

Welch v The Queen, 2012 TCC 350

Can Parties With Order of Provincial Superior Court Affect ITA's Requirements of Income Inclusion?

Welch v The Queen, [2012 TCC 350](#)

At Issue was whether individuals could agree as part of an order of a Provincial Superior Court to avoid the applicaiton of ITA's requirements that certain amounts be included in Income.

The TCC held that an Order of a provincial superior court cannot change the requirements of the ITA, and the parties cannot agree as between themselves to change what the act includes and excludes as income.

COMMENTS

There is some tension in the case law regarding the application and affect of provincial legislation, and therefore provincial judicial determinations, on

FACTS

The parties separated and agreed in 2009, as included in an Order of the Ontario Superior Court, that the amounts for spousal support would not be deducted by the payer spouse and would not be included in income of the receiver. The MNR reassessed to include the amounts received in income.

ANALYSIS

The TCC held that an Order of a provincial superior court cannot change the requirements of the ITA, and the parties cannot agree as between themselves to change what the act includes and excludes as income.

So long as the amount meets the definition of "support amount" in subsection 56.1(4) of the ITA, and is not a "child support amount", then the formula fond in paragraph 56(1)(b) applies