

Timely Tax Returns Should be a Top Priority

August 15, 2011

The recent decision of the Federal Court in *Estate of The Late Sloma Rosenberg v. Minister of National Revenue*, 2011 FC 445 provides a cautionary reminder that every effort should be made to ensure that tax returns are filed on time.

The case arose out of a request for the Federal Court to review the decision of the Canada Revenue Agency not to provide relief in respect of a penalty which was imposed for the late filing of the deceased's terminal income tax return.

This was not a simple estate. The deceased died intestate. The court appointed a liquidator. There were disputes between the heirs. There was an undeclared offshore bank account that ultimately resulted in a voluntary disclosure.

The liquidator had instructed the deceased's accountant to prepare and file the terminal return and quickly sent in a payment on account of the tax that might be owing. For whatever reason, the accountant failed to file the return and a new accountant was retained resulting in the terminal return being filed in September rather than by the end of April when it was required to be filed. Significant late filing penalties were assessed.

Among various applications to the CRA to provide relief from interest and penalties, the liquidator was unsuccessful in obtaining relief for the late filing penalty imposed in respect of the terminal return.

One could understand why the liquidator might be distracted with all the complexities. It was clear neither the liquidator nor the accountant had sufficient information to determine accurately the amount of tax owing by the time the terminal return was due. Further, the liquidator was having to deal with an intestacy and the dispute among the heirs.

In upholding the reasonableness of the tax authority's decision not to relieve the penalty, the Federal Court made two significant findings:

- Just because a tax return may not be accurate should not prevent it from being filed on time with a letter explaining that the tax has been estimated in the absence of all the information required to calculate the tax accurately.
- The dispute among heirs did not constitute extraordinary circumstances sufficient to justify cancellation of the late filing penalty.

Notwithstanding disputes or incomplete information, getting the tax returns in on time must be a top priority for all persons engaged in estate administration.

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