

Docket: 2012-1023(IT)APP

BETWEEN:

KWAME YANKEY,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on June 22, 2012 at Toronto, Ontario

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Applicant:	The Applicant Himself
Counsel for the Respondent:	Christian Cheong

ORDER

The Applicant's application to extend the time for serving notices of objection in relation to the reassessments of the Applicant's 2003, 2004, 2005 and 2006 taxation years is dismissed, without costs.

Signed at Ottawa, Canada, this 24th day of July, 2012.

“Wyman W. Webb”

Webb J.

Citation: 2012TCC266
Date: 20120724
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BETWEEN:

KWAME YANKEY,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Webb J.

[1] The Applicant, on March 7, 2012, made an application pursuant to the provisions of section 166.2 of the *Income Tax Act* (the “Act”) to extend the time to serve notices of objection to the reassessments of the Applicant’s 2003, 2004, 2005 and 2006 taxation years. The Applicant was reassessed for these taxation years on June 30, 2009.

[2] The Applicant purported to serve a notice of objection to the reassessments of these taxation years on March 15, 2011. The Minister treated this objection as an application to extend the time to serve a notice of objection but since the application was not made the time within which such an application could have been made, it was not granted. A letter informing the Applicant of this decision was sent on April 5, 2011.

[3] The Applicant again purported to serve a notice of objection to the reassessments of these taxation years on April 13, 2011. The Minister treated this objection as an application to extend the time to serve a notice of objection but since the application was not made the time within which such an application could have been made, it was not granted. A letter informing the Applicant of this decision was sent on July 5, 2011.

[4] The Applicant again purported to serve a notice of objection to the reassessments of these taxation years on August 2, 2011. The Minister treated this objection as an application to extend the time to serve a notice of objection but since

the application was not made the time within which such an application could have been made, it was not granted. A letter informing the Applicant of this decision was sent on November 23, 2011.

[5] The Applicant again purported to serve a notice of objection to the reassessments of these taxation years on February 10, 2012. The Minister treated this objection as an application to extend the time to serve a notice of objection but since the application was not made the time within which such an application could have been made, it was not granted. A letter informing the Applicant of this decision was sent on February 23, 2012.

[6] The Applicant then made this application pursuant to section 166.2 of the *Act*.

[7] Subsection 166.2(1) of the *Act* provides as follows:

166.2 (1) A taxpayer who has made an application under subsection 166.1[(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.

[8] Since the application to this Court was made on March 7, 2012, it cannot be considered to be an application in relation to the first, second or third decisions of the Minister as the notifications of these decisions were sent on April 5, 2011, July 5, 2011 and November 23, 2011. The application to this Court filed on March 7, 2012 was made more than 90 days after the day on which these notifications were mailed to the Applicant.

[9] The application to this Court filed on March 7, 2012 was made within 90 days of the day that the notification of the Minister's decision was mailed to the Applicant in response to the last application made by the Applicant to the Minister.

[10] The last application to the Minister was made on February 10, 2012. Subsection 166.2(5) of the *Act* provides that:

(5) 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; and

(b) the taxpayer demonstrates that

(i) within the time otherwise limited by this *Act* for serving such a notice or making such a request, as the case may be, the taxpayer

(A) was unable to act or to instruct another to act in the taxpayer's name, or

(B) had a *bona fide* intention to object to the assessment or make the request,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application was made under subsection 166.1(1) as soon as circumstances permitted.

[11] The application under subsection 166.1(1) of the *Act* is the application made to the Minister to request an extension of time to serve the notice of objection which was last made by the Applicant in this case on February 10, 2012. As a result of the provisions of paragraph 166.2(5)(a) of the *Act*, the application to this Court to extend the time to serve a notice of objection cannot be granted unless the application to the Minister to extend the time for serving the notice of objection was made within one year following the expiration of the time within which a notice of objection could have been served without an extension of time. The time within which a notice of objection may be served (without an extension of time being granted) is set out in subsection 165(1) of the *Act*. Prior to December 15, 2010 this subsection provided as follows¹:

165. (1) 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 ..., on or before the later of

¹ Effective December 15, 2010, the word “sending” was substituted for the word “mailing”.

(i) the day that is one year after the taxpayer's filing-due date for the year, and

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

(b) in any other case, on or before the day that is 90 days after the day of mailing of the notice of assessment.

[12] The date that the notices of reassessment were mailed to the Applicant started the period within which a notice of objection may be served. Therefore the application to the Minister to extend the time to serve a notice of objection must be made within one year and ninety days from the date that the notices of reassessment were mailed to the Applicant. The Respondent filed an affidavit of an officer of the Toronto Litigation Office of the Canada Revenue Agency outlining the practice and procedure for mailing notices of reassessment. Based on this affidavit I conclude that it is more likely than not that the notices of reassessment were mailed to the Applicant on June 30, 2009. The last application to the Minister to extend the time to serve a notice of objection was made over two and half years after the notices of reassessment were mailed to the Applicant.

[13] The Applicant stated that he had not received the notices of reassessment in 2009, however he did confirm that his address is the same address as in the Canada Revenue Agency files (and that this was his address in 2009). His explanation was that he had left the country for a period of approximately six weeks in 2009. However he left during March and April of 2009, which was before the notices of reassessment would have been sent to the Applicant. Subsection 165(1) of the *Act* is clear that the date that the notices of reassessments were mailed in 2009 started the period during which the Applicant could have served a notice of objection and also the period within which he could have made an application for an extension of time.

[14] Unfortunately there is no discretion to extend the deadlines as set out in the *Act* and the provisions of subsection 166.2(5) of the *Act* are clear that no application may be granted by this Court unless both the requirements of paragraph (a) and (b) are satisfied. In this case the Applicant has failed to satisfy the requirements of paragraph 166.2(5)(a) of the *Act*.

[15] As a result the Applicant's Application to extend the time for serving notices of objection in relation to the reassessments of the Applicant's 2003, 2004, 2005 and 2006 taxation years is dismissed, without costs.

Signed at Ottawa, Canada, this 24th day of July, 2012.

“Wyman W. Webb”

Webb J.

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STYLE OF CAUSE: KWAME YANKEY AND THE QUEEN
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: June 22, 2012
REASONS FOR ORDER BY: The Honourable Justice Wyman W. Webb
DATE OF ORDER: July 24, 2012

APPEARANCES:

For the Applicant: The Applicant Himself
Counsel for the Respondent: Christian Cheong

COUNSEL OF RECORD:

For the Applicant:

Name:

Firm:

For the Respondent:

Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada