

[OFFICIAL ENGLISH TRANSLATION]

2002-276(IT)I

BETWEEN:

NOËLLA LORRAIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 23, 2002, at Ottawa, Ontario, by

the Honourable Judge Lucie Lamarre

Appearances

For the Appellant: The Appellant herself

Counsel for the Respondent: Carole Benoît
Pierre-Paul Persico (Student-at-law)

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2000 taxation year is dismissed.

Signed at Ottawa, Canada, this 24th day of October 2002.

“Lucie Lamarre”

J.T.C.C.

Translation certified true
on this 5th day of January 2004.

Sophie Debbané, Revisor

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Date: 20021024
Docket: 2002-276(IT)I

BETWEEN:

NOËLLA LORRAIN,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Lamarre, J.T.C.C.

[1] The appellant is appealing from an assessment made on June 7, 2001, for the 2000 taxation year in which the Minister of National Revenue (“Minister”) included in her income a retroactive lump-sum payment she received in 2000 from the Canada Customs and Revenue Agency (“CCRA”) as pay equity for the years (1986 to 1994) when she was working at the Department of Transport.

[2] The appellant declared bankruptcy on February 22, 2000, and subsequently received a retroactive lump-sum payment of \$9,725.89 in employment income, \$806.40 as a retiring allowance and \$6,465.57 in interest in connection with this lump-sum payment. She did not include those amounts in her 2000 tax return since she wanted to make the election provided for under subsection 110.2(2) of the *Income Tax Act* (the “Act”) to deduct the amount of the lump-sum payment received and to compute the notional tax payable under section 120.31 of the *Act*. Under section 120.31, the notional tax payable on the eligible portion of the lump-sum amount (the portion that relates to employment income and the retiring allowance in accordance with subsection 110.2(1)) can be computed as though it

had been received in the previous years to which it related, adding the interest that would have been payable on the amount of tax computed using that method.

[3] However, a CCRA representative came to explain to the Court that the notional tax computation method was not advantageous for the appellant since she would be required to pay an additional \$2,346 in taxes using that method. Therefore, CCRA simply included the total amount of the lump-sum payment for the year 2000 without applying the deduction provided for in section 110.2. The appellant was thus liable for \$2,631 in taxes instead of the \$4,977 for which she would have been liable if the election had been made.

[4] The appellant was under the impression that the tax payable on the lump-sum payment relating to the previous years could be spread out over those years and would then have been part of the debts absorbed by the bankruptcy. Unfortunately, that is not the case. The computation of notional tax serves only to determine the computation most advantageous to the appellant in terms of the tax payable. However, since the lump-sum payment was received after February 22, 2000, the date of the bankruptcy, it was part of the appellant's taxable income in the taxation year starting at the beginning of the day on which she became a bankrupt and ending on December 31, 2000 (section 128 of the *Act*). The tax payable on that lump-sum payment becomes payable only at the time provided for under the *Act* for filing the tax return for the taxation year in which the lump-sum payment was received. In this case, it was the taxation year beginning on the day of the bankruptcy (February 22, 2000) and ending on December 31, 2000. Sections 110.2 and 120.31 do not make the amount of tax payable retroactive to the previous years.

[5] For these reasons, the assessment is correct and the appeal is dismissed.

Signed at Ottawa, Canada, this 24th day of October 2002.

“Lucie Lamarre”

J.T.C.C

Translation certified true
on this 5th day of January 2004.

Sophie Debbané, Revisor