

Citation: 2011TCC538
Date: 20111122
Docket: 2011-2513(IT)APP

BETWEEN:

IAN ROSS,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

(Delivered orally from the bench on October 27, 2011, in Calgary, Alberta.)

V.A. Miller J.

[1] This is an application by Ian Ross for an Order extending the time within which he may serve a Notice of Objection for his 2005 and 2006 taxation years.

[2] The Respondent has opposed the application on the basis that it was filed with this Court beyond the one year and 90 days allowed by the *Income Tax Act* (the “Act”). In support of her position, she filed the affidavit of Kim LaClaire, an officer with the Canada Revenue Agency.

[3] The years at issue were reassessed as follows:

Year	Assessed	Reassessed	90 day Period	One Year
2005	June 8, 2006	Feb 26, 2009	May 27, 2009	May 27, 2010
2006	April 27, 2007	Feb 26, 2009	May 27, 2009	May 27, 2010

[4] The Applicant did not file a Notice of Objection for any of the years in issue within the 90-day period.

[5] He served a Notice of Objection dated June 30, 2010 on the Minister which Notice was received by the Minister on July 8, 2010.

[6] By letter dated September 28, 2010 the Minister notified the Applicant that his Notices were received beyond the limitation period in the *Act* and that an extension of time could not be granted because the time to request such an extension had expired.

[7] On January 6, 2011 the Applicant served another Notice of Objection on the Minister. The Minister responded to this Notice of Objection on January 28, 2011. The Applicant filed another Notice of Objection with the Minister on April 21, 2011 and the Minister responded on May 10, 2011. The Applicant filed an Application for Extension of Time in this court on July 28, 2011.

[8] The relevant section of the Act are subparagraph 165(1)(a)(ii), subsection 166.2(1) and (5). They read:

165. (1) Objections to assessment - 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,

(a) where the assessment is in respect of the taxpayer for a taxation year and the taxpayer is an individual (other than a trust) or a testamentary trust, on or before the later of

(ii) the day that is 90 days after the day of sending of the notice of assessment;

166.2 (1) Extension of time [to object] by Tax Court - A taxpayer who has made an application under subsection 166.1 may apply to the Tax Court of Canada to have the application granted after either

(a) the Minister has refused the application, or

(b) 90 days have elapsed after service of the application under subsection 166.1(1) and the Minister has not notified the taxpayer of the Minister's decision,

but no application under this section may be made after the expiration of 90 days after the day on which notification of the decision was mailed to the taxpayer.

(5) When application to be granted - No application shall be granted under this section unless

(a) the application was made under subsection 166.1(1) within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection or making a request, as the case may be;

[9] In the circumstances of this case the application for extension of time was filed beyond the one year and ninety days for each of the years in issue.

[10] I do not have any discretion to extend the time for serving a Notice of Objection beyond the one year and 90 days.

[11] It is my view that paragraph 166.2(5) of the *Act* is mandatory. The application for extension of time must be made within one year after the expiration of the time limited by section 165.

[12] For these reasons, the application is dismissed.

Signed at Ottawa, Canada, this 22nd day of November 2011.

“V.A. Miller”

V.A. Miller J.

CITATION: 2011TCC538
COURT FILE NO.: 2011-2513(IT)APP
STYLE OF CAUSE: IAN ROSS AND
THE QUEEN
PLACE OF HEARING: Calgary, Alberta
DATE OF HEARING: October 27, 2011
REASONS FOR ORDER BY: The Honourable Justice Valerie Miller
DATE OF ORDER: November 3, 2011
DATE OF REASONS FOR ORDER: November 22, 2011

APPEARANCES:

For the Applicant: The Applicant himself
Counsel for the Respondent: Mary Softley

COUNSEL OF RECORD:

For the Applicant:

Name:

Firm:

For the Respondent: Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada