

R.G. Allen

INCOME TAX CONSULTANT

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December 31, 2013

Minister of National Revenue
Ottawa Ontario Canada K1A 0A6

ATTN: Kerry-Lynne D. Findlay, PC., QC., M.P.

Fax #: 1-613-952-6608

Dear Madam:

This is to one more time, request a written response to the actions/inactions and/or omissions of the Minister of National Revenue regarding the very serious actions that have been taken by the Winnipeg Tax Office. This is, of course, regarding the withholding of taxpayer's 2012 Income Tax Assessments for the 212 taxation year. The information herein provides an overview of what has transpired over the last number of months in this regard.

The pertinent information is documented as follows in a chronological order:

1. Court applications & Federal Court declaration.
2. Media response.
3. Lack of response by Minister of National Revenue & the Winnipeg Tax Office.
4. Lack of response by other Ministers.

Given the attached evidence of the Canada Revenue Agency not adhering to the law; not responding to Canadian taxpayers, and now, the ultimate punitive actions taken by 3rd parties as the direct result of the actions/inactions involved, surely the Canadian taxpayers seriously affected deserve and have a legal right to a written response from those who have the responsibility of administering our laws. As we all know, in Canada we, including the CRA are governed by law.

Your written response is appreciated.

Sincerely,



R. G. Allen
Income Tax Consultant

(Note) See completed T1013's signed by 7 Taxpayers. I have corresponded with the Minister of National Revenue on their behalf since May of 2013.

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DAVID WHIDDEN
Applicant

and

MINISTER OF NATIONAL REVENUE
Respondent

Court File No: **7-2124-13**

FEDERAL COURT

Proceeding commenced at Ottawa

NOTICE OF APPLICATION
(Form 301 under the Federal Court Rules)

DORIS LAW OFFICE PROFESSIONAL CORPORATION

222 Somerset Street West, 2nd Floor
Ottawa, Ontario
K2P 2G3

Darcy Daoust LSUC#: 51913H
Hussain Bukhari LSUC#: 62816A

Tel: 416.704.2386
Fax: 416.704.2381

Counsel(s) for the applicant

Court File No. T-2124-13

FEDERAL COURT

BETWEEN:

DAVID WHIDDEN

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

NOTICE OF APPLICATION
(Proposed Class Proceeding)

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Ottawa.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN
IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Dated: December 24, 2013

DORIS LAW OFFICE
222 Somerset Street West
2nd Floor
Ottawa, ON
K2P 2G3

Darcy Daoust
Hussain Bukhari

Tel: (613) 704-2386
Fax: (613) 704-2381

Counsel for the Applicant

Issued by: _____

(Registry Officer)

Address of principal office: Registry of the Federal Courts
Thomas D'Arcy McGee Building
90 Sparks Street, 5th floor
Ottawa, Ontario
K1A 0H9

TO: Minister of National Revenue
7th Floor
555 Mackenzie Avenue
Ottawa, ON
K1A 0L5

Deputy Attorney General of Canada
Bill Pentney
Department of Justice
Ontario Regional office
130 King Street West
Suite 3400, Box 36
Toronto, ON
M5X 1K6

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the 24th

day of _____ A.D. 2013

Dated this 24th day of _____ 2013

BENOÎT LABELLE
REGISTRY OFFICER
AGENT DU GREFFE

APPLICATION

THIS IS AN APPLICATION FOR JUDICIAL REVIEW IN RESPECT OF:

1. the failure of the Minister of National Revenue (the "**Minister**") to assess the income tax return filed by Mr. David Whidden (the "**Applicant**") for the 2012 taxation year (the "**2012 Return**") and to issue a notice of assessment ("**Assessment**") to the Applicant with all due dispatch as required by section 152 of the *Income Tax Act* (the "**Act**").

THE DECISION WAS COMMUNICATED TO THE APPLICANT ON:

July 11, 2013

THE APPLICANT MAKES APPLICATION FOR:

2. an Order compelling the Minister to forthwith assess the 2012 Return and to issue an Assessment to the Applicant;
 3. in the alternative, an Order declaring that the Minister has no authority to delay the assessment of the 2012 Return and issuance of an Assessment for any of the following reasons:
 - (a) to deter or otherwise limit taxpayer participation in a registered tax shelter, namely, the 2012 Mission Life Financial Tax Shelter (TS074385), and/or other tax shelters, including Pharma Gifts International Inc. (TS075200), Agroland Properties Inc. (TS078097) or Global Learning Giving Initiative.
 - (b) to pursue any goals other than those directly related to examining the 2012 Return and ascertaining any tax, interest, or penalties payable by the Applicant under the Act;
-

4. an Order granting the costs of this Application; and
5. such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE APPLICATION ARE:

1. that the minister acted without jurisdiction, beyond her jurisdiction, or refused to exercise her jurisdiction, in failing to assess the 2012 Return in good faith and with all due dispatch as required by section 152 of the Act;
2. that the minister failed to observe a principle of natural justice, procedural fairness, or other procedure that it was required by law to observe, or otherwise acted contrary to law in failing or delaying the examination of the 2012 Return and issuance of the Assessment;
3. section 152 of the Act;
4. section 18.1 of the *Federal Courts Act* and section 8 of the *Federal Court Rules*; and
5. such further and other grounds as counsel may advise and this Honourable Court may permit.

REASONS FOR EXPEDITING APPLICATION:

The Applicant respectfully requests the application be heard forthwith as the minister's actions, inactions and/or omissions as described herein have, among other things, caused;

- a. third parties to refuse and/or delay financing applications submitted by the Applicant or prospective Applicants for personal and/or business purposes, including applications related to the renewal of mortgages against the Applicant or prospective Applicants' principal residence(s);
-

- b. the Applicant or prospective Applicants to become ineligible for certain credits, benefits and/or rebates, including child tax credits and HST rebates, to which the Applicant or prospective Applicants would otherwise be entitled;
- c. the Applicant or prospective Applicants to become ineligible for certain provincial benefit programs, including with respect to BC Pharmacare and the Ontario Trillium Benefit, to which the Applicant or prospective Applicants would otherwise be entitled, or, alternatively, the delay in the receipt of the benefits associated with such programs.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

- 1. an affidavit or affidavits, to be sworn; and
- 2. such further and other evidence as counsel may advise and this Honourable Court may permit.

THE APPLICANT REQUESTS that the Minister send a certified copy of the following material, which is in the possession of the Minister, to the Applicant and to the Registry:

- 1. All materials in the possession of the Minister and Canada Revenue Agency relating to the decision of the Minister's consideration of the 2012 Return, and her failure to examine and assess that return and issue an Assessment to the Applicant.

Dated at City of Ottawa, in the Province of Ontario, this 24th day of December, 2013.

DORIS LAW OFFICE

Per: _____


Darcy Daoust
Hussain Bukhari

222 Somerset Street West
2nd Floor
Ottawa, ON
K2P 2G3

Tel: (613) 704-2386
Fax: (613) 704-2381

Counsel for the Applicant

Court File No.

FEDERAL COURT

BETWEEN:

ROBERT MCNALLY

Applicant

- and -

MINISTER OF NATIONAL REVENUE

Respondent

NOTICE OF APPLICATION

OSLER, HOSKIN & HARCOURT LLP

P.O. Box 50
1 First Canadian Place
Toronto, ON
M5X 1B8

Al Meghji
Pooja Samtani

Tel: (416) 862-5677
Fax: (416) 862-6666

Counsel for the Applicant



Court File No. T-1282-13

FEDERAL COURT

ROBERT MCNALLY

Applicant

- and -

MINISTER OF NATIONAL REVENUE

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Court Rules, 1998* and serve it on the Applicant's solicitor, or where the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Court Rules, 1998*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

DATED: July 25, 2013

OSLER, HOSKIN & HARCOURT LLP

P.O. Box 50
1 First Canadian Place
Toronto, ON
M5X 1B8

Al Meghji
Pooja Samtani

Telephone: (416) 862-5677
Facsimile: (416) 862-6666

JUL 25 2013

Counsel for the Applicant

Issued by:



MICHELLE GAUVIN
REGISTRY OFFICER
AGENT DU GREFFE

Address of local office: Registry of the Federal Courts

180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

To: Deputy Attorney General of Canada

Myles J. Kirvan
Department of Justice
Ontario Regional Office
130 King Street West
Suite 3400, Box 36
Toronto, ON
M5X 1K6

Minister of National Revenue

7th Floor
555 MacKenzie Avenue
Ottawa, ON
K1A 0L5

APPLICATION

THIS IS AN APPLICATION FOR JUDICIAL REVIEW IN RESPECT OF:

1. the failure of the Minister of National Revenue (the "Minister") to assess the income tax return filed by Mr. Robert McNally (the "Applicant") for the 2012 taxation year (the "2012 Return") and to issue a notice of assessment ("Assessment") to the Applicant with all due dispatch as required by section 152 of the *Income Tax Act* (the "Act").

THE DECISION WAS COMMUNICATED TO THE APPLICANT ON:

June 25, 2013.

THE APPLICANT MAKES APPLICATION FOR:

2. an Order compelling the Minister to forthwith assess the 2012 Return and to issue an Assessment to the Applicant;
3. in the alternative, an Order declaring that the Minister has no authority to delay the assessment of the 2012 Return and issuance of an Assessment for any of the following reasons:
 - (a) to deter or otherwise limit taxpayer participation in a registered tax shelter, namely, the EquiGenesis 2012 Structured Giving Program (also known as the EquiGenesis 2012 Investment & Donation Program); or
 - (b) to pursue any goals other than those directly related to examining the 2012 Return and ascertaining any tax, interest, or penalties payable by the Applicant under the Act;
4. an Order granting the costs of this Application; and
5. such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE APPLICATION ARE THAT THE MINISTER:

1. acted without jurisdiction, beyond her jurisdiction, or refused to exercise her jurisdiction, in failing to assess the 2012 Return in good faith and with all due dispatch as required by section 152 of the Act;
2. failed to observe a principle of natural justice, procedural fairness, or other procedure that it was required by law to observe, or otherwise acted contrary to law, in failing or delaying the examination of the 2012 Return and issuance of the Assessment;
3. section 152 of the Act;
4. section 18.1 of the *Federal Courts Act* and section 8 of the *Federal Court Rules*; and
5. such further and other grounds as counsel may advise and this Honourable Court may permit.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

1. an affidavit or affidavits, to be sworn; and
2. such further and other evidence as counsel may advise and this Honourable Court may permit.

THE APPLICANT REQUESTS that the Minister send a certified copy of the following material, which is in the possession of the Minister, to the Applicant and to the Registry:

1. all materials in the possession of the Minister and Canada Revenue Agency relating to the decision of the Minister's consideration of the 2012 Return, and her failure to examine and assess that return and issue an Assessment to the Applicant.

DATED at City of Toronto, in the Province of Ontario, this 25th day of July, 2013.

OSLER, HOSKIN & HARCOURT LLP

Per:



Al Meghji
Pooja Samtani

P.O. Box 50
1 First Canadian Place
Toronto, ON
M5X 1B8

Tel: (416) 862-5677
Fax: (416) 862-6666

Counsel for the Applicant

JUDGMENT

THIS COURT ADJUDGES AND DECLARES that for the Reasons given, the Respondent failed to assess the Applicant's tax return with all due dispatch.

Costs shall be as agreed between the parties.

"Michael L. Phelan"

Judge

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LETTERS TO THE EDITOR

Livelihoods wait as CRA impounds 2012 tax returns

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posted Nov 29, 2013 at 1:00 AM — updated Nov 28, 2013 at 5:07 PM

To the editor:

Over the last 10 months the Office of the Minister of National Revenue, has continually refused to take a position on the practice of the Canada Revenue Agency (CRA), Winnipeg Tax Office, withholding the assessments of hundreds, if not, thousands of taxpayer's 2012 Income Tax Returns.

Hundreds of taxpayers have written personally to the minister; three petitions from Profitable Giving Canada have been sent to the minister's office, the last with approximately 1,500 signatures. This issue was addressed by the federal court in the Alice Fick and the Attorney General of Canada case by the way of a Judicial Review completed May 13, 2013. The final judgment in that case states: "This Court Adjudges and Declares that for reasons given, the Respondent failed to assess the Applicant's tax return with all due dispatch."

There were a number of reasons given which addressed all specific issues and the court refuted all of the reasons that had been put forth by the CRA.

As a former auditor/appeals officer with Revenue Canada; before it was ultimately changed to the CRA; and as an income tax consultant assisting taxpayers in exercising their taxpayer bill of rights of the last 20 years; this is to advise and expound on just one of the reasons given by the courts in the case noted herein:

Namely: "Concerns of superiors at CRA in Ottawa: Head quarters has cautioned that there may be unintended effects on taxpayers rights where taxpayers may have rights to certain benefits under the Act, such as Child Tax Benefits and the Goods And Services Tax Credits, as these would be delayed until the assessment of the return."

These consequences have now affected hundreds, if not thousands, of taxpayers due to the inaction of the office of the Minister of National Revenue.

This (the writer's) office has not only represented a number of taxpayers regarding this issue; we have also addressed all of the issues in question in writing to Mr. Murray Rankin, Official Opposition Critic for National Revenue on Aug. 1, 2013; to Mr. Scott Brison, Liberal Finance and National Revenue Critic on July 30, 2013; and to Nancy Ricard, CRA service complaints, National Intake Centre on July 22, 2013.

Myself and a taxpayer whom I represented in this matter also met with Mr. Dan Albas, Member of Parliament in the summer of 2013. In addition, these issues were provided to our Finance Minister

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and it was his decision that the responsibility was that of another ministry. All of the specific issues addressed in the Fickel Case have been provided to all parties noted above during this summer of 2013 and there has been no response in this regard.

This obvious abuse of administrative authority practiced by the CRA and condoned, by all parties noted herein by their inaction, has now resulted in punitive actions by third parties. Examples are as follows:

Canadian taxpayers are now being refused mortgages on their homes by the banks because they do not have their 2012 Notice of Assessments from the CRA.

Canadian taxpayers are now prevented from obtaining personal or business loans to continue their livelihood for the same specific reason.

Canadian taxpayer's are now being denied legitimate child tax benefits as well, for the exact same reason.

Senior citizens as well as others are being denied their Goods and Service Tax/Harmonized Sales Tax Credits as was the concern of superiors at the CRA in Ottawa as articulated herein.

Taxpayers in British Columbia have been advised that BC Health has stated that their deductible for Pharma Care has been increased to \$10,000 as records indicate the CRA does not have a record of their 2012 tax filing.

These consequences noted above have already happened and it is so blatantly obvious that these will continue for thousands of Canadian taxpayers who have filed their 2012 Income Tax Returns in accordance with income tax law.

This has now surpassed the obvious abuse of administrative authority by the CRA; the obvious disregard for the Canadian taxpayer's rights, by the office of the Minister of National Revenue as a result of their inaction.

The same lack of respect for taxpayer's rights is indicated by the complete lack of response of others in the government as noted above.

These actions or inactions by all of the parties noted herein have now resulted in punitive actions taken by other third parties; i.e., banks, BC Health Care and more to come that actually prevent Canadian taxpayers not only from being treated legally and fairly by the CRA under the law but now are actually being prevented from participating in our economic system; some may well lose their homes and their livelihood as the results of actions by Canadian banks; fathers and mothers are denied their legitimate child tax credits; many Canadians are being denied federal and provincial tax credits.

In conclusion; all Canadians have the inherent right to participate in our economic system as outlined by income tax law; banking laws; provincial regulations and many other personal and business financial transactions conducted with third parties that are the basis of our rights as Canadians to pursue our livelihood and to our pursuit of happiness.

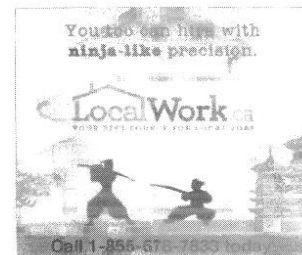
As a member of Profitable Giving Canada, I urge all affected taxpayers to join with us to do all we can to prevent our fundamental rights from being taken from us. This is much more than an income tax issue; it is actually leading to a breakdown of our entire system and preventing Canadians from being participants in that system.

From a personal viewpoint; throughout my early years I learned that, in Canada, we have government for the people by the people. The ramifications outlined herein cannot, in anyway, give any credence to that most fundamental principle. Moreover; given the opportunity of many government entities to actually respond to these issues over the last seven months on behalf of taxpayers gives credence to the idea that our system is, in fact, broken.

A simple directive from the Office of the Prime Minister could and would reverse these dire, punitive actions by directing those responsible to have the 2012 income tax returns assessed forthwith.

R. G. Allen,

income tax consultant,



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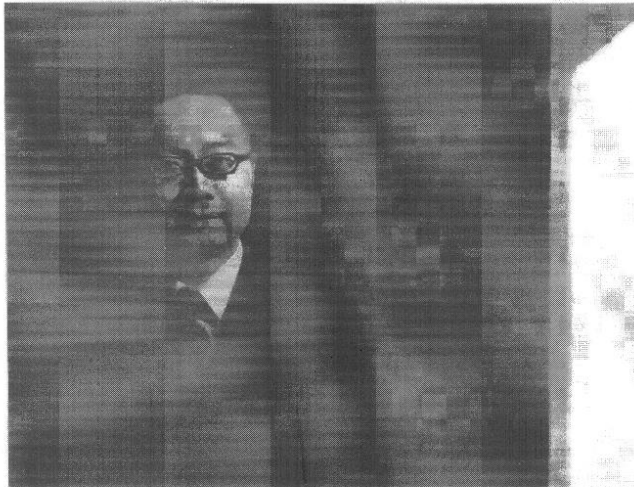
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Court smacks down tax crackdown



JULIUS MELNITZER | 10/07/13 7:15 AM ET
More from Julius Melnitzer

Business
Report



"There has been a definite trend by the Ministry of Revenue to push the audit envelope, but the courts have refused to condone it," says Chia-yi Chua, a tax partner in McCarthy Tétrault LLP's Toronto office. Photo: iStockphoto.com

Federal Court of Canada lukewarm to Canada Revenue Agency crackdown

The Federal Court has again chastised the Canada Revenue Agency for abusing its audit powers to discourage taxpayers from participating in tax shelters.

"There has been a definite trend by the Ministry of Revenue to push the audit envelope, but the courts have refused to condone it," says Chia-yi Chua, a tax partner in McCarthy Tétrault LLP's Toronto office.

The most recent case arose from the activities of the Global Learning Gifting Initiative, a registered tax shelter that issues charitable donation receipts to participants. After auditing GLGI, the CRA concluded that it was a sham and denied every one of the charitable donation claims made by taxpayers between 2004 and 2008.

Between 27,000 and 28,000 taxpayers filed notices of objection with respect to the 2004-2006 tax years alone. These taxpayers, however, had received their tax refunds pursuant to the then-existing CRA policy that allowed charitable donation tax credits in the initial tax assessment. Under that policy, a reassessed might issue and taxpayers might have to repay any refunds they received, but only following an audit of the tax shelter.

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Canada Revenue Agency zeroes in on bitcoin

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In 2011, the Director of CRA's Winnipeg Tax Centre instituted a new policy that focused on conducting the tax shelter audit before issuing a refund. The new policy affected several hundred taxpayers who had participated in GLGI in the 2010 and 2011 taxpayer years. They received letters advising that their assessments would not be issued until the GLGI audits for the relevant years were completed. A CRA warned of an audit if contributions were made to a gifting tax shelter.

At one point, the CRA stated that the 2010 GLGI audits would not be completed until well into 2013.

Alice Ficek was one of the taxpayers affected by the new policy. She asked the Federal Court to compel an examination of her 2010 return. Her lawyer, Salvador Borraccia of Baker & McKenzie LLP's Toronto office, argued that the Ministry had not met its statutory obligation to act "with all due dispatch."

The Federal Court agreed, finding that the intent of the new policy was to delay and discourage taxpayers from participating in GLGI. Internal documents indicated that the CRA believed it had GLGI participants "over a barrel" and that "withholding refunds for even a year or two may be sufficient to deter further participation" in GLGI.

Claire Kennedy, a tax partner in Bennett Jones LLP's Toronto office, says that the CRA's disregard of individual taxpayer's positions was inappropriate.

"The Agency's downfall was the internal documentation which demonstrated that it was almost indifferent to the particular returns that were being assessed," she says. "If the CRA had focused on the potentially disallowable claims in the individual returns, the result in the case could well have been different."

Citing confidentiality, CRA refused to comment. The fact remains, however, that whether CRA appeals or not, more than 25,000 taxpayers will remain in limbo until the Tax Court of Canada rules on the CRA's assessment of GLGI charitable deduction claims.

However that may be, the Ficek case was not the first occasion in recent times that Courts have criticized the CRA's audit practices.

In February, in a case involving RBC Life Insurance Co., the Federal Court of Appeal prohibited the CRA from using demands for information or other audit powers for ulterior purposes such as "sending a message" to taxpayers or "chilling" a business or business practice.

In that case, the CRA obtained an ex parte order requiring RBC to disclose clients who had bought a plan known as the "10-8" plan. The Court of Appeal subsequently voided the order, partly because the Minister had acted with an improper purpose.

"I do not believe that the Minister's central purpose in issuing the requirements is sufficiently tied to her valid audit purpose," the court concluded. "Contrary to the Minister's pretension, I did find evidence that the targeted audit of specific 10-8 plan holders was not only done to test the reasonableness of the 10% payable interest rate or the possible application of the GAAR but to send a message to the industry."



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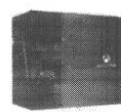
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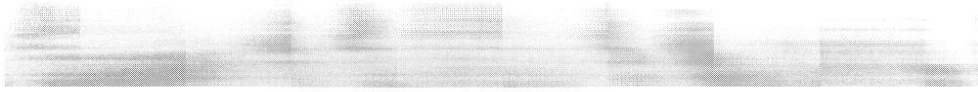
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CRA must play by the rules

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A recent test case from the Federal Court says the CRA can't use delayed assessments to discourage the use of tax shelters it doesn't like

By Patricia Chisholm | May 27, 2013 16:15

The Canada Revenue Agency (CRA) can't delay an individual's assessment by using an audit of the tax shelter used by the taxpayer as an excuse for the delay, according to a recent court ruling.

The May decision from the Federal Court of Canada comes as a pointed rebuke to the CRA and seems to suggest that the agency should not be trying to change policy or legal goals, especially related to tax avoidance schemes, which is the job of the courts or the legislature.

In particular, the Federal Court makes it clear that the CRA may not delay an assessment for the purpose "discouraging" the use of a particular tax shelter. The decision also concludes that specific regions (in this case the CRA's Winnipeg Tax Centre) cannot pursue a new policy that is purely local and which deviates from an established national policy used by the CRA.

As the court noted, the decision in *Alice Ficek v. The Attorney General of Canada* is "something of a test case." It deals with a charitable tax shelter known as Global Learning Gifting Initiatives (GLGI). The shelter, which used a trust and the distribution of "coursework" (software) to generate large refunds for taxpayers who made a cash payment to the charity, had been audited between 2004 and 2008; all of the claims for refunds in that period were denied.

The tax shelter had been popular; as a result of the denied refunds, between 27,000 and 28,000 notices of objections (appeals of the denied refunds) are outstanding for the years 2004 to

2006 alone. The Tax Court of Canada has yet to rule on whether the amounts claimed are deductible.

The particular taxpayer in this case, Alice Ficek, had made a cash payment to GLGI with her husband, in 2010. The receipts were for \$10,000 for a cash donation to the charity and \$50,019.86 for the donation of "courseware licences," the decision says. Tax receipts were issued in the name of the husband, who transferred \$35,100 of his total donation to his wife. The husband's return was assessed in 2011 and his charitable tax credit was allowed. But the wife received a notice from CRA saying that her return would not be assessed until the 2010 audit of GLGI was complete.

As a result, the wife sought judicial review to compel the CRA to assess her return "with all due dispatch" as required by s.152.(1) of the Income Tax Act. In November of 2012, the Attorney General said that the 2010 audit of GLGI could not be completed until June of 2013. However, that audit was completed within a few weeks of the judicial review hearing in November.

The wife then asked for further clarification from the court, namely: "a declaration that the Minister [of National Revenue] has no authority to delay the examination of the [wife's] return ... to deter or reduce taxpayer participation in a registered tax shelter (namely the Global Learning Gifting Initiative); or to pursue goals other than those directly related to examining the [wife's] return and ascertaining her tax, interest and penalties payable under the Income Tax Act."

The decision notes that the "long-standing" national policy of the CRA is to first issue refunds for charitable donation tax credits and require refunds if a subsequent audit finds that a deduction should not have been allowed. But, under what the decision refers to as the "new policy," the Winnipeg Tax Centre decided to conduct such audits before completing individual assessments.

CRA officials tried to argue that the assessment of the wife's return was delayed by the need to verify the donations. The court, however, disagreed, and was clearly unhappy about internal correspondence from the Winnipeg Tax Centre. "Even allowing for a certain degree of hyperbole or 'piling on' in internal communications," the decision states, "the officials in the [Winnipeg Tax Centre] wrote that they had GLGI participants 'over a barrel' and that 'withholding refunds for even a year or two may be sufficient to deter further participation' in the GLGI."

The federal court concluded that, whatever the CRA's concerns about the validity of the GLGI program, that was an issue to be decided by the Tax Court of Canada. Therefore, the failure to assess was not related to her return, but to discourage others from using the GLGI program. The court thus declared that the CRA had failed in its duty to assess the wife's return "with all due dispatch."

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TAXPAYERS NOT “OVER A BARREL” AFTER ALL

In *Ficek v. the Queen*,¹ the Canada Revenue Agency (“CRA”) was taken to task for delaying assessments (and refunds) against taxpayers who had participated in a tax shelter scheme. The evidence included internal CRA communications to the effect that CRA felt that it had the relevant taxpayers “over a barrel”² by withholding assessments and refunds in order to deter further participation in the tax shelter. The Federal Court concluded that this was an improper reason to delay assessment and held that CRA had failed to comply with its duty to assess taxpayers within a reasonable time. The case is another recent example of CRA unsuccessfully using its administration or enforcement powers to try to shape taxpayers’ behaviour by “chilling” participation in transactions of which CRA does not approve.

Under the *Income Tax Act*, CRA is required to assess a taxpayer’s return “with all due dispatch”.³ Courts have been lenient in defining this standard, holding that there is no fixed period of time within which CRA must assess, so long as CRA assesses “with all due diligence” or “within a reasonable time”.⁴ However, CRA’s broad discretion is not unlimited, because the delay in assessing must also be for the proper purpose of ascertaining and fixing the liability of the taxpayer.⁵ After all, taxpayers are entitled to have certainty with respect to their financial affairs as soon as reasonably possible.

In *Ficek*, the taxpayer was one of several taxpayers who had participated in a tax shelter scheme that CRA did not like. Participants in the scheme received charitable donation receipts. CRA had concluded that the related charitable donation tax credits should be denied for several reasons. The evidence in the case was that CRA’s long-standing policy across Canada was to allow the charitable donation tax credits in the initial assessment, to conduct an audit, and then to issue a reassessment to deny the credits. Nevertheless, CRA’s Winnipeg Tax Centre decided to depart from this national

¹ 2013 FC 502. As of May 27, 2013, no appeal of this decision had been commenced.

² *Ibid.*, para. 26.

³ Subsection 152(1) of the *Income Tax Act*.

⁴ See, for example, *Jolicoeur v. Minister of National Revenue*, 60 DTC 1254 (Ex Ct), cited in *Ficek* at paras. 19-20.

⁵ See *J. Stoller Construction Ltd. v. Minister of National Revenue*, 89 DTC 134, cited in *Ficek* at para. 21.

policy by delaying the initial assessments, even though CRA had already concluded that the credits would be denied. This had the effect of depriving the relevant taxpayers of refunds.⁶ The Court found that internal CRA communications showed that the true purpose of delaying the assessments was “to discourage participation in tax shelters generally and [the tax shelter in question] in particular.”⁷

The Court held that discouraging taxpayers from participating in tax shelters was not a proper reason for delaying assessment, finding that “the audit [was] so tainted by the real reason for [delaying the assessments] that the audit is the excuse for delay not a reason for delay.”⁸ By employing this remarkable administrative tactic to avoid having to issue refunds – a tactic that was inconsistent with CRA’s national policy to assess within a reasonable time and then to deny credits by way of audit and reassessment – CRA’s Winnipeg office was acting inconsistently with the federal and national nature of CRA’s obligation to assess with all due dispatch. In the end, the Court declared that CRA did not meet this obligation.

In other words, CRA must issue its initial assessment in cases like this one within a reasonable time, giving the taxpayer the right to challenge the correctness of the

assessment if he or she so chooses – a right that the taxpayer could not exercise while CRA was delaying the assessment to achieve its improper objectives.

Ficek is not the only recent example of CRA using its administration or enforcement powers to try to discourage taxpayers from participating in transactions that CRA does not like. In *Minister of National Revenue v. RBC Life Insurance Company et al.*,⁹ the Federal Court of Appeal cancelled several judicial authorizations that CRA had obtained, on an *ex parte* basis, to require RBC Life Insurance Company and others to provide certain information about their customers. The appeal court cancelled the authorizations because the lower court judge had not been informed that the primary purpose of the document requests was to “chill” participation in a particular insurance product known as the “10-8 plan.” Chilling participation in the insurance product was not a valid audit purpose.¹⁰

These cases highlight several things. First, CRA has broad powers of administration and enforcement. Second, these powers are not unlimited powers, and taxpayers should be vigilant to assert their judicial and other remedies where CRA has overstepped its bounds. Third, courts are an increasingly effective forum in which taxpayers can even the playing field with CRA.

⁶ Currently, most taxpayers are not required to pay amounts in dispute while an objection or an appeal in the Tax Court of Canada is pending. See generally section 225.1 of the *Income Tax Act*. The 2013 federal budget, released on March 21, 2013, proposes to give CRA the power to collect 50% of the disputed amount where a taxpayer has objected to an assessment of tax, interest or penalties because of the disallowance of a deduction or tax credit claimed in respect of a tax shelter that involves a charitable donation. The budget also proposes to extend the limitation period for assessing taxpayers who participate in tax shelters in certain circumstances. See Canada, *Jobs, Growth and Long-Term Prosperity: Economic Action Plan 2013* [2013 federal budget] at pages 337-38.

⁷ *Ficek*, para. 26.

⁸ *Ibid.*, para. 33.

⁹ 213 FCA 50.

¹⁰ See also *Minister of National Revenue v. Lordco Parts Ltd.*, 2013 FCA 49.

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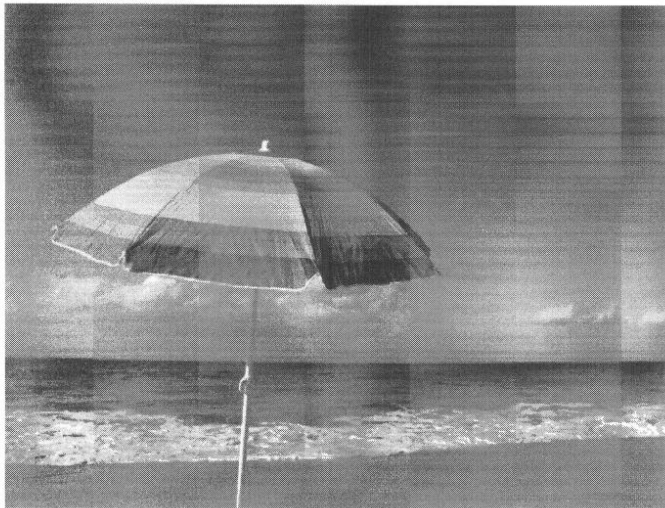
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Participation in tax shelters no reason for CRA to delay return



JAMIE GOLOMBEK | 13/05/31 | Last Updated: 13/05/31 11:56 AM ET
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To deter Canadians from participating in donation tax shelters for the 2012 year, the CRA announced that it will put on hold the assessment of any tax return in which the individual is claiming a donation credit by participating in a gifting tax shelter scheme. Getty Images/Thinkstock

If you're still waiting for your refund from filing your 2012 tax return, you may be wondering how long the tax man actually has to assess and issue that refund.

A recent federal court decision takes the Canada Revenue Agency to task for unduly delaying a taxpayer's assessment and corresponding refund for participating in a donation tax shelter.

Last fall, to deter Canadians from participating in donation tax shelters for the 2012 year, the CRA announced that it will put on hold the assessment of any tax return in which the individual is claiming a donation credit by participating in a gifting tax shelter scheme.

On October 30, 2012, the CRA announced that it would delay a taxpayer's assessment and refund until the tax shelter itself is audited, which could take up to two years. Doing so "will avoid the issuance of invalid refunds and discourage participation in these abusive schemes."

In response to this announcement, the Global Learning Gifting Initiative (GLGI), a registered tax shelter, called the CRA's delay tactics "an improper, and possibly illegal, use of CRA's assessing practices." To this end, it sponsored a court action challenging this new CRA practice. That case was heard on November 21, 2012 and a decision was released last month.

Sometimes it pays to challenge the CRA

If you feel that you've been unjustly charged a penalty or interest due to circumstances beyond your control, you should consider applying to the CRA under the 'fairness provisions' for some relief

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Under the Income Tax Act, the CRA has an obligation to examine your tax return "with all due dispatch." While this wording itself is somewhat vague, the courts have held that while there is no specific time frame given to the CRA to issue an assessment, it should do so "with all due diligence" or "within a reasonable time."

In the GLGI test case, the taxpayer, Alice Fieck, was one of 84 taxpayers whose 2010 assessments were being delayed by the CRA due to their participation in the GLGI tax shelter. A CRA official estimated that there are currently over 27,000 Notices of Objection being held in CRA's Appeals Division with respect to GLGI for the 2004-2006 tax years alone.

Prior to the CRA's fall announcement, its long-standing assessing policy was to allow even questionable charitable donation tax credits when initially assessing an

individual's tax return and then to conduct an audit and issue a reassessment to deny the credits, if it's determined that the donations were invalid.

The Court referred to internal CRA communications which revealed that the true purpose of delaying the assessments was "to discourage participation in tax shelters generally and GLGI in particular." It therefore concluded that this was not a valid reason for the CRA to delay its assessment and found that the CRA did not meet its obligation under the Tax Act to assess within a reasonable period of time.

Sal Mirandola, a tax partner in the Toronto office of Borden Ladner Gervais LLP, noted that the CRA is becoming "more aggressive" in using its enforcement powers but the courts have been stepping in to restrict these powers. "Taxpayers need a way to even the playing field against the CRA," says Mr. Mirandola.

Jamie Golombek is the managing director, tax & estate planning with CIBC Private Wealth Management in Toronto.

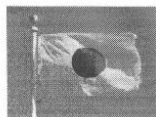


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Topics: Taxes, Canada Revenue Agency

R.G. Allen

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July 30th, 2013

Minister of National Revenue
Ottawa Ontario Canada K1A 0A6

Attn: Kerry-Lynne D. Findlay, PC., QC., M. P.

Fax # 1-613-952-6608

Dear Madam:

Furthur to your response letter dated July 29th, 2013 (copy attached), this is to address the various points outlined in that letter.

1. Obviously, the CRA is able to examine tax returns and ultimately audit and reassess tax returns in accordance with Income Tax Law. As we know, when a taxpayer is reassessed on a particular issue they have the right to file a Notice of Objection and ultimately Appeal to the Courts.
2. With regard to the specific issues with the Winnipeg Tax Centre; they and your office are well aware that the tax shelters that this taxpayer and all the others have participated in have already been assessed and Notices of Objection have been filed by most, if not all, of the taxpayers involved.
3. It is unfortunate for all taxpayers in this current position that your office has not addressed the real legal issues as raised in my previous correspondence; most specifically the decisions made by the Federal Court in the *ALICE FICEK V THE ATTORNEY GENERAL OF CANADA*. The taxpayers deserve a written response from your office on each of the following highlighted issues addressed by that Court.
 - 1) "while the Director of the Winnipeg Tax Centre tried to describe the purpose as simply verification of donations, **I CONCLUDE THAT ITS REAL AIM WAS TO DETER TAXPAYERS FROM PARTICIPATING IN THE GLGI PROGRAM.** (a tax shelter).
 - 2) Those taxpayers within the Centre's ambit were to be treated differently from taxpayers in the rest of the country ***"This is inconsistent with the Federal and National Nature of the Minister's obligation"***
 - 3) The Winnipeg Tax Centre had already determined that the donations claimed were not legitimate.
 - 4) Concerns of Superiors at the CRA in Ottawa; **"Headquarters has cautioned that there may be unintended effects on taxpayers rights where the taxpayers may have rights to certain benefits under the act, such as Child Tax Benefits and the Goods and Services Tax/Harmonized Sales Tax Credits, as these would be delayed until the assessment of the return.**
 - 5) The Audit is an excuse for delay **NOT** a reason for delay.
 - 6) Whatever the merits of CRA's concerns about the legitimacy of the GLGI donation program **THAT IS A MATTER FOR TAX COURT.**

- 7) There are no local circumstances which justify the marked departure from the National Policy. More importantly, the **MINISTER'S OBLIGATION TO ASSESS REMAINS UNAFFECTED BY LOCAL POLICY CONCERNS.**

Court's Conclusion: The applicant is entitled to a Declaration that the Minister failed to comply with the duty to assess with all due dispatch.

JUDGEMENT: THE COURT ADJUDGES AND DECLARES that for the reasons given THE RESPONDENT FAILED TO ASSESS THE APPLICANT'S RETURN WITH ALL DUE DISPATCH; Costs shall be as agreed between parties.

On behalf of this taxpayer, we respectfully submit that your response letter of July 29th, 2013 **DID NOT** address the legal issues involved. The letter reiterated part of the policy of the CRA of which we are all aware. We all know that the **CRA DOES NOT** create or legislate Income Tax Law but administers that law. The process that they are attempting to create law and National Policy regarding Income Tax matters is not in accordance with all of the points and issues as specified by the Federal Court decision described herein. Furthermore, in consideration of the decision in your letter of July 29th, 2013; it is obvious that your office chooses **NOT** to address the legal issues involved; chooses to condone the practices of the Winnipeg Office that are in direct contravention of the Federal Court decision (Alice Ficek v the Attorney General of Canada) and chooses to defer to the policy of the Winnipeg Tax Centre rather than the Federal Court Decision. Our question on behalf of this taxpayer is as follows: ***"How can the Minister of National Revenue accept, follow and condone the policy practise of the CRA (Winnipeg Tax Centre) when these practices have been refuted by a Federal Court? Can the CRA actually have more Legal Authority than the Federal court?"***

The taxpayer deserves a written answer to these questions since we all know that, in Canada, we, including the CRA are governed by law.

Your written response is appreciated.

Sincerely,



R. G. Allen
Income Tax Consultant

Minister
of National RevenueMinistre
du Revenu national

Ottawa, Canada K1A 0A6

JUL 29 2013

Mr. R. G. Allen
Income Tax Consultant
3614 21 Avenue
Vernon BC V1T 1H6

Dear Mr. Allen:

I am replying to your correspondence of May 28 and June 7, 2013, sent to my predecessor, the Honourable Gail Shea, about the income tax affairs of your client, [REDACTED]. I am giving you the following confidential information because you have [REDACTED] written authorization.

Canada's tax system is based on self-assessment. Although there is a high degree of public compliance with the law, the Canada Revenue Agency (CRA) can maintain this system only by continually examining tax returns. To make sure taxpayers respect the law, the CRA runs various review and enforcement programs that examine all categories of returns and choose files for audit based on objective criteria using risk assessment techniques.

When carrying out audit or enforcement activities, CRA officials make every effort to be fair, considerate, and responsive to taxpayers' needs. Officials are also required to respect taxpayers' rights and show integrity and impartiality while doing their jobs. The CRA's goals include conducting quality audits and applying the law and its administrative policies fairly and consistently.

The *Income Tax Act* requires the CRA to process returns promptly. However, when a return needs a more detailed review, the CRA will not assess the return until it completes the review.

I note your comments about the delay in assessing your client's return and the recent Federal Court decision in *Alice Ficek v. The Attorney General of Canada*. The CRA is reviewing the Court's decision to see if there are implications for the assessment of your client's return. Once it finishes the review, the CRA will announce its decision.

.../2

Canada

- 2 -

X If you or [REDACTED] wants to discuss the audit of [REDACTED] return, I invite you to contact Ms. Franca Caligiuri, Manager of the Compliance Programs Section at the Winnipeg Tax Centre, by writing to 66 Stapon Road, Winnipeg MB R3C 3M2, or by calling 204-983-8701. The CRA accepts collect calls. Ms. Caligiuri is aware of our correspondence and will be pleased to assist you.

I trust the information I have provided is helpful.

Yours sincerely,

Kerry-Lynne D. Findlay

Kerry-Lynne D. Findlay, P.C., Q.C., M.P.

613-995-2960

- no response from CRA Winnipeg office since May 30th / 2013 letter!!!! 3 months
- Numerous letters have gotten no response!

Minister
of National Revenue



Ministre
du Revenu national

Ottawa, Canada K1A 0A6

AOUT 20 2013
AUG 20 2013

Mr. R. G. Allen
Income Tax Consultant
3614 21 Avenue
Vernon BC V1T 1H6

Dear Mr. Allen:

Thank you for your correspondence sent to my predecessor, the Honourable Gail Shea, about the income tax affairs of your client, Ms. Bonnie [redacted]. I am giving you this confidential information because you have Ms. [redacted] written authorization. I apologize for the delay in replying.

Canada's tax system is based on self-assessment. Although there is a high degree of public compliance with the law, the Canada Revenue Agency (CRA) can maintain this system only by continually examining tax returns. To make sure taxpayers respect the law, the CRA runs various review and enforcement programs that examine all categories of returns and choose files for audit based on objective criteria using risk assessment techniques.

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I note your comments about the delay in assessing your client's return and the recent Federal Court decision in *Alice Ficek v. The Attorney General of Canada*. The CRA is reviewing the Court's decision to see if there are implications for the assessment of your client's return. Once it finishes the review, the CRA will announce its decision.

.../2

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If you or Ms. [REDACTED] wants to discuss the audit of Ms. [REDACTED] return, I invite you to contact Ms. Franca Caligiuri, Manager of the Compliance Programs Section at the Winnipeg Tax Centre, by writing to 66 Stapon Road, Winnipeg MB R3C 3M2, or by calling 204-983-8701. The CRA accepts collect calls. Ms. Caligiuri is aware of our correspondence and will be pleased to assist you.

I trust the information I have provided is helpful.

Yours sincerely,

A handwritten signature in cursive script that reads "Kerry-Lynne D. Findlay".

Kerry-Lynne D. Findlay PC, QC, MP