

Docket: 2014-4744(IT)I

BETWEEN:

CHRISTIAN DESCHESNES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on June 17, 2015, at Montréal, Quebec.

Before: The Honourable Justice Dominique Lafleur

Appearances:

For the appellant:	The appellant himself
Counsel for the respondent:	Dany Leduc

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2012 taxation year in respect of the penalties is allowed, without costs, and is referred back to the Minister of National Revenue for reconsideration and reassessment. In all other respects, the assessment shall remain unchanged.

Signed at Ottawa, Canada, this 9th day of July 2015.

“Dominique Lafleur”

Lafleur J.

Translation certified true
On this 25th day of August 2015

Margarita Gorbounova, Translator

Citation: 2015 TCC 177
Date: 20150709
Docket: 2014-4744(IT)I

BETWEEN:

CHRISTIAN DESCHESNES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Lafleur J.

[1] This is an appeal filed by the appellant regarding the addition to his income for the 2012 taxation year, under the provisions of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act) of \$19,094.40 paid by the Régie des rentes du Québec (RRQ) as disability benefits as well as of \$23,581.62 paid by Great West Life Assurance Company (Great West) as disability benefits under his group disability insurance plan. The appellant also disputes the \$73.35 in late filing penalties under subsection 162(1) of the Act.

I. Facts

[2] The facts in this case are uncontested.

[3] In 2011 and 2012, the appellant was disabled. He received disability benefits from his group disability insurance plan administered by Great West. The appellant stated that there were three different levels of insurance and that he had taken the best plan.

[4] In a letter dated February 13, 2012, Great West informed the appellant that he could be eligible for disability benefits from the RRQ. That letter is part of the document filed by the respondent as Exhibit I-1 entitled [TRANSLATION]

“Appellant’s Tax Return for 2012” at page 17. In the letter (page 18 of Exhibit I-1), Great West informed the appellant that, if the RRQ agreed to pay him disability benefits retroactively, he would be obliged to repay the amount overpaid by Great West in accordance with the conditions of his group insurance plan. Accordingly, pending the RRQ’s decision, Great West asked the appellant to choose the option that best suited him. Under option 1, Great West’s disability benefits would be decreased during this waiting period to take into account the approximate amount of disability benefits that would be paid by the RRQ. Under option 2, Great West’s benefits would not be decreased during the waiting period, and the appellant would authorize the RRQ to reimburse Great West directly if an overpayment is made to the appellant by the group disability insurance plan.

[5] On March 22, 2012, the appellant chose option 2 and sent the form indicating his selection to Great West (page 21 of Exhibit I-1). During the same month, the appellant applied to the RRQ to receive disability benefits.

[6] On March 23, 2012, the appellant signed an RRQ form authorizing it to reimburse Great West directly in case of an overpayment (page 40 of Exhibit I-1).

[7] On July 24, 2012, the RRQ confirmed to the appellant that he was entitled to RRQ disability benefits, which should have been paid to him as of July 2011 (page 47 of Exhibit I-1). The appellant was entitled to monthly RRQ payments of \$1,041.36 for 2011 and \$1,070.52 for 2012.

[8] Because the RRQ paid the appellant disability benefits for an earlier period, Great West calculated that it had overpaid the appellant \$12,947.58. Great West advised the appellant of this fact in a letter dated July 17, 2012, (page 25 of Exhibit I-1). At page 26 of Exhibit I-1, Great West provided the details of the overpayment calculations.

[9] In July 2012, the RRQ gave the appellant a cheque for \$794.22 for the period from July 2011 to July 2012 (page 49 of Exhibit I-1); that amount is equivalent to the difference between the RRQ disability pension that should have been paid to him, namely, \$13,741.80 (six months at \$1,041.36 per month and seven months at \$1,070.52 per month) and the amount the RRQ reimbursed directly to Great West because of the overpayment, namely, \$12,947.58.

[10] In a letter dated August 22, 2012, Great West confirmed to the appellant that it had received \$12,947.58 from the RRQ as reimbursement of the overpayment (page 28 of Exhibit I-1).

[11] The appellant explained to the Court that he had cashed only one cheque for \$794.22 from the RRQ in the 2012 taxation year. All the other cheques from the RRQ for the 2012 taxation year, that is, the five cheques for August to December 2012, were indeed received by the appellant in 2012, but were not cashed that year. At pages 50 to 55 of Exhibit I-1, the RRQ confirmed in various letters to the appellant (five letters from April 2013 to August 2013) that, because those five cheques were not cashed and were issued more than six months earlier, they were no longer valid. The RRQ asked the appellant to contact it in order to resolve this problem.

[12] I understand that the appellant communicated with the RRQ several times in 2013. In their last exchange, the appellant agreed to have his disability benefits deposited in his bank account by direct deposit. In a letter dated November 16, 2013 (page 56 of Exhibit I-1), the RRQ confirmed to the appellant that it owed him the payments for the last five months of the 2012 (August to December 2012) and for eight months in 2013 as well as interest.

[13] The RRQ gave the appellant a tax slip (T4A((P)) for the 2012 taxation year indicating disability benefits of \$19,094.40. There were no source deductions (page 4 of Exhibit I-1).

[14] Great West also gave the appellant a T4A tax slip indicating payments of \$23,581.62 as wage loss insurance. Source deductions were made from the amount (page 5 of Exhibit I-1).

[15] The appellant agreed that Exhibit I-1 is the tax return that he had filed with the Canada Revenue Agency (CRA) for the 2012 taxation year. He agreed that he had crossed out his own signature because, according to him, the information in it was incorrect with regard to the amounts received from the RRQ. He also agreed that he had a tax preparer prepare the tax return and that he had signed it in February 2014. Based on Exhibit I-1 filed at the hearing, the CRA received the return on February 17, 2014. The appellant agreed that it is likely.

[16] On page 3 of Exhibit I-1, we can see that the amount received from Great West, namely, \$23,581.62, was reported as other employment income and that the amount received from the RRQ, namely, \$19,094.40 (\$13,741.80 plus five monthly payments of \$1,070.52 from August to December 2012) was reported as disability benefits.

II. Issues

[17] It must be determined whether the appellant had to include the amount of \$19,094.40 in his income for the 2012 taxation year as disability benefits paid by the RRQ in the course of that year as well as the amount of \$23,581.62 as wage loss insurance paid by Great West. In addition, it must be determined whether late filing penalties of \$73.35 should be confirmed for the 2012 taxation year.

III. Positions of the parties

[18] The appellant claims that he should not include in his income for the 2012 taxation year cheques that he had not cashed during that year. Accordingly, he should include the amount of \$794.40 for the 2012 taxation year, that is, the amount paid by the RRQ that he had cashed during that year. The \$12,947.58 that the RRQ reimbursed and paid directly to Great West as well as the \$5,352.60 from the five monthly cheques issued by the RRQ that he did not cash in 2012 should not be included in his income. The appellant agrees that the amounts paid by Great West should be included in his income.

[19] The respondent claims that the appellant must include in his income the amount of \$19,094.40 that the RRQ paid to him in 2012. Indeed, according to the respondent, it is the time when the cheque is received, not when it is cashed, that is determinative. Receiving a cheque is like receiving money. In addition, the amount that the RRQ paid to Great West is also an amount that the RRQ paid to the appellant since the appellant chose the option authorizing the RRQ to reimburse Great West directly in case of an overpayment resulting from the RRQ's disability benefit payments.

IV. The Act and analysis

A. Great West's benefits.

[20] Paragraph 3(a) of the Act sets out that a taxpayer must, among other things, include employment income in his or her income.

[21] Under paragraph 6(1)(f) of the Act, the amounts periodically received by a taxpayer as compensation for the loss of all or part of the taxpayer's income from employment under a disability insurance plan to which the taxpayer's employer has contributed should be included in the taxpayer's employment income. The provision reads as follows:

6. (1) There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable

...

(f) the total of all amounts received by the taxpayer in the year that were payable to the taxpayer on a periodic basis in respect of the loss of all or any part of the taxpayer's income from an office or employment, pursuant to

(i) a sickness or accident insurance plan,

(ii) a disability insurance plan,

...

[22] I am of the view that the disability benefits of \$23,581.62 paid to the appellant by Great West in the 2012 taxation year under the disability insurance plan that it administers must be included in the appellant's income for that year under paragraphs 3(a) and 6(1)(f) of the Act.

[23] As indicated on the T4A slip given to the appellant by Great West, it paid him \$23,581.62 in wage loss insurance in the 2012 taxation year. In that regard, I would like to note that that amount does not include the amount that it had paid the appellant before the RRQ paid him disability benefits, which the RRQ reimbursed directly to Great West, namely, \$12,947.58. Although it was not discussed at the hearing, according to page 25 of Exhibit I-1, during the 2012 taxation year, Great West made seven monthly payments of \$3,478 (before the RRQ started to pay disability benefits) and five monthly payments of \$2,436.64 (after the RRQ agreed to pay disability benefits), for a total of \$36,529.20. That amount includes the amounts from which Great West collected source deductions. The T4A slip that Great West gave to the appellant indicates \$23,581.62, not \$36,529.20, the difference between the two amounts being \$12,947.58, that is, the appellant's overpayment amount. Therefore, Great West did not indicate as disability benefits for the 2012 taxation year the amount of \$12,947.58 reimbursed by the RRQ on the appellant's behalf. In my view, this practice is consistent with the Act and with the definition of "receive".

[24] As Justice D'Auray of this Court stated in *Martin v. The Queen*, 2015 CCI 118,

[32] The case law is clear: the term "receive" must be interpreted broadly. Receive obviously means to benefit or profit from (*Morin v. Canada*, [1974])

F.C.J. No 907 (QL) (F.C.T.D.), at paragraph 23).

[25] In this case, it cannot be concluded that the appellant received \$12,947.58 from Great West because the RRQ reimbursed this amount on his behalf. However, the appellant received \$23,581.62 from Great West during the 2012 taxation year as indicated on the T4A slip.

B. RRQ's benefits

[26] According to clause 56(1)(a)(i)(B) of the Act, amounts received as disability benefits from a provincial pension plan must be included in a taxpayer's income:

56. (1) Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,

(a) any amount received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of,

(i) a superannuation or pension benefit including, without limiting the generality of the foregoing,

(A) the amount of any pension, supplement or spouse's or common-law partner's allowance under the *Old Age Security Act* and the amount of any similar payment under a law of a province,

(B) the amount of any benefit under the Canada Pension Plan or a provincial pension plan as defined in section 3 of that Act,

...

[27] Thus, under the Act, the amounts paid by the RRQ to the appellant as disability benefits must be included in his income.

[28] In *Lessard v. The Queen*, 2006 TCC 45, Justice Lamarre-Proulx of this Court stated the following:

[19] Pursuant to clause 56(1)(a)(i)(B) of the Act, any amount received in the year in payment of a benefit under a provincial pension plan must be included in the calculation of income in the year in which it is received.

[20] It must be understood that according to the economy of the Act, a taxpayer must declare their income year by year. At the end of each year, the taxpayer must

calculate their income as it is during that year and the tax is assessed as a function of that income.

[21] In 2002, the Appellant received from the Régie an amount in payment of a disability benefit under the plan, an amount that she was entitled to dispose of. The right to dispose of the received amount is clear. The Appellant cashed the cheque and the money was paid into her account. Under a judgment handed down in 2004, the decision of the review office was set aside, and following this judgment, the Appellant received a demand for repayment of the amount paid. In 2002, she had obtained full ownership of this amount.

[29] That decision was upheld on appeal (*Lessard v. Canada*, 2007 FCA 9).

[30] In light of the foregoing, it is clear that the appellant must include in his income for the 2012 taxation year the amount of \$794.40, which he had received in that year. The appellant is also of this view.

[31] However, it must be determined whether the amount that the RRQ paid to Great West directly because of its overpayment to the appellant, namely, \$12,947.58 must be included in the appellant's income for the 2012 taxation year.

[32] The evidence has shown that the RRQ paid that amount to Great West. In a letter to the appellant dated August 22, 2012, Great West confirmed that it had received that amount as reimbursement of the amount it had overpaid to the appellant (page 28 of Exhibit I-1).

[33] For clause 56(1)(a)(i)(B) of the Act to apply, the appellant must have received some amounts as disability benefits.

[34] In this case, the appellant has benefited from the \$12,947.58, which the RRQ had reimbursed to Great West in the 2012 taxation year. If the RRQ had not made that reimbursement, the appellant would have had to reimburse that amount to Great West. The appellant had therefore received that amount during the 2012 taxation year.

[35] In light of the foregoing, I am of the view that the \$12,947.58 that the RRQ repaid to Great West must be included in the appellant's income in accordance with clause 56(1)(a)(i)(B) of the Act.

[36] Let us now turn to whether the disability benefits from August to December 2012, namely, \$5,352.60, must be included in the appellant's income for the 2012 taxation year.

[37] According to the appellant, the cheques were received during the 2012 taxation year, but he decided not to cash them that year.

[38] The courts have disposed of this issue several times. In *Kowalczyk v. The Queen*, [1986] 2 C.T.C 2092, Judge Brulé stated that the generally accepted conclusion is that a cheque payment is equivalent to a cash payment unless special circumstances point to a different conclusion or, obviously, if the cheque bounces when it is presented for payment. He referred to the comments of Judge Thurlow of the Exchequer Court in *Moody v. Minister of National Revenue*, [1957] Ex. C.R. 33, at pages 40 and 41.

[39] Judge Garon applied the same principles in *Piché v. The Queen*, [1992] T.C.J. No. 655 (QL), affirmed by [1993] F.C.J. No. 510 (QL) (F.C.A.), quoting the following excerpt from *Moody, supra*:

In the absence of some special circumstance indicating a contrary conclusion such as, for example, post-dating or an arrangement that the cheque is not to be used for a specified time, a payment made by cheque, although conditional in some respects, is nevertheless presumably made when the cheque is delivered and, in the absence of such special circumstance, there is, in my opinion, no ground for treating such a payment other than as a payment of cash made at the time the cheque was received by the payee.

[40] In this case, no special condition or circumstance surrounded the five cheques from the RRQ for August to December 2012. In addition, the appellant agreed that he had received these five cheques during the 2012 taxation year. Thus, the appellant could have cashed the cheques at any point during that taxation year. I am therefore of the opinion that the appellant received the \$5,352.60 during the 2012 taxation year as disability benefits paid by the RRQ from August to December 2012. Accordingly, he must include that amount in his income for the 2012 taxation year even though he did not cash the cheques until 2013.

[41] In light of the foregoing, the amount of \$19,094.40 that the RRQ paid to the appellant during the 2012 taxation year as indicated on the T4A(P) slip given to the appellant by the RRQ must be included in the appellant's income for the 2012 taxation year.

C. Late filing penalties

[42] Under paragraph 150(1)(d) of the Act, a taxpayer (such as the appellant) must file his income tax return with the Minister of National Revenue for each taxation year by April 30 of the following year at the latest.

[43] Thus, the appellant had to file his income tax return for the 2012 taxation year no later than April 30, 2013. The appellant agrees that he filed his return for the 2012 taxation year in February 2014. In his testimony, the appellant agreed that he had crossed out his signature on the tax return because he believed it contained incorrect information, even though his tax preparers had confirmed to him that the return was in compliance. Indeed, he incorrectly believed that, because he had not cashed the RRQ cheques in 2012, he should not have included them in his 2012 income. He also believed that he did not need to pay taxes on the amounts that the RRQ had reimbursed to Great West because, according to him, it would have been double taxation. The appellant testified that he had tried to talk to RRQ representatives several times but to no avail. He also testified that he had tried to obtain information from Great West representatives.

[44] The \$73.35 penalty was imposed pursuant to subsection 162(1) of the Act, which does not provide for a statutory due diligence defence. It reads as follows:

162. (1) Every person who fails to file a return of income for a taxation year as and when required by subsection 150(1) is liable to a penalty equal to the total of

(a) an amount equal to 5% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed, and

(b) the product obtained when 1% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding 12, from the date on which the return was required to be filed to the date on which the return was filed.

[45] In *Jay v. The Queen*, 2010 TCC 122, Justice Woods of this Court found as follows after analyzing that provision:

[12] Notwithstanding the strictness of the legislation, it has generally been accepted that a penalty of this nature should not be imposed if the taxpayer has undertaken all reasonable measures to comply with the legislation: *Royal Bank of Canada v. The Queen*, 2007 FCA 72, [2007] GSTC 18.

[46] Given the particular circumstances of the appeal and of the appellant's efforts to find out the correct way to prepare his tax return for the 2012 taxation year, I am of the view that the late filing penalties should be cancelled.

[47] The appeal from the assessment made under the Act for the 2012 taxation year in respect of the penalties is allowed, without costs, and is referred back to the Minister of National Revenue for reconsideration and reassessment. In all other respects, the assessment shall remain unchanged.

Signed at Ottawa, Canada, this 9th day of July 2015.

“Dominique Lafleur”

Lafleur J.

Translation certified true
On this 25th day of August 2015

Margarita Gorbounova, Translator

CITATION: 2015 TCC 177

COURT FILE NO: 2014-4744(IT)I

STYLE OF CAUSE: CHRISTIAN DESCHESNES v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: June 17, 2015

REASONS FOR JUDGMENT BY: The Honourable Justice Dominique Lafleur

DATE OF JUDGMENT: July 9, 2015

APPEARANCES:

For the appellant: The appellant himself

Counsel for the respondent: Dany Leduc

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

For the respondent:

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada