2013, Mr. Easton filed a Notice of Objection with respect to the reassessment of his 2011 taxation year;
- By letter dated January 23, 2013, the CRA advised Mr. Easton that interest continued to accrue on the balance owing in his account and recommended payment of the balance owing to reduce or avoid additional interest;
- On July 11, 2013, the Minister reassessed Mr. Easton’s 2010 and 2011 taxation years. The reassessment with respect to the 2010 taxation year deleted the gross negligence penalties that had previously been assessed and credited Mr. Easton’s account with \$383.34, representing the arrears interest that had been assessed with respect to the gross negligence penalties. The reassessment confirmed the amount of taxes owing.

B. *Requests for a waiver of interest*

- (1) First Request

[7] On July 25, 2013, Mr. Easton filed the First Request with the CRA's Taxpayer Relief Centre of Expertise. He based his request on CRA error and financial hardship, and requested that the remaining arrears interest on his account be waived.

[8] On February 11, 2015, the Minister partially allowed the request, and waived the interest that had accrued between August 21, 2012 and October 15, 2012.

(2) Second Request

[9] On April 17, 2015, Mr. Easton filed the Second Request on the basis of CRA error, CRA delay, and financial hardship or inability to pay.

[10] On September 21, 2015, the Minister, represented by the Minister's Delegate, denied Mr. Easton's request.

[11] On October 30, 2015, the Statement of Account provided by the CRA indicated total interest on Mr. Easton's account in the amount of \$13,448.39. Mr. Easton then learned that the CRA had assessed a late-filing penalty of \$727.67.

III. Decision under review

[12] In his Second Request, Mr. Easton requested that the Minister waive the remaining interest that had accrued on his balance with respect to the 2010 and 2011 taxation years.

[13] Mr. Easton argued that (1) interests should be waived on his 2012 income tax return given the devastating financial impact the reassessment had; (2) there were delays in both the processing of his reassessment and his appeal, and that fairness would require at least relief of interest accrued subsequent to the submission of his audit for reassessment in August 2012, and the completion of the Appeals process the following May; and (3) the Shawinigan Assessment Division of the CRA was negligent in assessing his 2010 income tax return, in that they should have immediately recognized that his return warranted further review as the amount of about \$259,000 was more than twice his T4 salary.

[14] The Minister's Delegate completed a second impartial review of the facts and circumstances of this case and denied Mr. Easton's Second Request, rejecting his allegations of financial hardship, delay on the part of the CRA and negligence on the part of the CRA.

A. *Financial hardship*

[15] The Minister's Delegate defined financial hardship "as the prolonged inability to provide necessities such as food, clothing, shelter and reasonable non-essentials". According to the decision of the Minister's Delegate, household income, basic living expenses and the capacity to borrow are among factors used to determine an individual's ability to pay.

[16] The Minister's Delegate concluded that Mr. Easton had not demonstrated financial hardship or an inability to pay the amounts owing. The Minister's Delegate based his/her decision on (1) the discretionary spending indicated on Mr. Easton's monthly income statement;

(2) the credit available on his line of credit and credit cards; (3) the value of his RRSP; and (4) his 2014 yearly income of \$155,368.

B. *Delay on the part of the CRA*

[17] The Minister's Delegate concluded that there was no delay on the part of the CRA:

- In letters dated November 20, 2012 and January 23, 2013, Mr. Easton was advised that the balance would still accrue arrears interest while being disputed;
- In May 2013, the appeal filed in regards to the 2010-2011 income tax returns was finalized, being within the 6 to 9 month timeframe that was given in the above-mentioned letters;
- When gross negligence penalties on Mr. Easton's 2010 income tax return were cancelled, arrears interest was credited back to him on the Notice of Reassessment dated July 11, 2013;
- The CRA does a limited review upon receipt of tax returns;
- The CRA has three years from the Notice of Assessment to conduct a more in-depth review of tax returns, and the review of the 2010-2011 tax returns was made within three years from the above timeframe.

C. *Negligence on the part of the CRA*

[18] The Minister's Delegate concluded that there was no negligence on the part of the CRA, and that the onus is on the taxpayer to file a true and accurate income tax return.

IV. Submissions of the parties

A. *Mr. Easton*

[19] Mr. Easton raises two issues, namely that (1) the CRA did not act fairly and with due care toward him; and (2) the Minister's Delegate did not properly assess Mr. Easton's Second Request with respect to CRA error and financial hardship.

- (1) In its assessment of Mr. Easton's 2010 tax return, and in subsequent dealings with the taxpayer regarding payment arrangements, did the CRA act fairly and with due care towards the taxpayer?

[20] Mr. Easton contends there exists a general duty to act fairly, and relies on the decision of the Supreme Court of Canada in *Knight v Indian Head School Division No 19*, [1990] 1 SCR 653 at paragraph 24 which listed the criteria to assess when determining if this duty applies in a certain administrative proceeding. Those criteria are namely: the nature of the decision to be made by the administrative body, which must be sufficiently administrative or quasi-judicial, the relationship existing between that body and the individual which must be based on an exercise of power pursuant to a statute or a prerogative power, and the effect of that decision on the individual's rights. Mr. Easton submits that the decision under review meets all three of these conditions.

[21] He also submits that the Supreme Court of British Columbia, in *Leroux (c.o.b. Leroux Holdings) v Canada Revenue Agency*, 2014 BCSC 720 [*Leroux*], ruled that the CRA owes a duty of care towards taxpayers.

[22] Regarding the CRA's alleged error, Mr. Easton more precisely submits that the CRA was aware of the increasing possibility that its expedited process for assessing electronically filed tax returns increases the probability of assessment errors on its part. Indeed, in May or June 2015, in response to Mr. Easton's statement that the Shawinigan Assessment Division should have noticed and corrected his 2010 return on its initial assessment, someone at the Collections Division of the CRA told him that the Shawinigan Assessment Division had "dropped the ball on that one" and that he could be "100 percent certain" that the Shawinigan Assessment Division would have recognized the error had he filed a paper return instead of an electronic one.

[23] Therefore, the non-deductible mortgage, of an amount 2.4 times Mr. Easton's salary, should have been noticed. With this in mind, Mr. Easton submits that the CRA did not provide him with accurate and timely information by not correcting his 2010 return on assessment, contrary to section 6 of the CRA's *Taxpayer Bill of Rights*, RC17, Rev 16 [Taxpayer Bill of Rights], reproduced in annex, as well as with the duty of care required under *Leroux*.

[24] Mr. Easton also contends that the CRA did not meet the test of fairness in *Knight and Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 as well as the duty of care in *Leroux* by not responding to his proposals to the CRA Collections Division for a payment arrangement, which would have limited the interest owing.

[25] Finally, Mr. Easton submits that the CRA's process for reviewing only a sample of assessed returns applies the law inconsistently, contrary to section 7 of the Taxpayer Bill of Rights, reproduced in annex.

(2) Did the Minister's Delegate properly assess Mr. Easton's Second Request with respect to CRA error and Mr. Easton's financial situation?

(a) *Error on the part of the CRA*

[26] Regarding the CRA's alleged error, Mr. Easton submits that:

- The Taxpayer Relief Centre of Expertise is an integral part of the CRA, has access to all of the records in its possession and acts on its behalf. Thus, it is not an independent tribunal;
- The Minister's Delegate did not address the issue of error in its initial assessment of Mr. Easton's 2010 tax return, except to state that the CRA had not made any;
- This statement was made without explanation, corroboration or reference to any law or regulation;
- The Minister's Delegate was non-responsive to questions 1 through 5 of Mr. Easton's Written Examination relating to the possibility of an assessment error on the part of the CRA based on the increased error rate of electronically filed tax returns in 2010 over 2009, claiming that it was outside the reviewing Minister's Delegate's knowledge, although the information is publically available on the CRA's website;
- The response of the Minister's Delegate to question 6 of Mr. Easton's Written Examination was "boilerplate" text that a taxpayer is obligated to file a true and accurate tax return. However, the CRA's Appeals Division auditor, in reversing the finding of "gross negligence" and associated penalties, agreed that Mr.

Easton's tax return was complete and accurate, notwithstanding the erroneous deduction of the mortgage amount;

- The Minister's Delegate was non-responsive to Question 7 of Mr. Easton's Written Examination regarding a conversation with Ivano Feltrin of the Collections Division who, in May or June 2015, in response to Mr. Easton's statement that the Shawinigan Assessment Division should have noticed and corrected his 2010 return on its initial assessment, answered that the Shawinigan Assessment Division had "dropped the ball on that one" and that he could be "100 percent certain" that the Shawinigan Assessment Division would have recognized the error had he filed a paper return instead of an electronic one;
- Finally, only a subset of returns is reviewed, and the returns selected for review are through non-transparent criteria that may or may not apply to each individual taxpayer.

(b) *Financial hardship*

[27] Regarding financial hardship, Mr. Easton submits that the Minister's Delegate did not consider the totality of the tax debt and his on-going ability to pay that debt.

[28] More precisely, Mr. Easton alleges that the reasons given by the Minister's Delegate are incorrect because:

- His Bank of Nova Scotia Line of Credit is inactive and unavailable. It continues to have a balance owing, for which he makes minimum monthly payments;

- While he has three active credit cards, they do not have significant credit available and cannot be seen as long-term solutions;
- His 2014 gross income of \$155,368 included one-time payments of \$23,285.35 in unused vacation leave; \$3,465 in retroactive pay; and \$64,981.60 in severance pay, from which \$34,000 were transferred into his RRSP;
- Viewing the \$34,000 transferred to his RRSP as separate from his gross income amounted to double counting the same funds;
- His two apartments are adjacent and the combined floor area is no greater than an average three bedroom house, and the rent of these apartments include utilities and all maintenance;
- The Minister's Delegate did not take into consideration Mr. Easton's ability to pay for future large one-time costs such as dental reconstruction.

[29] Mr. Easton furthermore submits that:

- His monthly family income, including Public Service Pension Plan income, Canada Pension Plan, and Old Age Security is \$5,659.88 per month, or \$67,918.56 per year after deductions, while his monthly expenses, including pension garnishment of \$1,264.08, are \$7,663.09 per month, leaving a monthly deficit of \$1,973.21;
- He has already liquidated a portion of his RRSP to make up for the monthly excess of expenses over income: his RRSP balance was about \$40,000 in May 2015; \$31,000 in July, 2015; and \$27,000 in October 2015;

- Under these circumstances, there is a genuine danger that he will have expended all his available funds before the tax and interest arrears are liquidated, unless he receives interest relief and is able to negotiate a sustainable payment arrangement with the CRA.

B. *The respondent*

[30] The respondent submits that the Minister's Delegate reviewed and considered all of the relevant facts and documents, as well as the statutory requirements under the Act to conclude that a waiver of interest was not warranted.

[31] According to the respondent, the sole issue is whether the Minister, represented by the Minister's Delegate, reasonably exercised her discretion under subsections 220(3.1) of the Act when she decided not to cancel the remaining interest assessed on Mr. Easton's outstanding tax liability.

(1) Preliminary remarks

[32] The respondent first submits that, on an application for judicial review, the Court may only consider the considerations and material that were before the decision-maker (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 22-26 [*Alberta Teachers' Association*]; *Telfer v Canada (Revenue Agency)*, 2009 FCA 23 at para 31 [*Telfer*]; *Nedza Enterprises Ltd v Canada (Revenue Agency)*, 2010 FC 435 at para 20-21).

[33] The respondent lists the documents Mr. Easton refers to that were not before the decision-maker, and asks the Court to disregard them.

(2) Error on the part of the CRA

[34] The respondent contends that the Minister's Delegate did consider Mr. Easton's argument relating to the error the CRA made in reviewing his 2010 tax return, but concluded there was no such mistake on his/her part. According to the respondent, the fact that the Minister does not correct an ineligible deduction made by a taxpayer during the limited review made when a return is filed is not an error. The Minister has the ongoing authorization to review and make changes to a taxpayer's return within three years after a tax return is filed. Moreover, the Minister's Delegate found that Mr. Easton's account properly reflected the reimbursement of the penalty, with interest. Consequently, the Minister's Delegate's analysis with respect to the alleged CRA error was reasonable.

(3) Delay on the part of the CRA

[35] The respondent submits that the Minister's Delegate considered Mr. Easton's argument that interest relief should be given based on the delay of the CRA during the reassessment and objection process, but determined that additional relief should not be granted. The respondent contends that this analysis was reasonable as the Minister's Delegate considered the timelines between the audit and objection stages, and found they were within the three-year period provided for by the Act. The Minister's Delegate also acknowledged that partial relief had

already been granted and that the objection process was completed within the time given by the CRA in its initial correspondence.

[36] The respondent stresses that Mr. Easton was informed that interest accrued on the debt pending the outcome of his objection.

(4) Financial hardship and inability to pay

[37] The respondent submits that the Minister's Delegate's analysis with respect to financial hardship and inability to pay was reasonable as it was based on an overall overview of Mr. Easton's financial situation and was consistent with the notion of financial hardship as defined by the Information Circular IC07-1 – Taxpayer Relief Provisions.

V. Issues

[38] As previously stated, Mr. Easton raises the following two issues:

- In its assessment of Mr. Easton's 2010 tax return, and in subsequent dealings with the taxpayer regarding payment arrangements, did the CRA act fairly and with due care towards the taxpayer?
- Did the Minister's Delegate properly assess Mr. Easton's Second Request with respect to CRA error and Mr. Easton's financial situation?

[39] However, the Court notes that the arguments put forward by Mr. Easton regarding the alleged duty of care owed to him are similar to the ones related to the alleged error on the part of

the CRA. They address namely that the error in Mr. Easton's 2010 taxation return would have been caught if he had filed a paper return instead of an electronic one, that the CRA did not provide accurate and timely information to Mr. Easton by not correcting his 2010 return on assessment, and that the CRA should have responded to Mr. Easton's proposals for a payment arrangement which would have limited the interest owing.

[40] Moreover, as per subsection 18.1(3) of *the Federal Courts Act*, RSC 1985, c F-7, this Court's powers are limited on an application for judicial review. Therefore, the Court finds that the issue at hand is to determine whether the Minister's Delegate reasonably exercised his discretion under subsection 220(3.1) of the Act when deciding not to cancel the remaining interest assessed on Mr. Easton's tax liability, in particular when addressing (1) error or delay on the part of the CRA, and (2) financial hardship.

VI. Standard of review

[41] A decision under subsection 220(3.1) of the Act is of a discretionary nature and the Court must thus show deference to the Minister's Delegate (*Tomaszewski v Canada (Minister of Finance)*, 2010 FC 145 at para 17). Hence, the decision rendered by the Minister's Delegate under the taxpayer relief provisions must be assessed against the reasonableness standard (*Lanno v Canada (Customs and Revenue Agency)*, 2005 FCA 153; *Amoroso v Canada (Attorney General)*, 2013 FC 157 at para 50; *Christie Estate v Canada (Attorney General)*, 2007 FC 1014 at para 11).

[42] When assessing reasonableness in the judicial review context, this Court “is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process [and] with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[43] The Court’s role is not to reweigh the evidence (*Quastel v Canada (Revenue Agency)*, 2011 FC 143 at para 21), but rather to examine if the Minister’s Delegate “properly considered the evidence before him and that the decision was not based on considerations irrelevant or extraneous to the statutory purpose” (*Hauser v Canada (Revenue Agency)*, 2007 FC 113 at para 21).

VII. Analysis

A. *General provisions*

(1) Filing and assessment procedures

[44] As mentioned above, in October 2012, Mr. Easton’s 2010 and 2011 tax returns were reassessed, as per the powers conferred by subsection 152(4) of the Act, reproduced in annex. The reassessment must occur within the allowed timeline, hence “the period that ends three years after the earlier of the day of sending of a notice of an original assessment under this Part in respect of the taxpayer for the year and the day of sending of an original notification that no tax is payable by the taxpayer for the year”, as per subsection 152(3.1).

[45] If changes are made to a taxpayer's tax return, interest will be assessed on any additional amount owed, as per subsection 160.1(1) and 161(1) of the Act, reproduced in annex.

[46] Pursuant to subsection 165(1) of the Act, the taxpayer who disagrees with the reassessment may file a Notice of Objection which will be reviewed by the Minister as per subsection 165(3), reproduced in annex.

[47] During the objection process, interest will continue to accrue on the contested balance owing. If the objection is successful, the overpayment will be refunded with interest, as stated by the Federal Court of Appeal in *Telfer* at para 35:

Those who, like Ms Telfer, knowingly fail to pay a tax debt pending a decision in a related case normally cannot complain that they should not have to pay interest. If they had promptly paid the sum claimed to be due, and were later found not liable to pay it, the Minister would have had to repay the overpayment, with interest: see *Comeau v. Canada (Customs and Revenue Agency)*, 2005 FCA 271, 2005 D.T.C. 5489, at para. 20. The relatively high rate of interest charged to the taxpayer is no doubt intended, for the benefit of all taxpayers, to encourage the prompt payment of tax debts.

(2) Taxpayer relief

[48] In the presence of extraordinary circumstances, the Minister may grant relief from the application of penalty and interest.

[49] The Minister's power to grant the relief sought by Mr. Easton is set out in subsection 220(3.1) of the Act:

(3.1) The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer (or in the case of a partnership, a fiscal period of the partnership) or on application by the taxpayer or partnership on or before that day, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the taxpayer or partnership in respect of that taxation year or fiscal period, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.

[50] This provision allows the Minister to grant relief namely when “extenuating circumstances beyond the control of the taxpayer that would have prevented him from complying with the [Act]” (*Herrington v Canada (National Revenue)*, 2016 FC 953 at para 18).

[51] The Information Circular IC07-1 – Taxpayer Relief Provisions, dated May 31, 2007, contains the guidelines developed by the Minister, within which the statutory discretion under subsection 220(3.1) of the Act is exercised (*Telfer* at para 36). Exceptional circumstances can include actions of the CRA, a taxpayer’s inability to pay or financial hardship.

B. *Objection regarding Mr. Easton’s record admissibility*

[52] As a general rule, the evidentiary record before the Court in an application for judicial review is limited to the one that was before the decision-maker (*Assn of Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22 at para 19).

[53] With respect to the case at hand, these documents are listed in the respondent’s memorandum at paragraphs 28 and 29.

[54] The Court finds no reason to depart from the general rule and will thus accept the documents that were before the decision-maker. Despite Mr. Easton's contention that the Minister's Delegate should have or could have accessed his entire file, the evidence he submitted that was not before the Minister's Delegate will not be considered.

C. *Error or delay on the part of the CRA*

[55] The Canadian tax system is based on self-assessment. The onus is on the taxpayer to know the law and conduct its financial affairs in accordance with the Act (*Dimovski v Canada (Revenue Agency)*, 2011 FC 721 at para 17; *Kapil v Canada (Revenue Agency)*, 2011 FC 1373 at para 24).

[56] Indeed, as noted by our Court and emphasized by the respondent, "it is important to note that any applicant is responsible to file his or her return on time, and that any errors attributable to third parties are not considered extraordinary circumstances" (*Biller v Canada (Attorney General)*, 2013 FC 588 at para 12).

[57] The mistake of expensing the amount of his discharged mortgage was Mr. Easton's. His tax returns were reassessed in the delay provided by the Act and he was advised that interest would accrue on any amount owing.

[58] While the Minister had the discretion to waive the remaining interest that had accrued on Mr. Easton's balance, he had no obligation to do so and, given the aforementioned principles, the

Court is satisfied it was reasonable for the Minister's Delegate to deny the relief Mr. Easton sought.

D. *Financial hardship*

[59] The Court is also satisfied that it was reasonable for the Minister's Delegate to conclude that Mr. Easton did not demonstrate financial hardship or an inability to pay. Upon examination of Mr. Easton's living expenses and revenue in the record, it is reasonable to conclude his situation does not reach the threshold, as it does not show a prolonged inability to provide necessities such as food, clothing, shelter and reasonable non-essentials, even considering that his 2014 gross income included one-time payments.

E. *Conclusion*

[60] In conclusion, the Court is satisfied the Minister's Delegate reasonably assessed Mr. Easton's situation. His decision to deny Mr. Easton's request for taxpayer relief falls within the range of possible, acceptable outcomes given the record, and it is thus reasonable.

[61] This application for judicial review is dismissed, with costs in favor of the respondent.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. Costs are granted in favor of the respondent.

“Martine St-Louis”

Judge

ANNEX

Canada Revenue Agency,
*Taxpayer Bill of Rights Guide:
Understanding your rights as a
taxpayer*, RC17, Rev 16

6. You have the right to complete, accurate, clear, and timely information

You can expect us to provide you with complete, accurate, and timely information in plain language explaining the laws and policies that apply to your situation.

Complete, accurate, clear, and timely information

We have a wide variety of information available electronically, by telephone, and in print (generalized and specialized publications).

Our enquiries agents have extensive training and reference tools that let them respond quickly and accurately to your questions and provide you with the highest quality of service.

We offer our forms and publications in multiple formats for persons with a visual impairment. We use plain language and revise our publications to make sure that they are accurate and complete.

If you feel the information you received from us was

Agence du revenu du Canada,
Charte des droits du contribuable : Pour comprendre vos droits en tant que contribuable, RC17, Rév 16

6. Vous avez droit à des renseignements complets, exacts, clairs et opportuns

Vous pouvez vous attendre à recevoir des renseignements complets et exacts, en temps opportun, qui expliquent dans un langage simple les lois et les politiques qui s'appliquent à votre situation.

Renseignements complets, exacts, clairs et opportuns

Nous vous donnons accès à un large éventail de renseignements par voie électronique, par téléphone et sur papier (publications générales ou spécialisées).

Nos préposés aux renseignements ont reçu une formation complète. Ils ont des outils de référence qui leur permettent de répondre rapidement et avec précision à vos questions et de vous fournir un service de la plus haute qualité.

Nos formulaires et nos publications sont offerts en plusieurs formats pour les personnes ayant une déficience visuelle. Nos publications sont écrites dans un langage simple et nous les révisons pour que leur contenu soit exact et complet.

Vous croyez que les renseignements que nous

inadequate

We want you to let us know. You can do so by using the CRA Service Complaint process. To find out how to file a service complaint, see 9. You have the right to lodge a service complaint and to be provided with an explanation of our findings.

7. You have the right, unless otherwise provided by law, not to pay income tax amounts in dispute before you have had an impartial review

You have the right not to pay personal tax amounts in dispute until you have had an impartial review by the CRA or, if you have filed an appeal to the Tax Court of Canada, until that court has issued its decision. Interest charges will continue to accrue during this period.

In circumstances that are specified in legislation, such as when an amount is in jeopardy, the CRA can take collection action even though an objection or appeal has been filed.

If you disagree with a decision that resulted in an amount owing

You have the right to object to an assessment or reassessment if you think we did not apply the law correctly. If you

vous avons transmis sont inadéquats

Faites-nous-en part. Pour ce faire, utilisez le processus de plaintes liées au service de l'ARC. Pour savoir comment déposer une plainte liée au service, lisez 9. Vous avez le droit de déposer une plainte en matière de service et d'obtenir une explication de nos constatations.

7. Vous avez le droit de ne pas payer tout montant d'impôt en litige avant d'avoir obtenu un examen impartial, sauf disposition contraire de la loi

Vous avez le droit de ne pas payer les montants d'impôt sur le revenu des particuliers en litige jusqu'à ce que vous ayez obtenu un examen impartial de l'ARC ou, si vous avez fait appel devant la Cour canadienne de l'impôt, jusqu'à ce que celle-ci ait rendu sa décision. Les frais d'intérêts continueront de s'accumuler pendant cette période.

Dans certaines situations énoncées dans la loi, par exemple lorsque le recouvrement d'un montant est compromis, l'ARC peut prendre des mesures de recouvrement, même si une opposition ou un appel a été déposé.

Vous n'êtes pas d'accord avec une décision donnant lieu à un montant à payer

Vous avez le droit de contester une cotisation ou une nouvelle cotisation si vous pensez que nous n'avons pas appliqué la

disagree with, or do not understand, an assessment or a reassessment, you should contact us at once for an explanation. If you can provide some evidence that our assessment is not correct, we will suspend collection actions on the part of the assessed taxes that you are questioning until the matter is reviewed and resolved. However, you have to pay at once any amounts not in dispute.

For more information on your rights and obligations as an individual in paying disputed personal tax amounts, see *When you owe money – collections at the CRA.*

Income Tax Act, RSC 1985, c 1 (5th Supp), s 152(4), 160.1(1), 161(1), 165(1), (3)

152 (4) The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect

loi correctement. Si vous vous opposez à une cotisation ou à une nouvelle cotisation ou si vous ne la comprenez pas, vous devriez communiquer immédiatement avec nous pour obtenir une explication. Si vous pouvez fournir une preuve de l'inexactitude de votre cotisation, nous suspendrons les mesures de recouvrement visant la partie de l'impôt contesté jusqu'à ce qu'un examen ait été fait et que la question soit réglée. Vous devez toutefois payer immédiatement les montants qui ne sont pas contestés. Pour en savoir plus sur vos droits et obligations concernant le paiement de montants d'impôt sur le revenu des particuliers en litige, allez à *Lorsque vous devez de l'argent – les recouvrements à l'ARC.*

Loi de l'impôt sur le revenu, LRC 1985, c 1 (5e suppl), art 152(4), 160.1(1), 161(1), 165(1), (3)

152(4) Le ministre peut établir une cotisation, une nouvelle cotisation ou une cotisation supplémentaire concernant l'impôt pour une année d'imposition, ainsi que les intérêts ou les pénalités, qui sont payables par un contribuable en vertu de la présente partie ou donner avis par écrit qu'aucun impôt n'est payable pour l'année à toute personne qui a produit une déclaration de revenu pour une année d'imposition. Pareille cotisation ne peut être établie

of the year only if	après l'expiration de la période normale de nouvelle cotisation applicable au contribuable pour l'année que dans les cas suivants :
(a) the taxpayer or person filing the return	a) le contribuable ou la personne produisant la déclaration :
(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act, or	(i) soit a fait une présentation erronée des faits, par négligence, inattention ou omission volontaire, ou a commis quelque fraude en produisant la déclaration ou en fournissant quelque renseignement sous le régime de la présente loi,
(ii) has filed with the Minister a waiver in prescribed form within the normal reassessment period for the taxpayer in respect of the year;	(ii) soit a présenté au ministre une renonciation, selon le formulaire prescrit, au cours de la période normale de nouvelle cotisation applicable au contribuable pour l'année;
(b) the assessment, reassessment or additional assessment is made before the day that is 3 years after the end of the normal reassessment period for the taxpayer in respect of the year and	b) la cotisation est établie avant le jour qui suit de trois ans la fin de la période normale de nouvelle cotisation applicable au contribuable pour l'année et, selon le cas :
(i) is required under subsection (6) or (6.1), or would be so required if the taxpayer had claimed an amount by filing the prescribed form referred to in the subsection on or before the day referred to in the subsection,	(i) est à établir en vertu du paragraphe (6) ou (6.1), ou le serait si le contribuable avait déduit une somme en présentant le formulaire prescrit visé à ce paragraphe au plus tard le jour mentionné à ce paragraphe,
(ii) is made as a consequence of the assessment or reassessment pursuant to this paragraph or subsection 152(6) of tax payable by another taxpayer,	(ii) est établie par suite de l'établissement, en application du présent paragraphe ou du paragraphe (6), d'une cotisation ou d'une nouvelle cotisation concernant l'impôt payable par un autre contribuable,

(iii) is made as a consequence of a transaction involving the taxpayer and a non-resident person with whom the taxpayer was not dealing at arm's length,

(iii.1) is made, if the taxpayer is non-resident and carries on a business in Canada, as a consequence of

(A) an allocation by the taxpayer of revenues or expenses as amounts in respect of the Canadian business (other than revenues and expenses that relate solely to the Canadian business, that are recorded in the books of account of the Canadian business, and the

documentation in support of which is kept in Canada), or

(B) a notional transaction between the taxpayer and its Canadian business, where the transaction is recognized for the purposes of the computation of an amount under this Act or an applicable tax treaty.

(iv) is made as a consequence of a payment or reimbursement of any income or profits tax to or by the government of a country other than Canada or a government of a state, province or other political subdivision of any such country,

(v) is made as a consequence of a reduction under subsection 66(12.73) of an amount purported to be renounced under section 66,

(iii) est établie par suite de la conclusion d'une opération entre le contribuable et une personne non résidente avec laquelle il avait un lien de dépendance,

(iii.1) si le contribuable est un non-résident exploitant une entreprise au Canada, est établie par suite :

(A) soit d'une attribution, par le contribuable, de recettes ou de dépenses au titre de montants relatifs à l'entreprise canadienne (sauf des recettes et des dépenses se rapportant uniquement à l'entreprise canadienne qui sont inscrits dans les documents comptables de celle-ci et étayés de documents conservés au Canada),

(B) soit d'une opération théorique entre le contribuable et son entreprise canadienne, qui est reconnue aux fins du calcul d'un montant en vertu de la présente loi ou d'un traité fiscal applicable,

(iv) est établie par suite d'un paiement supplémentaire ou d'un remboursement d'impôt sur le revenu ou sur les bénéfices effectué au gouvernement d'un pays étranger, ou d'un état, d'une province ou autre subdivision politique d'un tel pays, ou par ce gouvernement,

(v) est établie par suite d'une réduction, opérée en application du paragraphe 66(12.73), d'un montant auquel il a été censément renoncé en vertu de l'article

(vi) is made in order to give effect to the application of subsection 118.1(15) or 118.1(16), or

(vii) is made to give effect to the application of any of sections 94, 94.1 and 94.2;

(b.1) an information return described in subsection 237.1(7) or 237.3(2) that is required to be filed in respect of a deduction or claim made by the taxpayer in relation to a tax shelter, or in respect of a tax benefit (as defined in subsection 245(1)) to the taxpayer from an avoidance transaction (as defined in subsection 245(3)), is not filed as and when required, and the assessment, reassessment or additional assessment is made before the day that is three years after the day on which the information return is filed;

(b.2) the assessment, reassessment or additional assessment is made before the day that is three years after the end of the normal reassessment period for the taxpayer in respect of the year and if

(i) the taxpayer, or a partnership of which the taxpayer is a member, has failed to file for the year a prescribed form as and when required under subsection 233.3(3) or to report on the prescribed form the information required in respect

66,

(vi) est établie en vue de l'application des paragraphes 118.1(15) ou (16),

(vii) est établie en vue de l'application des articles 94, 94.1 ou 94.2;

b.1) la déclaration de renseignements visée aux paragraphes 237.1(7) ou 237.3(2) qui doit être produite au titre d'une déduction ou d'une demande du contribuable relative à un abri fiscal, ou au titre d'un avantage fiscal, au sens du paragraphe 245(1), du contribuable découlant d'une opération d'évitement, au sens du paragraphe 245(3), n'est pas produite selon les modalités et dans les délais prévus, et la cotisation, la nouvelle cotisation ou la cotisation supplémentaire est établie avant la date qui suit de trois ans la date à laquelle la déclaration est produite;

b.2) la cotisation, la nouvelle cotisation ou la cotisation supplémentaire est établie avant la date qui suit de trois ans la fin de la période normale de nouvelle cotisation applicable au contribuable pour l'année et, à la fois :

(i) le contribuable, ou une société de personnes dont il est un associé, a omis de produire pour l'année le formulaire prescrit selon les modalités et dans le délai prévus au paragraphe 233.3(3) ou d'indiquer dans ce formulaire les renseignements exigés

<p>of a specified foreign property (as defined in subsection 233.3(1)) held by the taxpayer at any time during the year, and</p>	<p>relativement à un bien étranger déterminé, au sens du paragraphe 233.3(1), qu'il détient au cours de l'année,</p>
<p>(ii) the taxpayer has failed to report, in the return of income for the year, an amount in respect of a specified foreign property that is required to be included in computing the taxpayer's income for the year;</p> <p>(c) the taxpayer or person filing the return of income has filed with the Minister a waiver in prescribed form within the additional three-year period referred to in paragraph (b) or (b.1);</p>	<p>(ii) le contribuable a omis d'indiquer, dans la déclaration de revenu pour l'année, une somme relative à un bien étranger déterminé qui est à inclure dans le calcul de son revenu pour l'année;</p> <p>c) le contribuable ou la personne produisant la déclaration de revenu a présenté au ministre une renonciation, selon le formulaire prescrit, au cours de la période additionnelle de trois ans mentionnée aux alinéas b) ou b.1);</p>
<p>(c.1) the taxpayer or person filing the return of income has filed with the Minister a waiver in prescribed form within the additional three-year period referred to in paragraph (b.2); or</p>	<p>c.1) le contribuable ou la personne produisant la déclaration de revenu a présenté au ministre une renonciation, selon le formulaire prescrit, au cours de la période additionnelle de trois ans mentionnée à l'alinéa b.2);</p>
<p>(d) as a consequence of a change in the allocation of the taxpayer's taxable income earned in a province as determined under the law of a province that provides rules similar to those prescribed for the purposes of section 124, an assessment, reassessment or additional assessment of tax for a taxation year payable by a corporation under a law of a province that imposes on the corporation a tax similar to the tax imposed under this Part (in this paragraph referred to as a</p>	<p>d) par suite d'un changement intervenu dans l'attribution du revenu imposable du contribuable gagné dans une province, déterminé selon la législation d'une province qui prévoit des règles semblables à celles établies par règlement pour l'application de l'article 124, une cotisation, une nouvelle cotisation ou une cotisation supplémentaire (appelée « nouvelle cotisation provinciale » au présent alinéa) est établie à l'égard de l'impôt à payer par une société pour</p>

“provincial reassessment”) is made, and as a consequence of the provincial reassessment, an assessment, reassessment or additional assessment is made on or before the day that is one year after the later of

- (i) the day on which the Minister is advised of the provincial reassessment, and
- (ii) the day that is 90 days after the day of sending of a notice of the provincial reassessment.

160.1 (1) Where at any time the Minister determines that an amount has been refunded to a taxpayer for a taxation year in excess of the amount to which the taxpayer was entitled as a refund under this Act, the following rules apply:

- (a) the excess shall be deemed to be an amount that became payable by the taxpayer on the day on which the amount was refunded; and
- (b) the taxpayer shall pay to the Receiver General interest at the prescribed rate on the excess (other than any portion thereof that can reasonably be considered to arise as a consequence of the operation of section 122.5 or 122.61) from the day it became payable to the date of payment.

161 (1) Where at any time

une année d'imposition en vertu d'une loi provinciale aux termes de laquelle la société est assujettie à un impôt semblable à celui prévu par la présente partie et, par suite de la nouvelle cotisation provinciale, une cotisation, une nouvelle cotisation ou une cotisation supplémentaire est établie au plus tard le jour qui suit d'une année le dernier en date des jours suivants :

- (i) le jour où le ministre est avisé de la nouvelle cotisation provinciale,
- (ii) le quatre-vingt-dixième jour suivant la date d'envoi de l'avis de la nouvelle cotisation provinciale.

160.1 (1) Lorsque le ministre détermine qu'un contribuable a été remboursé pour une année d'imposition d'un montant supérieur à celui auquel il avait droit en application de la présente loi, les règles suivantes s'appliquent :

- a) l'excédent est réputé représenter un montant qui est payable par le contribuable à compter de la date du remboursement;
- b) le contribuable doit payer au receveur général des intérêts sur l'excédent, sauf toute partie de l'excédent qu'il est raisonnable de considérer comme découlant de l'application des articles 122.5 ou 122.61, calculés au taux prescrit, pour la période allant du jour où cet excédent est devenu payable jusqu'à la date du paiement.

161 (1) Dans le cas où le total

after a taxpayer's balance-due day for a taxation year

visé à l'alinéa a) excède le total visé à l'alinéa b) à un moment postérieur à la date d'exigibilité du solde qui est applicable à un contribuable pour une année d'imposition, le contribuable est tenu de verser au receveur général des intérêts sur l'excédent, calculés au taux prescrit pour la période au cours de laquelle cet excédent est impayé :

(a) the total of the taxpayer's taxes payable under this Part and Parts I.3, VI and VI.1 for the year

a) le total des impôts payables par le contribuable pour l'année en vertu de la présente partie et des parties I.3, VI et VI.1;

exceeds

(b) the total of all amounts each of which is an amount paid at or before that time on account of the taxpayer's tax payable and applied as at that time by the Minister against the taxpayer's liability for an amount payable under this Part or Part I.3, VI or VI.1 for the year, the taxpayer shall pay to the Receiver General interest at the prescribed rate on the excess, computed for the period during which that excess is outstanding.

b) le total des montants représentant chacun un montant payé au plus tard à ce moment au titre de l'impôt payable par le contribuable et imputé par le ministre, à compter de ce moment, sur le montant dont le contribuable est redevable pour l'année en vertu de la présente partie ou des parties I.3, VI ou VI.1.

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,

165 (1) Le contribuable qui s'oppose à une cotisation prévue par la présente partie peut signifier au ministre, par écrit, un avis d'opposition exposant les motifs de son opposition et tous les faits pertinents, dans les délais suivants :

[...]

(3) On receipt of a notice of objection under this section, the Minister shall, with all due

[...]

(3) Sur réception de l'avis d'opposition, le ministre, avec diligence, examine de nouveau

dispatch, reconsider the assessment and vacate, confirm or vary the assessment or reassess, and shall thereupon notify the taxpayer in writing of the Minister's action.

la cotisation et l'annule, la ratifie ou la modifie ou établit une nouvelle cotisation. Dès lors, il avise le contribuable de sa décision par écrit.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1718-15

STYLE OF CAUSE: PETER EASTON V. CANADA REVENUE AGENCY

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JANUARY 16, 2017

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: JANUARY 31, 2017

APPEARANCES:

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FOR THE APPLICANT
(ON HIS OWN BEHALF)

Gabrielle White

FOR THE RESPONDENT

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