

Reassessment Beyond Normal Reassessment Period - Accountant's Mistake

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Vine Estate v The Queen, [2014 TCC 64](#)

One of the issues was whether an error committed by the taxpayer's accounting firm was of the kind that would allow for reassessment beyond the normal reassessment period. The other issue was the valuation of shares based on the valuation of property owned by the corporation.

The court stated that for the MNR to reassess beyond the normal reassessment period in the case of an estate, in looking at misrepresentation due to carelessness or negligence, one must look at whether the executor/legal representative took reasonable care in filing the return. When this involves the use of professionals who prepare the return, this requires evidence that shows a review of the return with a view to understanding and ascertaining its correctness.

FACTS

The Deceased's terminal year return and Estate returns were prepared by his long-standing accountants. In the Estate's first year a large capital loss was incurred, and the loss was carried back to the terminal year (to offset capital gains) of the deceased pursuant to ITA subsection 164(6) by filing an amended return within the time prescribed by ITA subsection 152(6).

In preparing the amended return the accountants discovered an error in the terminal year return - one property was treated as a partnership when it was held as tenants in common with a daughter. The valuation of an undivided interest in property is different than partnership interest in the property. The error resulted in a reporting a capital gain, where a combination of capital gain and recaptured CCA was appropriate. This error was corrected, but resulted in a further error of double reporting the capital gain.

The MNR began an audit, and obtained a waiver that referred to capital gains but not recapture of CCA.

ANALYSIS

[Justice D Campbell](#) stated that for the MNR to assess beyond the normal reassessment period, the evidence must show that the taxpayer misrepresented the facts in his return due to neglect, carelessness, or wilful default (ITA s 152(4)(a)(i)). The onus is on the taxpayer to show that the failure was not a misrepresentation that was attributable to neglect, carelessness, or wilful default. This is not a penal, but a remedial, provision that balances the taxpayer's need for finality and the self-reporting system's need to ensure correct reporting of information (see *College Park Motors Ltd v The Queen*, [2009 TCC 409](#)).

In this case neglect or carelessness led to the omission of recapture as a result of inaccurate

characterization leading to over-reporting of capital gains and unreporting of recapture. In dealing with otherwise statute barred years, the courts must answer two questions ([Farm Business Consultants Inc v The Queen](#), 96 DTC 6085 (FCA)):

1. what is the alleged misrepresentation?
2. to what can the misrepresentation be attributed?

In this case, the issue is "who" made the misrepresentation, since 152(4) refers to a misrepresentation by the "taxpayer of the person filing the return". The taxpayer is the deceased or his estate, and therefore cannot be the one who made the misrepresentation.

The person "filing the return", the case of an estate, is the executors/legal representatives who are required to file the return (see Subparagraph 150(1)(d)(i); [Aridi v The Queen](#), 2013 TCC 74). Thus, an accountant or professional who prepares the return is not captured by this wording. The person filing the return and the person preparing the return are distinct.

A misrepresentation is material information that is false in substance and fact, and can be innocent or not ([Minister of National Revenue v Taylor](#), 61 DTC 1139). For neglect to be established, the taxpayer must be shown to not have exercised reasonable care ([Gebhart Estate v The Queen](#), 2008 FCA 206; [Venne The Queen](#), 84 DTC 6247). An honest but mistaken belief does not allow for reassessment beyond the normal reassessment period.

The Court stated that this error was not a honest mistake, but one due to inattention and care by a professional. The error was obviously incorrect, not insignificant, and not part of complicated or technical reporting. However, the issue is not whether the professionals were negligent or careless, but whether the executors failed to exercise reasonable care.

Reasonable care is the care that would be expected of a wise and prudent person in the circumstances ([Angus v The Queen](#), 96 DTC 1824). This requires:

- the person filing the return to review it, engage in extensive conversation with the preparer, and ask relevant questions - [Aridi](#); or
- form a bona fide belief of the correctness of the return based on recommended filing positions of professionals, or CRA technical bulletins - [Envision Credit Union v The Queen](#), 2010 TCC 576; or
- had reviewed the return and relied on professional opinions and other reasonably reliable statements - [O'Dea v The Queen](#), 2009 TCC 295.

In this case the executor stated that he did not review the return as it didn't mean much to him - they were just numbers and he didn't understand the intricacies of a complicated tax return. The Court stated that the care exercised - quickly flipping through the return, not reviewing it - does not show any attempt to understand the return or that any questions were asked about it. This was not even the bare minimum attention and care required. A taxpayer cannot absolve responsibility by hiring a professional and leaving matters in that professional's hands. The TCC stated at paragraph 41:

[...] I do not believe that the standard of reasonable care requires that the taxpayer pick out the specific errors/mistakes/miscalculations in the return but, rather, the standard requires that the taxpayer's conduct and actions exhibit a deliberate attempt to complete a review and inquiry with the knowledge they have. It is the standard of a reasonably prudent person, not that of a tax expert.

The fact that the Minister could have perceived the error is irrelevant. A taxpayer cannot get away by improperly completing a return while providing accurate basic working data and documents. It is the taxpayer who must be diligent and take reasonable care in preparing returns. The Minister was allowed to reassess beyond the normal reassessment period.

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