

Docket: 2009-823(IT)APP

BETWEEN:

ROBERT J. SCHNEIDMILLER,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Application heard on June 26, 2009 at Regina, Saskatchewan

Before: The Honourable Justice D.W. Beaubier

Appearances:

For the Applicant:	The Applicant himself
Counsel for the Respondent:	Anne Jinnouchi

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**ORDER**

Upon hearing the application for an Order extending the time within which a Notice of Objection from the reassessments made under the *Income Tax Act* for the 2002, 2003 and 2004 taxation years may be instituted;

IT IS ORDERED THAT the application is dismissed because it is not necessary. The Applicant has the right to appeal these reassessments to the Tax Court of Canada now. Therefore, the Applicant should now file a Notice of Appeal.

Signed at Saskatoon, Saskatchewan, this 10<sup>th</sup> day of July 2009.

“D.W. Beaubier”

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Beaubier D.J.

Citation: 2009TCC354  
Date: 20090708  
Docket: 2009-823(IT)APP

BETWEEN:

ROBERT J. SCHNEIDMILLER,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR ORDER**

Beaubier, D.J.

[1] This is an application by the taxpayer, Mr. Schneidmiller, pursuant to Section 166.2 of the *Income Tax Act* (the “Act”) to extend the time in which he may file a Notice of Objection to Reassessments for his 2002, 2003 and 2004 taxation years.

[2] The application was heard in Regina Saskatchewan on June 26, 2009. The Applicant was the only witness. He resides in Gull Lake, about 300 km west of Regina, a land of open range, where big farms meet big ranches and the deer and the antelope play and the skies are not cloudy all day.

[3] The chronology of this matter is as follows:

1. 27 April, 2006 Notices of Reassessment of the Applicant for 2002, 2003 and 2004 were issued and mailed to the Applicant (Exhibits R-4, R-5 and R-6).
2. He telephoned Canada Revenue Agency (“CRA”) in Regina and stated that the reassessments listed his gross, not net income and were wrong and said that he had to speak to someone and correct them. CRA in Regina sent him “T1 Adjustment Request” forms which he received on May 3, 2006.
3. 12 May, 2006 CRA in Surrey, B.C. received these forms duly completed by the Applicant. (Exhibit A-1, letter July 4, 2006). CRA forwarded these to

Winnipeg, Manitoba. Winnipeg CRA confirmed this on August 3, 2006 (Exhibit A-1).

4. 7 November, 2007 (one and one half years later) CRA Surrey acknowledged an inquiry by the Applicant on 26 October 2007 and stated that they had forwarded the request to CRA's Regina office, but they couldn't locate it. CRA asked him to resubmit it to Regina (Exhibit A-1).
5. 15 November, 2007 The Applicant refiled the forms.
6. 31 January, 2008 The Applicant telephoned Regina CRA and as a result of the conversation they sent him Notice of Objection forms (Exhibit A-1 – CRA letter January 31, 2008).
7. 7 February, 2008 The Applicant mailed the Notice of Objection forms to CRA, Regina. (Exhibit A-1, CRA letter March 11, 2008 and Exhibits R-1, R-2 and R-3).
8. 12 March 2008 CRA advised the Applicant that he was too late to object to the Notices of Reassessment dated 27 April 2006. (Exhibit A-1, CRA letter 11 March 2008).

[4] CRA confirmed this on January 26, 2009 and this application was filed with the Tax Court of Canada on 13 March 2009 by letter dated March 6, 2009.

[5] Respondent's Counsel relied on *Armstrong v. The Queen* 2006 DTC 6310 in which paragraph 8 describes the concept of an "amended return." It reads:

[8] An amended return for a taxation year that has already been the subject of a notice of assessment does not trigger the Minister's obligation to assess with all due dispatch (subsection 152(1) of the *Income Tax Act*), nor does it start anew any of the statutory limitation periods that commence when an income tax return for a particular year is filed and then assessed. An amended income tax return is simply a request that the Minister reassess for that year.

[6] However there is no evidence that Mr. Schneidmiller filed any amended returns.

[7] Rather, the evidence is that he found the reassessments of 27 April 2006 objectionable and telephoned CRA in Regina to request a meeting with someone to talk about his position that the reassessments described gross, not net, income.

[8] CRA Regina sent him “Request” forms to write out his objections and he completed these and returned them to CRA Surrey on 12 May 2006. Thereupon, CRA Surrey, British Columbia to CRA Winnipeg, Manitoba to CRA Regina, Saskatchewan lost these documents as confirmed on November 7, 2007.

[9] An “Objection” or a “Notice of Objection” is not defined or described in either Section 165 or 248 of the Act. Nor should it be. It is a matter of substance, not form. The Shorter Oxford Dictionary, 3<sup>rd</sup> Edition, defines “Objection” as:

“The action of starting something in opposition to a person or thing... an adverse reason, argument or contention. Now often merely: An expression, or feeling, of disapproval, disagreement or dislike...”

[10] That is what the Applicant did when he sent his request respecting the 2002, 2003 and 2004 Reassessments of 27 April 2006 to CRA which they received on 12 May 2006. They constituted timely Notices of Objection.

[11] As a result, the Applicant does not need an extension of time in which to file Notices of Objection. He has done that.

[12] To this date, CRA has not confirmed its reassessments. However, more than 90 days have elapsed since May 12, 2006. Therefore the Applicant now has the right to appeal these reassessments to the Tax Court of Canada pursuant to subsection 169(1) of Act which reads as follows:

**169.** (1) Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied after either

(a) the Minister has confirmed the assessment or reassessed, or

(b) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed,

but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

[13] In these circumstances, this Application is dismissed because it is not necessary. Mr. Schneidmiller has the right to appeal these reassessments to the Tax Court of Canada now.

Signed at Saskatoon, Saskatchewan, this 10<sup>th</sup> day of July 2009.

“D.W. Beaubier”

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Beaubier D.J.

CITATION: 2009TCC354

COURT FILE NO.: 2009-823(IT)APP

STYLE OF CAUSE: ROBERT J. SCHNEIDMILLER AND THE QUEEN

PLACE OF HEARING: Regina, Saskatchewan

DATE OF HEARING: June 26, 2009

REASONS FOR ORDER BY: The Honourable Justice D.W. Beaubier

DATE OF ORDER: July 10, 2009

APPEARANCES:

For the Applicant: The Applicant himself  
Counsel for the Respondent: Anne Jinnouchi

COUNSEL OF RECORD:

For the Applicant:

Name:

Firm:

For the Respondent:

John H. Sims, Q.C.  
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Ottawa, Canada

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