

Jeopardy Order to Keep taxpayer Money - Sas Ansari

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CRA Keeping Money Paid by Taxpayer

Canada (National Revenue) v 0741449 BC Ltd, [2016 FC 529](#)

The Minister sought a jeopardy order under subsection 164(1.2) of the [ITA](#) allowing it to keep funds presently in its hands until the appeals in respect to the tax have been determined.

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FACTS

The taxpayer corporation's assets are mostly properties that are highly leveraged. The shareholder's of the taxpayer were also noted to have a history of business ventures that have failed to pay tax or gone bankrupt. There was dispute as to the value of the only asset of value which was the subject of foreclosure proceedings that, to the knowledge of the Court, had not been resolved. There was also doubt that providing funds for the operation of the taxpayer's business would not result in generation of income or increase in the value of the property.

ANALYSIS

The Court referred to the only two decisions that had considered subsection 164(1.2) - *The Minister of National Revenue v Chabot*, [2010 FC 574](#); and *Minister of National Revenue v Clarke*, [2011 FC 838](#). The Court also referred to decision dealing with section 225.2 of the ITA which permits the issuance of a jeopardy order where the Minister has not yet received funds, and noted that those decisions are not relevant to subsection 164(1.2) - *Canada v Golbeck*, [1990] 2 CTC 438; *1853-9049 Quebec Inc v Her Majesty the Queen*, [1987] 1 CTC 137.

Subsection 164(1.2) applies:

- Where the Minister makes an application within 45 days after the receipt of a written request for repayment of an amount or surrender of security;
- When a judge is satisfied that there are reasonable grounds for believing that the collection of all of any amount assessed would be jeopardized by the repayment or surrender;

When the section applies the Judge can order any or all of the amount not to be repaid or surrendered, and to make such other orders as the Judge considers reasonable in the circumstances.

As part of the "reasonable grounds to believe" test, the Court must assess the taxpayer's net worth and ability to satisfy the tax independent of the refund at issue. Relevant factors include:

- Unorthodox behaviour of the taxpayer;
- The potential for dissipation of assets by the taxpayer;
- Amount of debt compared to the amount of refund;
- Value of taxpayer's net assets;
- Sufficiency and availability of taxpayer's assets;

Where in all the circumstances the Judge is satisfied that reasonable grounds are made out that the release of any or all of the refund or security would result in that amount not being available to the Minister for collection, then the collection of the debt is jeopardized.

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