

Docket: 2011-2489(IT)I

BETWEEN:

YVONNE TUCK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 12, 2012 at Kingston, Ontario

By: The Honourable Justice J.M. Woods

Appearances:

Agent for the Appellant: Trueman Tuck

Counsel for the Respondent: Christopher Kitchen

JUDGMENT

The appeal with respect to an assessment made under the *Income Tax Act* for the 2008 taxation year is dismissed. Each party shall bear their own costs.

Signed at Toronto, Ontario this 20th day of September 2012.

“J. M. Woods”

Woods J.

Citation: 2012 TCC 332
Date: 20120920
Docket: 2011-2489(IT)I

BETWEEN:

YVONNE TUCK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] The appellant, Yvonne Tuck, was late in filing her 2008 income tax return and paying the related tax. The return was filed approximately 12 months after the due date, and federal tax was owed in the amount of \$1,831.92.

[2] Ms. Tuck seeks relief relating to the interest charged on the unpaid tax and the imposition of a late-filing penalty. Although Ms. Tuck seeks relief for both provincial and federal amounts, this Court has no jurisdiction with respect to provincial levies and these amounts will not be dealt with.

[3] Ms. Tuck was represented at the hearing by her spouse, Trueman Tuck, who is a licensed paralegal.

Adjournment request

[4] At the commencement of the hearing, an adjournment request was made so that Ms. Tuck could first apply to the Canada Revenue Agency (CRA) for a waiver of interest and penalty pursuant to the taxpayer relief provisions. After hearing the parties' submissions, I concluded that an adjournment was not appropriate and the request was denied.

[5] To begin with, I was not satisfied that an adjournment would accomplish Ms. Tuck's objective of having the CRA deal with a waiver application while an appeal to this Court was outstanding. It appears to be the policy of the CRA to defer decisions on taxpayer relief applications until after all appeal rights have been exhausted. This is referred to in a document provided to the Court by Mr. Tuck (Information Circular IC07-1 dated May 31, 2007, paragraphs 109 and 110).

[6] Mr. Tuck argued that the CRA is not bound by the Information Circular. That may be the case but I was not satisfied that an adjournment would likely assist in achieving Ms. Tuck's objective.

[7] Moreover, it was not appropriate in my view to waste scarce judicial resources in order to grant the request. Mr. Tuck stated that he only recently became aware of this alternative remedy. This appeared to be at odds with a letter written by the CRA to Ms. Tuck in December 2011 which outlined the taxpayer relief procedure. I was not satisfied that Mr. Tuck only recently became aware of this or that sufficient due diligence was exercised in making an application to the CRA in a timely fashion before this appeal was set down for hearing. I also noted that an application to the CRA has not yet been made.

[8] For all these reasons, the adjournment request was denied.

The issues

[9] With respect to the appeal, Mr. Tuck stated that he was abandoning constitutional arguments that were similar to the well known "natural person" theories. He stated that these were not being pursued because he now has a good relationship with the CRA and is in the process of settling outstanding tax obligations.

[10] I would briefly mention at this juncture that in 2007 this Court struck out notices of appeal filed by Mr. and Ms. Tuck relating to the 2002, 2003 and 2004 taxation years that were based on this type of argument: *Tuck and Tuck v The Queen*,

2007 TCC 418. Neither party mentioned this decision at the hearing.

[11] The arguments now raised by Ms. Tuck were not mentioned in her notice of appeal. As I understand the oral submissions of Mr. Tuck, there are three questions to be decided:

- Should the penalty and interest be vacated on grounds that there was an agreement with the CRA to deal with other tax obligations first?
- Should the penalty and interest be vacated on grounds of due diligence?
- Should the matter be referred back to the Minister of National Revenue to further consider because the review at the objections stage was inadequate?

Background

[12] Mr. Tuck testified that he handled his spouse's financial affairs and accordingly would testify on her behalf. Ms. Tuck confirmed this when she was called as a witness by the Crown.

[13] According to Mr. Tuck's testimony, there were a number of reasons which led to the late filing for 2008. He explained that around 1995 the Tucks were struggling to cope with a rapidly expanding health food business and they got behind in their tax filings. It was explained that the filings were complicated because they had seven separate entities. It was difficult to catch up once the filings were late. Mr. Tuck also testified that at the same time there were financial pressures because he was laid off from his employment. He also described problems with their bookkeepers and accountants.

[14] With respect to Ms. Tuck's 2008 tax return specifically, Mr. Tuck stated that it was not possible to prepare it in time because most of Ms. Tuck's income was comprised of dividends from related corporations and the corporations' financial information was not yet available.

[15] Mr. Tuck also stated that he has been working cooperatively with the CRA through the voluntary disclosure program to satisfy outstanding tax obligations. He stated that the payment priorities are set by the CRA, who have decided that the first obligations to be paid are trust amounts, specifically payroll and GST remittances owing by one of the corporations. He stated that he understood that the CRA were in

agreement that other obligations could be deferred until the trust matters were dealt with.

Existence of agreement with CRA

[16] As I understand Mr. Tuck's argument, it is that the payment priorities were set by the CRA, and that they agreed to defer payment of Ms. Tuck's obligations. Implicit in this is that the CRA agreed to waive interest during this period.

[17] This submission depends almost entirely on the self-serving testimony of Mr. and Ms. Tuck. I did not find it convincing.

[18] If in fact the CRA made an agreement to defer Ms. Tuck's tax obligations, it is likely that the agreement would have been reduced in writing. Mr. Tuck vaguely suggested that there might be a letter but he failed to produce it.

[19] Moreover, Mr. Tuck's submission appears to be at odds with correspondence from the CRA (Exhibits to Affidavit of Yvonne Tuck). Two letters are relevant.

[20] The first is a letter from the CRA dated January 14, 2011 which confirms arrangements for paying arrears and the filing of outstanding returns. This letter only relates to obligations of corporations related to the Tucks. There is no suggestion that it applies to Ms. Tuck's personal tax obligations.

[21] A second letter was written to Ms. Tuck on December 29, 2011 which provided information as the procedure for applying for a waiver of penalty and interest charges under the taxpayer relief provisions. The letter indicates that interest was owing for several years, including 2008. This strongly suggests that there was no prior agreement with the CRA to waive late filing penalties or interest charges.

[22] I am not satisfied that the CRA made any agreement with respect to Ms. Tuck's 2008 income tax obligations.

Has due diligence been established?

[23] Ms. Tuck also argues that interest and the late-filing penalty should be vacated on grounds of due diligence.

[24] I would first comment that the applicable legislation dealing with interest and late-filing penalties does not provide for a due diligence defence. The applicable

provisions are s. 161(1) and s. 162(1) which read:

161. (1) General [interest on balances] - Where at any time after a taxpayer's balance-due day for a taxation year

(a) the total of the taxpayer's taxes payable under this Part and Parts I.3, VI and VI.1 for the year

exceeds

(b) the total of all amounts each of which is an amount paid at or before that time on account of the taxpayer's tax payable and applied as at that time by the Minister against the taxpayer's liability for an amount payable under this Part or Part I.3, VI or VI.1 for the year,

the taxpayer shall pay to the Receiver General interest at the prescribed rate on the excess, computed for the period during which that excess is outstanding.

162. (1) Failure to file return of income - Every person who fails to file a return of income for a taxation year as and when required by subsection 150(1) is liable to a penalty equal to the total of

(a) an amount equal to 5% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed, and

(b) the product obtained when 1% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding 12, from the date on which the return was required to be filed to the date on which the return was filed.

[25] Although due diligence is not recognized as a defence in the legislation, this Court has recognized a due diligence defence for penalties provided that the taxpayer establishes that reasonable steps were taken to comply with the legislation. This principle has no application to interest, and due diligence is not a ground for this Court to vacate interest imposed pursuant to s. 161(1).

[26] With respect to due diligence relating to the penalty, I am not satisfied that Ms. Tuck took all reasonable steps to comply with the obligation to file an income tax return on time.

[27] As mentioned earlier, this argument was first raised at the hearing. It was not raised either in the notice of objection or in the notice of appeal.

[28] I would also note that Mr. Tuck's self-interested testimony referred to tax compliance problems that allegedly occurred a long time ago. Even if the testimony is considered to be reliable, I am not satisfied that it is a reasonable excuse for late filing the 2008 income tax return.

[29] I would also comment that Ms. Tuck continued to assert for the 2008 taxation year that she was not subject to the Canadian income tax system based on arguments similar to the natural person theories. The anti-tax theories were raised both in the notice of objection and by reference in her notice of appeal. The prior decision of this Court that dismissed these arguments was issued in 2007. The fact that Ms. Tuck continued to raise these arguments for the 2008 taxation year suggests a wanton disregard for statutory tax obligations.

[30] Finally, I reject the suggestion that filing an income tax return late should be excused because the amount of income is not known. The late-filing penalty under s. 162(1) could have been avoided if the income tax return had been filed on time, with further information to be submitted subsequently. I am not satisfied that proper diligence was exercised.

Should matter be referred back to Minister?

[31] As an alternative argument, Ms. Tuck suggests that this matter should be referred back to the Minister for further consideration since the CRA refused to consider these issues at the objections stage.

[32] Even if these issues were raised at the notice of objection stage, it is not appropriate to grant this type of relief. Ms. Tuck essentially seeks to reopen the objections process that ended when the reassessment was confirmed. An appeal to this Court gives taxpayers the opportunity of establishing by proper evidence that an assessment is incorrect. If a taxpayer fails to do this, the appeal should be dismissed.

Conclusion

[33] The appeal will be dismissed, and each party shall bear their own costs.

Signed at Toronto, Ontario this 20th day of September 2012.

“J. M. Woods”

Woods J.

CITATION: 2012 TCC 332

COURT FILE NO.: 2011-2489(IT)I

STYLE OF CAUSE: YVONNE TUCK v.
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PLACE OF HEARING: Kingston, Ontario

DATE OF HEARING: September 12, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice J.M. Woods

DATE OF JUDGMENT: September 20, 2012

APPEARANCES:

Agent for the Appellant: Trueman Tuck

Counsel for the Respondent: Christopher Kitchen

COUNSEL OF RECORD:

For the Appellant:

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Firm:

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