

Ashton v The Queen, 2012 TCC 353 (informal procedure)

Jurisdiction of the TCC in relation to whether there was in fact a refund of tax to a taxpayer.

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One issue was whether the TCC has jurisdiction to determine whether excess amounts were refunded to the taxpayer, in addition to jurisdiction as to the amount of the excess refund.

On the basis of subsection 160.1(3) the TCC stated in *obiter* that it has express jurisdiction to decide if excess amounts were refunded to the taxpayer or not.

FACTS

In 2008, Money Mart e-filed a 2007 tax return in the taxpayer's name and gave a refund in cash. Though the taxpayer was a money mart customer for 10 years, she had never filed a tax return with them. The taxpayer claims that her identity was stolen and that she never was involved with the e-file, and that she never received the refund.

ANALYSIS

The Crown argued that the TCC lacks jurisdiction over collection matters, and that notwithstanding section 160.1 of the ITA, the TCC can only determine the question of the amount of the excess refund not whether there was a refund or not. (para 3).

The Court at paragraph 3 stated:

... my decision that this Court does have jurisdiction to determine whether, in the words of section 160.1 “an amount has been refunded to a taxpayer in excess” is largely moot. That wording in section 160.1, and the express conferral of appeal jurisdiction on this Court in subsection 160.1(3), indicates Parliament intended this Court to have jurisdiction to decide if excess amounts were refunded to a taxpayer.

The court said also:

I do not have to decide whether, based upon the statutory requirement the CRA must determine that an excess amount was refunded to a taxpayer, the Minister has the onus or burden of proof that the refunds were, in fact, paid to Ms. Ashton. It seems reasonable in the circumstances that it might. It is similarly not clear that the Minister should have the benefit of the assumptions being *prima facie* assumed correct since, in the case of identity theft, the information of who pretended to be a taxpayer is not within her particular knowledge – CRA may well be better situated to investigate. In any event, even if the taxpayer bears the usual burden of proof in this case, once she has denied

her involvement, as a practical matter, the burden of persuasion shifts to the Crown if her evidence that it was not her appears credible. It would be difficult for a taxpayer in the situation to have much greater evidence to offer if it was not her.