

Docket: 2012-292(IT)APP

BETWEEN:

PETER SEDLAK,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Application heard on April 30, 2012, at Vancouver, British Columbia

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Applicant:

The Applicant Himself

Counsel for the Respondent:

Nabeel Peermohamed  
(Student-at-law)

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ORDER

The Applicant's application to extend the time within which appeals to this Court in relation to the reassessments of the Applicant's 2004 and 2005 taxation years may be instituted is dismissed, without costs.

Signed at Edmonton, Alberta, this 5<sup>th</sup> day of June 2012.

“Wyman W. Webb”

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Webb J.

Citation: 2012TCC190  
Date: 20120605  
Docket: 2012-292(IT)APP

BETWEEN:

PETER SEDLAK,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

**REASONS FOR ORDER**

Webb J.

[1] The Applicant, on January 11, 2012, filed an application to extend the time within which appeals to this Court in relation to the reassessments of the Applicant's 2004 and 2005 taxation years may be instituted. This was the second time that the Applicant had made an application to extend the time within which appeals to this Court in relation to the reassessments of the Applicant's 2004 and 2005 taxation years may be instituted. The first application was filed on August 11, 2010 and was discontinued on October 19, 2010.<sup>1</sup>

[2] The Notice of Confirmation of the reassessments of the Applicant's 2004 and 2005 taxation years was dated October 10, 2008.

[3] The time within which an appeal may be instituted to this Court is set out in subsection 169(1) of the *Income Tax Act* (the "Act"), which, prior to December 15, 2010, provided 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

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<sup>1</sup> The Notice of Discontinuance was dated October 19, 2010 and filed the following day on October 20, 2010.

(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<sup>2</sup> to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

[4] If a taxpayer does not institute an appeal within this time period (which the Applicant did not), the taxpayer may, as provided in section 167 of the *Act*, apply to have the time for instituting an appeal extended. However, paragraph 167(5)(a) of the *Act* provides as follows:

(5) No order shall be made under this section unless

(a) the application is made within one year after the expiration of the time limited by section 169 for appealing; ...

[5] As a result of the provisions of paragraph 167(5)(a) of the *Act*, unless the Applicant made the application (to extend the time within which appeals to this Court may be instituted in relation to the reassessments of the Applicant's 2004 and 2005 taxation years) within one year and 90 days from the day that notice that the reassessments had been confirmed was mailed<sup>3</sup> to the Applicant, no order to grant the requested extension of time can be made.

[6] In this case the Applicant's first application to extend the time within which appeals to this Court in relation to the reassessments of the Applicant's 2004 and 2005 taxation years may be instituted (which was filed on August 11, 2010) was not made until one year and ten months after the reassessments of the Applicant's 2004 and 2005 taxation years had been confirmed (October 10, 2008). Therefore no order could have been granted to extend the time within which appeals to this Court in relation to the reassessments of the Applicant's 2004 and 2005 taxation years may be instituted in relation to the first application even if it would not have been discontinued. The second application filed on January 11, 2012 is clearly not made within the time period as provided in paragraph 167(5)(a) of the *Act*. As a result no order can be granted to extend the time within which appeals to this Court in relation

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<sup>2</sup> Effective December 15, 2010, the word "sent" was substituted for "mailed".

<sup>3</sup> As a result of the provisions of subsection 244(14) of the *Act*, the notice of confirmation is presumed to be mailed or sent on the date of such notice.

to the reassessments of the Applicant's 2004 and 2005 taxation years may be instituted. The provisions of paragraph 167(5)(a) of the *Act* are clear and there is no provision of the *Act* that would allow this Court to extend this time period.

[7] As a result, the Applicant's application to extend the time within which appeals to this Court in relation to the reassessments of the Applicant's 2004 and 2005 taxation years may be instituted is dismissed, without costs.

Signed at Edmonton, Alberta, this 5<sup>th</sup> day of June 2012.

“Wyman W. Webb”

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Webb J.

CITATION: 2012TCC190

COURT FILE NO.: 2012-292(IT)APP

STYLE OF CAUSE: PETER SEDLAK AND HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: April 30, 2012

REASONS FOR ORDER BY: The Honourable Justice Wyman W. Webb

DATE OF ORDER: June 5, 2012

APPEARANCES:

For the Applicant:	The Applicant Himself
Counsel for the Respondent:	Nabeel Peermohamed (Student-at-law)

COUNSEL OF RECORD:

For the Applicant:

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