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Issues in Law You Need To Know

Dealing with the Canada Revenue Agency

It is not uncommon for people, often in a dire state, to seek advice after receiving a notice of assessment or reassessment from the Canada Revenue Agency (the "CRA"). When it comes to effectively addressing tax issues and notices of assessment or reassessment, there are several rules and deadlines that we should be aware of in order to avoid the pitfalls. The following sets out and discusses some of the key relevant deadlines and rules governing dealings with the CRA.

Role of the CRA

The Canadian tax system is a self-assessing system. As a result, the CRA has broad powers and authority to audit and investigate information provided by taxpayers to ensure compliance with the Income Tax Act (the "ITA"). These powers and authority range from requisitioning documents or other information for their review, conducting audits and inspections, formal searches and seizure of documents under a search warrant and formal inquiries and investigation authorized by the CRA.

The CRA is required to examine the return and make an assessment "with all due dispatch" following receipt of the taxpayer's return. Although "all due dispatch" is not defined in the ITA and does not refer to a specific period of time, the jurisprudence establishes a criterion of reasonableness depending on the facts of the matter.

Upon reviewing the taxpayer's income tax return and all other documentation requested, the auditor will issue his final report and, if he believes amendments to the return are required, the CRA will issue a notice of assessment or reassessment setting out the amendments to the taxation year at issue.

Notice of Assessment/ Reassessment

The CRA has three years from the date of mailing the notice of assessment to issue a notice of reassessment or a further notice of assessment and this interval is referred to as the "normal reassessment period."



If the taxpayer disagrees with the Minister's notice of assessment or reassessment, he is entitled to file a notice of objection within 90 days from the date the notice of assessment or reassessment is mailed.

The notice of objection must be in writing and must set out all relevant material facts, reasons and grounds on which the taxpayer is relying. It is important to understand that the onus is on the tax-

payer to rebut all of the Minister's assumptions and findings within the notice of objection.

Failure to object to all of the Minister's findings will result in the taxpayer's objection being "incomplete" and the Minister's obligation is only to review the arguments raised in the notice of objection. This potentially leaves the taxpayer with the unfortunate result of having to pay taxes because some grounds were not raised in the notice of objection.

The Minister will only review those points of objection that are raised in the notice of objection. Consequently, it is advisable that the person drafting the notice of objection consult with the taxpayer, the taxpayer's accountant and the taxpayer's lawyer to ensure all points are covered.

Appealing to the Tax Court of Canada

Once the Minister has issued its final ruling on the taxpayer's objection, he will issue a confirmation or a reassessment. From the date of the issuance of the confirmation or reassessment, the taxpayer has 90 days to appeal to the Tax Court of Canada (the "TCC").

There are two sets of Rules governing an appeal before the TCC and, depending on the amount of money at issue, the taxpayer may have to choose whether to appeal under the Informal Procedure or the General Procedure.

If the aggregate amount at issue is equal to or less than \$12,000.00 or the amount of the loss is equal to or less than \$24,000.00, the taxpayer may elect to file his notice of appeal under the Informal Procedure. If the amount at issue exceeds the two thresholds, the taxpayer must then appeal under the General Procedure.

If the taxpayer appeals under the General Procedure Rules, the notice of appeal must state all material facts, all grounds of appeal, alternative arguments and any specific relief sought. The notice of appeal must also refer to the statutory provisions relied upon.

Final Thoughts

For many, dealings with the CRA represent a period of severe stress and frustration. Seeking proper advice and guidance from experienced professionals (lawyer, accountant and others) is essential to insure that your interests are well protected. If you have any ques-

tions concerning tax reassessment, please do not hesitate to contact me directly.

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PRACTICE SUMMARY:

Sébastien joined Tierney Stauffer LLP as an Associate in the Wills, Estates & Trusts Planning & Administrative Practice Group in 2009. His practise focuses on estate planning, will drafting and personal and corporate taxation. Sébastien has experience in resolving disputes with the Canada Revenue Agency (CRA), filing voluntary disclosures, assisting individuals with their tax related issues and tax planning for families and businesses. Sébastien is bilingual and practices in both official languages.

He has spoken at various seminars on estate, trust and tax matters. Sébastien has also appeared on radio and television discussing legal issues. He is a tutor for the Law Society of Upper Canada for the Estate Practice section.

Prior to joining Tierney Stauffer LLP, Sébastien practiced with another Ottawa law firm where he gained experience in tax law, charity law, estate planning and will drafting.