

Docket: 2025-2414(GST)APP

BETWEEN:

DIONNE SMITH,

Applicant,

and

HIS MAJESTY THE KING,

Respondent.

Application heard on April 13, 2026, at Toronto, Ontario

Before: The Honourable Justice David E. Spiro

Appearances:

Agent for the Applicant: Frederica Henry-Pottinger

Counsel for the Respondent: Eric Myles

JUDGMENT

The Applicant's application for an order extending the time within which a notice of objection to the assessment dated May 12, 2022 in respect of the Applicant's claim for a new housing rebate under section 254 of the Excise Tax Act may be filed with the Minister of National Revenue is quashed without costs.

Signed this 15th day of April 2026.

"David E. Spiro"

Spiro J.

Citation: 2026 TCC 68
Date: 20260415
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REASONS FOR JUDGMENT

Spiro J.

[1] For the reasons set out below, I have no choice but to quash the Applicant’s application for an order extending the time within which a notice of objection to an assessment dated May 12, 2022 in respect of her claim for a new housing rebate under section 254 of the *Excise Tax Act* may be filed with the Minister of National Revenue (the “Minister”).

[2] My colleague, Justice Graham, recently dealt with a similar set of circumstances in *Amador v The King*, 2025 TCC 143 (citations omitted):

The Seven Tests

[4] Parties and the Court commonly refer to four conditions that must be met for the Court to grant an extension of time to object. However, it would be more accurate to describe it as seven tests: three conditions precedent and four conditions.

Conditions Precedent

[5] Subsection 12(4) of the *Tax Court of Canada Act* gives the Court exclusive original jurisdiction to hear and determine applications for extensions of time to object under subsection 304(1) of the *Excise Tax Act*. Subsection 304(1) sets out three conditions precedent that must be met for the Court to obtain that jurisdiction.

[6] The three conditions precedent are as follows:

- (a) the taxpayer must first have applied to the Minister of National Revenue under section 303 for an extension of time to object (s. 304(1); *Mezzanine Steel Ltd. v. The Queen*);
- (b) either:
 - (i) the Minister must have refused that application (s. 304(1)(a)); or
 - (ii) 90 days must have passed since the application was filed and the Minister must not yet have notified the taxpayer of the Minister's decision (s. 304(1)(b)); and
- (c) if the Minister refused the application, the taxpayer must have brought their application to the Court within 30 days of the date the Minister mailed the notification of that decision to the taxpayer (s. 304(1); *Désir v. The Queen*)

[7] It is important to note that time limit in the third condition precedent is 30 days. This short time period sometimes trips up people who are used to the 90-day limit in the equivalent provision under the *Income Tax Act*.

[8] The Court has no power to waive or change any of these conditions precedent.

[9] If a taxpayer fails to meet any of these conditions precedent, the Court has no choice but to quash the application. The Court does not need to consider whether the four conditions set out below are met. On the contrary, the Court has no jurisdiction to consider those conditions at all.

[10] Ideally, the question of whether the Court has jurisdiction to hear an application for extension of time to object should be decided when the application is called for hearing. The Court should then rule on the question. If the Court does not have jurisdiction, it should quash the application and proceed no further. Only if the Court has jurisdiction should it proceed to hear the application and consider whether the following four conditions have been met.

[11] The Court must consider whether the conditions precedent have been met whether the parties raise that question or not. The Court cannot gain jurisdiction by consent or mistake (*L.I.U.N.A. Local 527 Members' Training Trust Fund v. The Queen*).

Conditions

[12] If a taxpayer satisfies the conditions precedent for filing an application for extension of time to object with the Court, then the Court has jurisdiction to hear their application. At that point, the Court must determine whether the taxpayer meets the following four conditions:

- (a) the taxpayer must have applied to the Minister within one year of the deadline for filing a notice of objection (s. 304(5)(a));
- (b) between the date of the assessment and the objection deadline, the taxpayer must either (s. 304(5)(b)(i); *Bygrave v. The Queen*):
 - (i) have been unable to act or instruct someone else to act in their name;
or
 - (ii) had a bona fide intention to object;
- (c) after the objection deadline passed, the taxpayer must have applied to the Minister as soon as circumstances permitted (s. 304(5)(b)(iii); *Bygrave*); and
- (d) given the reasons set out in the application and the circumstances of the case, it must be just and equitable to grant the application (s. 304(5)(b)(ii)).

[13] The first three conditions turn on what the taxpayer did or did not do before or after the objection deadline. The objection deadline is 90 days after the date that the Minister sent the notice of assessment to the taxpayer (s. 301(1.1)).

[14] The Court has no power to waive or change any of the above conditions. If a taxpayer fails to meet any of these conditions, the Court has no choice but to dismiss their application.

[15] Most applications for extension of time to object that fail are dismissed because the taxpayer did not meet the first condition. It is worth repeating that the Court has no power to extend the one-year deadline in any circumstances.

Mailing Is Only Considered If Conditions Precedent Are Met

[16] Taxpayers sometimes assert that the Minister never sent them a notice of assessment or sent it to the wrong address and that the objection deadline should therefore be calculated from when the taxpayer first received the assessment, not from when it was dated.

[17] The long-established method for challenging whether a notice of assessment was properly sent is for the taxpayer to file an application for extension of time to object with the Minister, wait for the Minister to reject the application, then bring an application for extension of time to object to this Court, and, in the course of that application, raise the issue of whether the notice was properly sent. This method engages the jurisdiction of the Court and allows the Court to determine whether the notice was sent.

[18] As explained above, if a taxpayer has not met the conditions precedent, the Court does not have the jurisdiction to hear their application. Since the issue of whether the notice of assessment was properly sent is only relevant to the four conditions, if the conditions precedent have not been met, the Court has no jurisdiction to consider whether the notice was sent. The Federal Court of Appeal made this point very clearly in *McGowan v. The Queen*.

[19] If a taxpayer who has not met the conditions precedent nonetheless asks the Court to decide whether an assessment was sent, the taxpayer is actually asking the Court to grant declaratory relief. The Court does not have that power (*Canada (Attorney General) v. British Columbia Investment Management Corp.*; *Persaud v. The Queen*; *Manke v. The Queen*; *Roy v. The Queen*).

Dionne Smith's Application

[3] The Minister assessed Dionne Smith to deny a new housing rebate that she claimed. Ms. Smith did not file a notice of objection with the Minister within 90 days of the date the notice of assessment was sent which was May 12, 2022. Ms. Smith has brought an application to this Court for an extension of time to file her notice of objection with the Minister.

[4] Ms. Smith is frustrated because she applied to the Minister to extend the time to file her notice of objection six days late. She is also frustrated because she spoke to several officials at the Canada Revenue Agency over the phone and no one told her about any deadlines.

[5] Unfortunately, Ms. Smith has not satisfied one of the conditions precedent for bringing an application to this Court. Subsection 304(1) of the *Excise Tax Act* reads as follows:

Extension of time by Tax Court

304(1) A person who has made an application under section 303 may apply to the Tax Court to have the application granted after either

- (a) the Minister has refused the application, or

(b) ninety days have elapsed after service of the application under subsection 303(1) and the Minister has not notified the person of the Minister's decision,

but no application under this section may be made after the expiration of thirty days after the day the decision has been mailed to the person under subsection 303(5).

[6] By the concluding words of subsection 304(1), Parliament has precluded the Court from entertaining any application for an extension of time to file a notice of objection if the application was made after the expiration of thirty days from the day the Minister's decision was mailed notifying the person that the Minister denied their application for an extension of time to file a notice of objection.

[7] By letter dated March 8, 2024, the Minister notified Ms. Smith that her application for an extension of time to object had been denied. That letter included specific instructions on what Ms. Smith had to do if she disagreed with the Minister's decision to deny her the extension of time:

If you disagree with our decision, you can appeal to the Tax Court of Canada within 30 days of the mailing date of this letter.¹

[8] Ms. Smith has not credibly asserted that the Minister's letter of March 8, 2024 was not mailed to her on that date.

[9] One of the conditions precedent that must be met for this Court to have jurisdiction to hear Ms. Smith's application is that she had to file her application with the Court within thirty days of March 8, 2024. She filed her application nineteen months later on October 22, 2025. As a result, the Court has no jurisdiction to hear the application which must, therefore, be quashed.²

Signed this 15th day of April 2026.

“David E. Spiro”

Spiro J.

¹ Exhibit “E” to the Affidavit of Bahiya Nakkach, marked as Exhibit R-1 at the hearing.

² Even if this Court did have jurisdiction to consider her application, Ms. Smith's argument would have failed. She argued that time should begin to run from November 2022 when she says

the owner of the apartment next door (unit #311) handed her an envelope containing the notice of assessment. Ms. Smith speculates that Canada Post must have delivered her notice of assessment to unit #311 by mistake. Unit #311 was rented out to tenants until the owner returned in November 2022. Ms. Smith lived in unit #310. The notice of assessment was properly addressed to unit #310. Ms. Smith has not credibly asserted that the notice of assessment was not sent to her on May 12, 2022. It is abundantly clear that time began to run from the date the Minister sent the notice of assessment to Ms. Smith.

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APPEARANCES:

Agent for the Applicant: Frederica Henry-Pottinger
Counsel for the Respondent: Eric Myles

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