Everything Old is New Again — Part III

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As the title says, Everything Old is New Again. But this is just getting old. In two previous articles (*The Canadian Taxpayer* Volume XXXVI at pages 9 and 17), I spoke of the current state of affairs in dealing with the Canada Revenue Agency. They are out of control and believe that they are above the law.

Two more instances have recently crossed my desk. Both relate to the CRA's war on tax shelters. The purpose of this article is not to debate the merits, or otherwise, of tax shelter programs. That is a battle for the courts. But, whether you agree with the current attack on tax shelters or not, the CRA should still be playing by the rules.

Objections and Collections

Under normal circumstances, when a Notice of Objection is filed, it will take 8 to 10 months for an appeals officer to be appointed to deal with the Objection. While a matter is under objection, the CRA cannot, except in very limited circumstances, take any collection action.

The federal budget in 2013 changed the rules to allow the CRA to collect up to 50 percent of an amount in dispute if the amount is a charitable donation tax credit (for individuals) or deduction (for corporations) in respect of a charitable donation tax shelter. The new law only applies in respect of the disputed charitable donation amount.

However, the following is an excerpt of a letter from the Appeals Division of the CRA in the Tax Services Office in Surrey, B.C.

> If you have not paid the amount in dispute, any applicable interest will continue to accumulate on the unpaid balance. If the unpaid amount in dispute results from an assessment of tax, interest or penalties because the CRA has disallowed your deduction or tax credit claimed as a charitable donation in respect of a tax shelter, the CRA can take action to collect 50% of the disputed amount pending the final determination of your liability. If you choose to pay any outstanding amount, the payment does not imply agreement with the assessment.

The taxation year in question is 2010. The letter mentions that there are many taxpayers in the same situation and that all of the files are under review. We know that Head Office is dealing with tax shelter files.

The part of me that believes that the CRA can at least be relied upon to tell the truth would like to think that this is an honest error, but the cynic in me .....

Notices of Reassessment and Collections

As we know, once a matter is under objection, the CRA cannot, in the normal course, take collection action. If an amount has been paid and the taxpayer wishes a refund pending the objection an application can be made under subsection 164(1.1) for a refund of the amounts in dispute.

BUT, the taxpayer cannot write to ask for the refund until 120 days after the filing of the Notice of Objection. The last experience I had with this provision, an application was made for a refund in November, 2013. The refund was finally processed and paid in March, 2014, and then the wrong amount (by about 50 percent) was paid. Waiting for the balance of the refund took another couple of months.

So, here is the latest dirty trick in the CRA arsenal.

A taxpayer filed his tax returns for 2010 and 2011, including tax receipts related to a tax shelter donation program. Notices of Assessment were issued, disallowing the tax credits and Notices of Objection were filed on a timely basis. Since these are taxation years before 2013, no collection action can be taken.

The taxpayer then filed his 2013 tax return, with no claims for charitable tax credits. The return showed a tax refund due of approximately $30,000. However, before processing the Notice of Assessment for 2013, new Notices of Reassessment were issued in respect of 2010 and 2011. As we know, a new Notice of Reassessment cancels the outstanding Notice of Objection.

Since the Notices of Objection were cancelled, the CRA took the refund for 2013 to apply to the 2010 and 2011 taxation years, as there were "no amounts in dispute" for those years. Normally, taxes are not collectible until 90 days after assessment, and are not collectible while they are under objection.

The CRA will claim that the taxpayer has the right to file a new Notice of Objection, which has been done, and then to apply for a refund under subsection 164(1.1). That is true, but in the circumstances, should the taxpayer have to wait another six months to get money that is truly owing?

Again, the part of me that believes that the CRA can at least be relied upon to tell the truth and play fair would like to think that the timing of the reassessments is strictly coincident, but the cynic in me .....

There is no question that there have been many questionable tax donation shelters. Some, however, have passed audit by very senior auditors. If there was an overall government policy, it would be easy for a majority government to simply provide that no charitable tax receipts can be issued by any charity when the donations are related to a tax shelter. The government has not done so.

For the CRA to use its power to flaunt the rules of the *Income Tax Act* and to abuse taxpayers' rights is unconscionable. This is the reason that we are seeing more and more civil actions against the CRA across the country, and that trend only shows signs of increasing, as it should.

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