

Docket: 2016-5064(IT)I

BETWEEN:

DANIEL TURCOTTE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard and judgment delivered orally from the bench on
June 30, 2017, at Québec City, Quebec.

Before: The Honourable Justice Réal Favreau

Hearings:

For the Appellant: The Appellant himself
Counsel for the Respondent: Emmanuel Jilwan

JUDGMENT

The appellant's appeal from the reassessments dated May 29, 2015, made under the *Income Tax Act* for the 2012, 2013, and 2014 taxation years is allowed in respect of the penalty only and, in all other respects, the reassessments are upheld, and the appellant is not entitled to any other relief. As a result, the reassessments are referred to the Minister of National Revenue for review and reassessment in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 7th day of December 2017.

“Réal Favreau”

Favreau J.

Citation: 2017 TCC 243

Date: 20171207

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REASONS FOR JUDGMENT

Favreau J.

[1] I allowed the appeal orally from the bench on June 30, 2017, and I notified the parties that the reasons would accompany my written judgment.

[2] The appeal at issue here involves reassessments dated May 29, 2015, issued under the *Income Tax Act*, R.S.C. (1985), c. 1 (5th Supp.), as amended, (the “*Act*”), by the Minister of National Revenue (the “Minister”) for the appellant’s 2012, 2013, and 2014 taxation years.

[3] Under these reassessments, the Minister made the following adjustments to Part X.1 of the *Act* with respect to excess contributions by the appellant into his Registered Retirement Savings Plan (“RRSP”) and to his spouse’s RRSP, and to the penalty for the late filing of his T1-OVP and interest:

Year	Tax	Penalty	Interest
	\$	\$	\$
2012	1,927.56	327.69	263.74
2013	10,404.00	1,768.68	727.91
2014	8,670.00	433.50	73.87

[4] To issue and uphold the reassessments, the Minister made the following assumptions:

- a) During November 2012 and January 2013, the appellant contributed the following amounts to his RRSPs and his wife's RRSPs:

Contribution	Month of Contribution	Annuitant	Plan Sponsor
\$130,000	November 2012	Daniel Turcotte	Tangerine Bank
\$100,000	November 2012	Daniel Turcotte	The Empire Life Insurance Company
\$50,000	November 2012	Martine Michel	The Empire Life Insurance Company
\$40,000	November 2012	Martine Michel	Manulife Bank of Canada
\$5,000	January 2013	Daniel Turcotte	Fonds de solidarité des travailleurs du Québec (F.T.Q.)

- b) During November 2014, the appellant withdrew the following amounts from his RRSPs and his spouse's RRSPs:

Amount Withdrawn	Month of Withdrawal	Annuitant	Plan Sponsor
\$59,549	November 2014	Martine Michel	The Empire Life Insurance Company
\$41,261	November 2014	Martine Michel	Manulife Bank of Canada

- c) For the taxation years at issue, the applicant's RRSP deduction limits were as follows:

Taxation Year	2012	2013	2014
Deduction limit	\$221,622	\$14,678	\$1,300

- d) Since the unused contributions at the end of each month between November 2012 and October 2014 for the taxation years in issue exceed the RRSP deduction limit by over \$2,000, the appellant is subject to tax on the excess RRSP contributions of 1% for each month in which the amounts remained in his RRSP (refer to the documents in the Appendix for a comprehensive version of this Response).

[5] Daniel Turcotte, an insurance broker, testified at the hearing and explained that in 2012 he sold his insurance office, which generated significant taxable income that he attempted to reduce by making the maximum contribution into his RRSPs as well as his spouse's RRSPs. He claimed that he acted in good faith and was convinced that he was complying with the *Act*. Approximately twenty months

later, he learned that he was not allowed to contribute to his spouse's RRSPs after he had reached the limit for his own RRSPs.

[6] Mr. Turcotte also explained that in November 2014 he withdrew the excess contributions made to his spouse's RRSPs and that he had to pay the additional taxes resulting from these withdrawals.

[7] Mr. Turcotte does not dispute the fact that he made excess contributions to his RRSPs and his spouse's RRSPs, but he believes that resulting the taxes and penalties are unreasonable in light of the circumstances because it was a reasonable mistake that was not made in bad faith.

Statutory Provisions

[8] The statutory provisions applicable to this case are subsection 204.1(2.1), 204.2(1.1), and 204.3(1) of the *Act*, which read as follows:

204.1(2.1) Tax payable by individuals – Where, at the end of any month after December, 1990, an individual has a cumulative excess amount in respect of registered retirement savings plans, the individual shall, in respect of that month, pay a tax under this Part equal to 1% of that cumulative excess amount.

204.2(1.1) Cumulative excess amount in respect of RRSPs. The cumulative excess amount of an individual in respect of registered retirement savings plans at any time in a taxation year is the amount, if any, by which:

- a) the amount of the individual's undeducted RRSP premiums at the time exceeds
- b) the amount determined by the formula:

$$A + B + R + C + D + E$$

where:

A is the individual's unused RRSP deduction room at the end of the preceding taxation year,

B is the amount, if any, by which:

- (i) the lesser of the RRSP dollar limit for the year and 18% of the individual's earned income (as defined in subsection 146(1)) for the preceding taxation year,

exceeds the total of all amounts each of which is

- (ii) a prescribed amount in respect of the individual for the year,

C is, where the individual attained 18 years of age in a preceding taxation year, \$2,000, and in any other case, nil,

- D is the group plan amount in respect of the individual at that time,
- E is, where the individual attained 18 years of age before 1995, the individual's transitional amount at that time, and in any other case, nil, and;
- R is the individual's total pension adjustment reversal for the year.

204.3(1) Return and payment of tax. Within 90 days after the end of each year after 1975, a taxpayer to whom this Part applies shall:

- a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;
- b) estimate in the return the amount of tax, if any, payable by the taxpayer under this Part in respect of each month in the year; and;
- c) pay to the Receiver General the amount of tax, if any, payable by the taxpayer under this Part in respect of each month in the year.

[9] Under these provisions, an individual who, at the end of a given month, has a cumulative excess amount in respect his or her RRSPs, as stipulated in subsection 204.2(1.1) of the *Act*, shall, for that month, pay tax equal to 1% of this excess. The taxpayer must also file, within 90 days after the end of the taxation year during which the taxpayer had an excess, file a return for the year in prescribed form, i.e. the T1-OVP form, estimate the tax that he or she owes for each month of the year, and pay this tax to the Receiver General.

[10] An individual who does not file a return for the year under Part X.1 of the *Act* may be subject to a late-filing penalty of a tax return pursuant to subsection 162(1) of the *Act*.

[11] In this case, the appellant misinterpreted the provisions of the *Act* regarding the amounts that he could contribute to his RRSPs and his spouse's RRSPs. He made a mistake by contributing to his spouse's RRSPs after he contributed the maximum to his own RRSPs. The applicant did not act in bad faith and sincerely believed that he was complying with the *Act*.

[12] The appellant made withdrawals of amounts accrued in his spouse's RRSP as soon as he learned that he had made excess contributions to these plans. The appellant was required to pay the taxes payable on these withdrawals (principal and interest).

[13] Unaware that he had made excess contributions to his RRSP and his spouse's RRSPs, the appellant did not know that he had to file income tax returns (T1-OVP forms) for the 2012, 2013, and 2014 taxation years.

[14] This is a reasonable mistake in light of the circumstances.

[15] At the hearing, after being informed of the decision made on October 5, 2016, by my colleague Justice Johanne D'Auray of this Court in *Murray E. Hall v. The Queen*, [2016] T.C.J. No. 181, the respondent agreed to set aside the late-filing penalties for the T1-OVP income tax returns for the 2012–2014 taxation years inclusive.

[16] Therefore, the appeal is allowed in respect of the penalty only and, in all other respects, the reassessments are upheld, and the appellant is not entitled to any other relief.

Signed at Ottawa, this 7th day of December 2017.

“Réal Favreau”

Favreau J.

CITATION: 2017TCC243

COURT FILE NO.: 2016-5064(IT)I

STYLE OF CAUSE: DANIEL TURCOTTE and HER MAJESTY
THE QUEEN

PLACE OF HEARING: Québec City, Quebec

DATE OF HEARING: June 30, 2017

REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau

DATE OF JUDGMENT: December 7, 2017

APPEARANCES:

For the Applicant: The Applicant himself
Counsel for the Respondent: Emmanuel Jilwan

COUNSEL OF RECORD:

For the Applicant:

Name:

Firm:

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