

Federal Court



Cour fédérale

Date: 20090921

Docket: T-2069-07

Citation: 2009 FC 940

Ottawa, Ontario, September 21, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

RANDY KNECHT

Applicant

and

**THE ATTORNEY GENERAL
OF CANADA**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a Director's Liability Assessment dated June 10, 2003, where the Minister refused to exercise the discretion conferred by section 281.1 of the *Excise Tax Act*, R.S., 1985, c. E-15 (the Act), to grant the applicant relief from interest and penalties on the Goods and Services Tax (GST) payable for the reporting periods between October 1, 1998 and December 31, 1999 totalling \$70,505.63. The applicant is a self-represented litigant.

[2] The only question is whether Minister reasonably exercised his discretion pursuant to section 281.1 of the Act in deciding not to waive or cancel penalties and interest assessed to the Applicant with respect to the Director's Liability Assessment dated June 10, 2003?

Factual Background

[3] Ken Taylor Motors Ltd. failed to remit GST for its reporting periods in 1998 and 1999, for which it was assessed on February 10, 1999, June 4, 1999 and August 23, 1999, resulting in a Director's Liability Assessment pursuant to subsection 323(1) of the Act.

[4] The interest and penalties arising from the Director's Liability Assessment of the applicant dated June 10, 2003 totalled \$70,505.63 including interest and penalties.

[5] A line of credit with the Royal Bank had become overdrawn when cheques were written on the account in order to cover employee wages and payments to GMAC. These cheques were returned because of non-sufficient funds, which prompted the seizure and sale action by GMAC in January 1999. Two Third Party Requirements to Pay were sent by regular mail to the Royal Bank dated March 9, 1999 (applicant's record, at pages 39 and 41). The first one was eventually paid by the Royal Bank but the second one (page 41) was never paid because it had been sent by regular mail instead of registered or certified mail or serve in person. The respondent confirmed in a letter dated September 2, 2009 (applicant's record, at page 50) that the Requirement to Pay issued pursuant to the *Excise Tax Act* had to be served by registered or certified mail or in person.

[6] The applicant implied also that he was forced to use his entire retirement fund in 2000 to compensate for the loss of income and he argued that he would be able to make arrangements to pay the principal if the penalties and interest were cancelled.

[7] In September 2003, the applicant filed a Notice of Objection to the Director's Liability Assessment, which was confirmed by the Minister on June 25, 2004.

[8] On November 14, 2006, the Tax Court of Canada dismissed the applicant's appeal of the Director's Liability Assessment and the applicant was deemed responsible for the debt.

[9] On November 9, 2007, the applicant paid \$25,517.72 (applicant's record, at page 151) being the principal due, leaving the penalties and interest unpaid.

Legislative Framework

[10] The applicable legislative provisions can be found at Appendix A at the end of this document.

[11] The Taxpayer Relief Provisions of the *Income Tax Act*, 1985, c. 1 (5th Suppl.) gives Canada Revenue Agency (CRA) the discretion to waive or cancel all or part of properly assessed penalties and interests. Discretion will generally be exercised if the taxpayer has not complied with the Act due to circumstances beyond his or her control, financial hardship or due to actions of the CRA. In addition, prior to making a decision with regard to the cancellation of penalties or interest, the

Agency will review the taxpayer's situation to determine if a reasonable standard of care has been exercised in the administration of his or her affairs.

[12] The decision making process in respect of a request by a taxpayer for cancellation or waiver of interest and/or penalties (a Fairness Request) pursuant to section 281.1 of the Act begins when a CRA Fairness Officer reviews the taxpayer's first level request. The Fairness Officer prepares a report and makes a recommendation on the taxpayer's First Level Request. Where the amount in issue exceeds \$5,000, the First Level Request is reviewed by a committee of three Team Leaders (First Level Committee). If the taxpayer requests a review of the First Level Request (a Second Level Request), a report is prepared by a CRA Officer who was not involved in the First Level Request for review by a committee which consists of the Assistant Director of the Revenue Collections and Client Services Division, the Assistant Director of the Audit Division and the Director of the South Interior Tax Services office (Second Level Committee). The Second Level Committee reviews all the material and then makes a decision.

[13] In deciding whether to grant a taxpayer relief in response to a Fairness Request, the factors considered by the Minister generally include the following:

- (a) the taxpayer's history of compliance with GST obligations;
- (b) whether or not the taxpayer has knowingly allowed a balance of GST payable to exist upon which arrears interest has accrued;
- (c) whether or not the taxpayer has exercised a reasonable amount of care and has not been negligent or careless in conducting his or her affairs under the self-assessment system;

- (d) whether or not the taxpayer has acted quickly to remedy any delay or omission attributable to the taxpayer; and
- (e) whether the taxpayer is subject to hardship which affects his or her ability to pay the assessed amounts.

Impugned Decision

[14] On March 11, 2007, the applicant applied to the Minister pursuant to section 281.1 of the Act for a waiver of interest and penalties on his GST payable for the reporting periods between October 1, 1998 and December 31, 1999 (the First Level Request).

[15] The basis of the First Level Request included financial hardship and alleged faulty collection actions by the CRA. The First Level Request Report was reviewed by the First Level Committee who denied the First Level Request on June 13, 2007, based on the following grounds:

- (a) the Tax Court of Canada upheld the Director's Liability Assessment on November 16, 2006;
- (b) the applicant maintained an ability to earn net monthly income of at least \$4,500 to \$7,470;
- (c) the applicant contributed a total of \$35,900 between 2001 and 2006 to his registered retirement savings plan (RRSPs), which the applicant's spouse contributed a total of \$23,276 to her RRSPs during that same time;
- (d) the applicant had a one-half interest in his personal residence, with an equity share equal to approximately \$116,550;
- (e) the applicant claimed monthly expenses which were not reasonable, such as \$1,400 in groceries for two people, \$1,000 in house maintenance and repairs and \$200 in legal and accounting fees;

- (f) the applicant proposed to make a lump sum payment of \$38,049 toward the GST debt;
- (g) the applicant failed to demonstrate that he suffered financial hardship in any effort to pay his GST debt;
- (h) the applicant failed to demonstrate that there were any circumstances beyond his control to pay his GST debt;
- (i) the applicant had control of the company's assets and did not fulfill a commitment to pay the GST debt by selling some of the company's property or recovering accounts receivable;
- (j) the company sold some of its property and paid off a secured creditor other than the CRA;
- (k) the applicant did not show any attempt of having GMAC hold back the GST portion of the proceeds of sale following the liquidation of the inventory;
- (l) despite the applicant's family's medical issues, the applicant maintained the ability to earn income and take responsibility for the GST debt; and
- (m) the CRA's efforts to collect the arrears on the applicant's GST debt were in accordance with its policies and procedures and there was no indication of any undue delay or error by the CRA in its collection action.

[16] It was noted that the applicant and his spouse have a combined monthly income of approximately \$7,400 for 2006. Based on monthly expenses of \$4,410 claimed by the applicant, there is \$3,060 per month that the applicant can pay towards his debt. Also, with the exception of the refund that was applied from the applicant's T1 account, the last payment made to the account was on May 12, 2005.

[17] On July 28, 2007, the applicant made a Second Level Request for a waiver of interest and penalties on the GST payable. The applicant claimed that many of the points made in the First Level Request were either misunderstood or overlooked by the CRA and he noted that he only had \$64 in RRSPs because he was forced to cash them in after the closure of Ken Taylor Motors Ltd.

[18] Following a review of the Second Level Request, a CRA officer prepared a report recommending the denial of the Second Level Request. The Second Level Committee decided to deny the applicant's Second Level Request on October 16, 2007 on the following grounds:

- (a) the guidelines established in GST Memorandum G500-3-2-1;
- (b) the applicant had a total income of \$41,813, \$71,812 and \$88,730 in his 2004, 2005 and 2006 taxation years, respectively;
- (c) the total income of the applicant's spouse was \$19,619, \$20,079 and \$20,373 in the 2004, 2005 and 2006 taxation years, respectively;
- (d) the applicant contributed a total of \$34,900 between 1997 and 2002 to his RRSPs, while his spouse withdrew \$6,452 from her RRSPs;
- (e) the applicant had a one-half interest in his personal residence, with an equity share equal to approximately \$116,550;
- (f) the combined net monthly income of the applicant and his spouse was \$3,060 in 2006;
- (g) in summary, the applicant failed to demonstrate that he suffered financial hardship in any efforts to pay his GST debt;
- (h) the applicant had a history of non-compliance with his obligations under the Act and had not exercised a reasonable amount of care in conducting his affairs under the self-assessment system under the Act;

- (i) the applicant had not acted quickly to remedy any delay or omission in making GST payments;
- (j) the applicant had allowed interest to accrue on his GST debt;
- (k) the applicant had not made a voluntary payment on his GST debt since May 12, 2005;
- (l) despite the applicant's family medical issues, the applicant maintained the ability to earn income and take responsibility for the GST debt;
- (m) the CRA responded to the applicant's letter dated April 2, 2002 (setting out his due diligence defence) by letter dated May 1, 2002;
- (n) the CRA was not obligated to deliver Requirements to Pay by registered mail (despite the conclusion in the Second Level Report, prior to amendments to the Act in force on October 20, 2000, section 317 of the Act provided that the Minister was required to deliver Requirements to Pay by registered mail, certified mail or personal delivery);
- (o) as there was insufficient equity following the sale of the company's property to satisfy the company's GST debt, the CRA released its judgments registered against the company's property; and
- (p) in summary, there was no indication of any undue delay or error by the CRA in its collection action.

[19] After reviewing all the circumstances of this case, it was found that it would be inappropriate to cancel any interest or penalty charges. Furthermore, interest would continue to accrue until the account is paid in full.

Standard of Review

[20] The respondent argues that the grounds of review are set out in subsection 18.1(4) of the *Federal Courts Act* and are the bases upon which courts may generally provide the remedy sought. A reviewing court should consider whether the discretion was exercised in good faith and in accordance with the principles of natural justice. The Court should not interfere if the Minister did not rely upon irrelevant or extraneous considerations (*Barron v. Canada (Minister of National Revenue)* (1997), 209 N.R. 392, 69 A.C.W.S. (3d) 976 (F.C.A.) at paragraphs 5 and 8).

[21] Tax fairness decisions are discretionary in nature. Before *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the standard of review applicable to the Minister's exercise of discretion in a decision made under section 281.1 of the Act was unreasonableness simpliciter (*Lanno v. Canada (Customs and Revenue Agency)*, 2005 FCA 153, 334 N.R. 348). Following *Dunsmuir*, tax fairness decisions are reviewable according to the new standard of reasonableness.

[22] As a result, the Court will only intervene to review the decision if it does not fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at paragraph 47). For a decision to be reasonable there must be justification, transparency and intelligibility within the decision making process.

Applicant's Arguments

[23] The Taxpayer Relief Provisions of the *Income Tax Act* state that the Minister may grant relief from the application of penalties and interest if the penalty and interest arose primarily

because of actions of the CRA, such as processing delays or errors in processing. The applicant claims CRA caused several delays and errors in processing, thus justifying the grant of relief from the application of penalties and interest. These errors and delays include:

- (a) Failure to send a Requirement to Pay via registered mail as was required in section 317 of the Act as it was in effect at the time;
- (b) Releasing liens on property that was sold with the sole intent of satisfying the debt to CRA;
- (c) A pre-assessment letter was sent more than two years after the business was closed;
- (d) A due diligence defence was submitted on April 1, 2002. However, no response was issued until May 21, 2003, nearly 14 months later;
- (e) A request for a statement accounting for money collected by CRA took several written requests and more than eight months;
- (f) A request for a statement accounting for money collected by Okanagan Court bailiffs, acting on behalf of CRA took several requests and more than a year;
- (g) Okanagan Court bailiffs acting on behalf of CRA collected money that was not remitted.

[24] The applicant requests that CRA re-examine the facts and reconsider his original request for relief under the terms of the Taxpayer Relief Provisions of the *Income Tax Act*.

[25] After the death of his father on June 6, 1996, the applicant took over the company, including aspects of the business unfamiliar to him, including bookkeeping and finances. At the same time, he

performed duties as executor of the estate and as well dealt with probate issues, lawyers and other matters.

[26] The applicant also had to help his spouse who became ill following surgery in April 1996 and care for his disabled son. Furthermore, the applicant's brother-in-law, who was also his best friend, was killed in a logging accident in August 1999, adding to the stress at the time the business was collapsing. There was also pressure from family to have security on the applicant's mother's personal property as well as the place of business of Ken Taylor Motors Ltd. released from liens and security interests.

[27] The applicant submits that an error by the Royal Bank in January 1999 caused some cheques from Ken Taylor Motors Ltd. to be returned, which in turn caused GMAC to call in their loan on vehicle inventory. In order to receive close to their actual value, Joy Knecht (the applicant's mother and the other company director) pressured the applicant to sell the vehicles from the dealership to get the maximum value. She was the only one who had a personal guarantee signed to GMAC and did not want to risk having to realize on her guarantee. The applicant pursued action first through the Royal Bank Ombudsman and then the Canadian Banking Ombudsman, who agreed that the bank was in error.

[28] The applicant alleges that errors and delays by CRA also caused interest and penalties to add up. For example, two Requirements to Pay were issued by CRA to the Royal Bank in March 1999. One was issued in accordance with section 224 of the *Income Tax Act* and the other was issued in

accordance with section 317 of the Act. Both were delivered by regular mail and the Royal Bank failed to properly pay on either Requirement to Pay. The Royal Bank disputed the Requirement to Pay because it was not sent via registered or certified mail or delivered by hand, as was required by the Act at that time. The applicant argues that if CRA had registered this Requirement to Pay, the entire amount of the GST owing at the time would have been paid.

[29] In September 1999, a piece of property owned by Ken Taylor Motors Ltd. was sold and the proceeds of this sale were to be used to pay the GST debt, as discussed with and agreed upon by CRA. The applicant submits that instead of exercising its priority by providing a payout figure and collecting, CRA released its liens on the property, allowing other creditors to acquire the proceeds, even though the sole purpose of the sale was to raise the funds with which to pay CRA. An opportunity to receive payment in full was thus lost due to the actions of CRA. When the applicant raised this point in Tax Court, the CRA representative could not explain why this lien was released. Rodot Holdings Co. Ltd. had a lien on the property as security for a debenture and received the proceeds of the sale of the property. The debenture also included other assets of Ken Taylor Motors Ltd. which were seized and sold by Okanagan Court bailiffs.

[30] Following receipt of a pre-assessment letter dated January 23, 2002, more than two years after the close of the business in 1999, the applicant submitted a due diligence defence on April 1, 2002 but no response was issued until May 21, 2003, nearly 14 months later.

[31] A request for a statement of accounting for money collected was requested by the applicant on June 17, 2003. Following several subsequent requests, a statement was received in a letter dated November 14, 2003 but it did not include the requested breakdown. Finally, more than eight months later and after another request, the applicant received the statement on February 27, 2004.

[32] Although the applicant filed a Notice to Appeal on September 20, 2004, his case was only heard on November 2, 2006, more than two years after filing the appeal. During this period, the case was handled by four different counsels for the Minister. The first three all wanted to discuss possible settlements, but the last counsel was unwilling to discuss this and insisted on going to court.

[33] The applicant also contends that many of the points in the appeal were never addressed in the Minister's denial of the First Level Request on June 13, 2007. The response to the Second Level Request October 16, 2007 also disregarded some of the points addressed or did not consider the supporting documentation provided by the applicant.

[34] The applicant submits that having to pay interest and penalties will cause hardship to his family and a detriment to his wife's already frail health. Although the principal amount has been paid in full, the interest and penalties have climbed to over \$53,000.

[35] The applicant reiterates that he was forced to use his entire retirement savings in 2000 after the loss of his business. He did not qualify to receive unemployment income and his wife was

unable to work full time due to her illness. If the applicant borrowed an additional \$53,000, he would be left with a large and unmanageable payment until his late 70s. The applicant is 54 years old and he would be unable to save a significant amount in a retirement plan which would enable him to refund the large payments. Furthermore, there is no retirement fund available to him at his current employer. The applicant's wife is only able to work part time and although their adult son is now employed, he still lives at home as he requires home support due to his learning disabilities. The applicant has an aging mother and his elderly in-laws are in need of increasing support. The applicant often accompanies his wife to travel to Nanaimo to care for his in-laws, forcing him to take time away from his job. He does not get paid during these trips because he works on commission.

Respondent's Arguments

[36] The applicant was found personally liable for unremitted GST by the Tax Court of Canada. Despite this, the respondent submits he still made no efforts to pay any part of his GST debt to CRA, even though he had the financial means to make voluntary payments for the full amount. Instead, he knowingly allowed interest to accrue.

[37] Having considered all of the applicant's circumstances, there was no undue delay by the Minister with respect to its collection of the applicant's debt and the Minister reasonably exercised his discretion pursuant to section 281.1 of the Act in denying the applicant's request for interest and penalty relief.

[38] The Minister created guidelines to facilitate the exercise of his discretion under section 281.1 of the *Excise Tax Act* to cancel or waive penalties and interest payable under section 280 of the *Excise Tax Act*. The respondent notes the Minister cannot fetter his discretion by treating the guidelines as binding and excluding all other relevant reasons for exercising his discretion. Each taxpayer relief request is considered on its merits (*Maple Lodge Farms Ltd. v. Canada*, [1982] 2 S.C.R. 2 at pages 6 and 7).

[39] At the time of the applicant's Second Level Request, GST Memorandum G500-3-2-1, entitled "Cancellation or Waiver of Penalties and Interest" (GST500-3-2-1), which sets out some of the factors considered by CRA in deciding whether to apply section 281.1 of the Act, was in effect. Generally, a portion of interest and penalties may be waived if they arise from circumstances beyond a taxpayer's control, if the interest and penalties arise primarily because of the actions of the CRA or where the taxpayer has proved an inability to pay the amounts owing.

[40] In deciding whether to grant a taxpayer relief in response to an applicant's request, the factors considered by the Minister generally include the following:

- (a) the taxpayer's history of compliance with GST obligations;
- (b) whether or not the taxpayer has knowingly allowed a balance of GST payable to exist upon which arrears interest has accrued;
- (c) whether or not the taxpayer has exercised a reasonable amount of care and has not been negligent or careless in conducting his or her affairs under the self-assessment system;

- (d) whether or not the taxpayer has acted quickly to remedy any delay or omission attributable to the taxpayer; and
- (e) whether the taxpayer is subject to hardship which affects his or her ability to pay the assessed amounts.

[41] According to the respondent, it was reasonable for the Minister to conclude that the applicant's situation did not warrant a waiver of interest and penalties on the GST payable in respect of the Director's Liability Assessment and to consequently deny his request for relief as the applicant has not demonstrated financial hardship or any circumstances beyond his control to pay the GST debt. The records of the CRA and the financial information supplied by the applicant support his ability to pay interest and penalties over a period of time that would not cause any additional financial burden.

[42] The respondent argues the applicant has not shown a history of compliance with his tax obligations under the Act. He negligently conducted his affairs under the self-assessment system of the Act, he did not act quickly to remedy any delay or omission in making payments of GST and he allowed interest to accrue on a known GST debt.

[43] Also, the applicant did not demonstrate any undue delay or error on the part of the CRA in the collection of the GST debt. The CRA responded to the applicant's due diligence submissions within reasonable time and acted in accordance with its policies and procedures in its administration of the collection of the GST debt. The Minister cannot be blamed for not having detected the taxpayer's own negligence sooner. The Minister is only required to take steps or commence

processes within a reasonable amount of time (*Braceland v. Canada (Minister of National Revenue)* (1999), 165 F.T.R. 93, 87 A.C.W.S. (3d) 1048 (F.C.T.D.) at paragraph 22).

[44] Furthermore, the Minister considered all of the information before him and considered no irrelevant information in arriving at his decision. The Minister properly and reasonably exercised his discretion and it was reasonable for him to conclude that relief is not appropriate in the circumstances.

Analysis

[45] I have been persuaded by the applicant's submission that the respondent made an error in not sending by registered mail the second Requirement to Pay (March 9, 1999). But, this error is not determinative. It does not have an impact on the penalties and interests imposed on the applicant. The record shows (respondent's record, at page 23) that there was no money available for the Royal Bank to pay the second Requirement to pay (\$38,840.12).

[46] The Court is not convinced with the applicant's evidence that the respondent has committed an error when it released the liens on a property to be sold (applicant's record, at page 53). The Court cannot conclude with the documents filed by the applicant that the respondent was negligent or did not protect its interests.

[47] The applicant has not demonstrated how the CRA's assessment was in error.

[48] The respondent considered all the applicant's arguments and the particular facts of the case in making its decision when reviewing the applicant's appeal. There is no evidence that the penalties and interest were incurred primarily because of the actions of the CRA.

[49] The Court understands there are unfortunate circumstances plaguing the applicant's situation but the decision taken by the respondent cannot be characterized as unreasonable. It falls in the range of acceptable outcomes (*Dunsmuir*, paragraph 47).

[50] For this reason, this judicial review application shall be dismissed.

[51] Given the particular circumstances of this case, there shall be no award for costs.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be dismissed. No costs are awarded.

“Michel Beaudry”

Judge

APPENDIX A

Relevant Legislative Provisions

Excise Tax Act, R.S., 1985, c. E-15:

Waiving or cancelling interest

281.1 (1) The Minister may, on or before the day that is 10 calendar years after the end of a reporting period of a person, or on application by the person on or before that day, waive or cancel interest payable by the person under section 280 on an amount that is required to be remitted or paid by the person under this Part in respect of the reporting period.

Garnishment

317. (1) If the Minister has knowledge or suspects that a particular person is, or will be within one year, liable to make a payment to another person who is liable to pay or remit an amount under this Part (in this subsection and subsections (2), (3), (6) and (11) referred to as the “tax debtor”), the Minister may, by notice in writing, require the particular person to pay without delay, if the moneys are payable immediately, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor’s liability under this Part.

Idem

(2) Without limiting the generality of

Renonciation ou annulation — intérêts

281.1 (1) Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin d’une période de déclaration d’une personne ou sur demande de la personne présentée au plus tard ce jour-là, annuler les intérêts payables par la personne en application de l’article 280 sur tout montant qu’elle est tenue de verser ou de payer en vertu de la présente partie relativement à la période de déclaration, ou y renoncer.

Saisie-arrêt

317. (1) Dans le cas où le ministre sait ou soupçonne qu’une personne donnée est ou sera tenue, dans les douze mois, de faire un paiement à une autre personne — appelée « débiteur fiscal » au présent paragraphe et aux paragraphes (2), (3), (6) et (11) — qui elle-même est redevable d’un montant en vertu de la présente partie, il peut, par avis écrit, exiger de la personne donnée que tout ou partie des sommes par ailleurs payables au débiteur fiscal soient versées, immédiatement si les sommes sont alors payables, sinon, dès qu’elles le deviennent, au receveur général au titre du montant dont le débiteur fiscal est redevable selon la présente partie.

Idem

(2) Sans restreindre la portée générale du

subsection (1), where the Minister has knowledge or suspects that within ninety days

(a) a bank, credit union, trust company or other similar person (in this section referred to as the “institution”) will loan or advance moneys to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by, a tax debtor who is indebted to the institution and who has granted security in respect of the indebtedness, or

(b) a person, other than an institution, will loan or advance moneys to, or make a payment on behalf of, a tax debtor who the Minister knows or suspects

(i) is employed by, or is engaged in providing services or property to, that person or was or will be, within ninety days, so employed or engaged, or

(ii) where that person is a corporation, is not dealing at arm’s length with that person, the Minister may, by notice in writing, require the institution or person, as the case may be, to pay in whole or in part to the Receiver General on account of the tax debtor’s liability under this Part the moneys that would otherwise be so loaned, advanced or paid, and any moneys so paid to the Receiver General are deemed to have been loaned, advanced or paid, as the case may be, to the tax debtor.

Garnishment

(3) Despite any other provision of this Part, any other enactment of Canada other than the Bankruptcy and Insolvency Act, any

paragraphe (1), lorsque le ministre sait ou soupçonne que, dans les 90 jours, selon le cas :

a) une banque, une caisse de crédit, une compagnie de fiducie ou une personne semblable — appelée « institution » au présent article — prêtera ou avancera une somme au débiteur fiscal qui a une dette envers l’institution et qui a donné à celle-ci une garantie pour cette dette, ou effectuera un paiement au nom d’un tel débiteur ou au titre d’un effet de commerce émis par un tel débiteur;

b) une personne autre qu’une institution prêtera ou avancera une somme à un débiteur fiscal, ou effectuera un paiement au nom d’un débiteur fiscal, que le ministre sait ou soupçonne :

(i) être le salarié de cette personne, ou prestataire de biens ou de services à cette personne, ou qu’il l’a été ou le sera dans les 90 jours,

(ii) lorsque cette personne est une personne morale, avoir un lien de dépendance avec cette personne, il peut, par avis écrit, obliger cette institution ou cette personne à verser au receveur général au titre de l’obligation du débiteur fiscal en vertu de la présente partie tout ou partie de la somme qui serait autrement ainsi prêtée, avancée ou payée. La somme ainsi versée est réputée avoir été prêtée, avancée ou payée au débiteur fiscal.

Saisie-arrêt

(3) Malgré les autres dispositions de la présente partie, tout texte législatif fédéral à l’exception de la Loi sur la faillite et

enactment of a province or any law, if the Minister has knowledge or suspects that a particular person is, or will become within one year, liable to make a payment

(a) to a tax debtor, or

(b) to a secured creditor who has a right to receive the payment that, but for a security interest in favour of the secured creditor, would be payable to the tax debtor, the Minister may, by notice in writing, require the particular person to pay without delay, if the moneys are payable immediately, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General on account of the tax debtor's liability under this Part, and on receipt of that notice by the particular person, the amount of those moneys that is so required to be paid to the Receiver General shall, despite any security interest in those moneys, become the property of Her Majesty in right of Canada to the extent of that liability as assessed by the Minister and shall be paid to the Receiver General in priority to any such security interest.

(4) [Repealed, 2000, c. 30, s. 95]

Effect of receipt

(5) A receipt issued by the Minister for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

Effect of requirement

(6) If the Minister has, under this section, required a person to pay to the Receiver

l'insolvabilité, tout texte législatif provincial et toute règle de droit, si le ministre sait ou soupçonne qu'une personne est ou deviendra, dans les douze mois, débitrice d'une somme à un débiteur fiscal, ou à un créancier garanti qui, grâce à un droit en garantie en sa faveur, a le droit de recevoir la somme autrement payable au débiteur fiscal, il peut, par avis écrit, obliger la personne à verser au receveur général tout ou partie de cette somme, immédiatement si la somme est alors payable, sinon dès qu'elle le devient, au titre du montant dont le débiteur fiscal est redevable selon la présente partie. Sur réception par la personne de l'avis, la somme qui y est indiquée comme devant être versée devient, malgré tout autre droit en garantie au titre de cette somme, la propriété de Sa Majesté du chef du Canada, jusqu'à concurrence du montant dont le débiteur fiscal est ainsi redevable selon la cotisation du ministre, et doit être versée au receveur général par priorité sur tout autre droit en garantie au titre de cette somme.

(4) [Abrogé, 2000, ch. 30, art. 95]

Récépissé du ministre

(5) Le récépissé du ministre relatif à des sommes versées, comme l'exige le présent article, constitue une quittance valable et suffisante de l'obligation initiale jusqu'à concurrence du paiement.

Étendue de l'obligation

(6) L'obligation, imposée par le ministre aux termes du présent article, d'une personne de

General on account of the liability under this Part of a tax debtor moneys otherwise payable by the person to the tax debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the requirement applies to all such payments to be made by the person to the tax debtor until the liability under this Part is satisfied and operates to require payments to the Receiver General out of each such payment of such amount as is stipulated by the Minister in a notice in writing.

verser au receveur général, au titre d'un montant dont un débiteur fiscal est redevable selon la présente partie, des sommes payables par ailleurs par cette personne au débiteur fiscal à titre d'intérêts, de loyer, de rémunération, de dividende, de rente ou autre paiement périodique s'applique à tous les paiements analogues à être effectués par la personne au débiteur fiscal tant que le montant dont celui-ci est redevable n'est pas acquitté. De plus, l'obligation exige que des paiements soient faits au receveur général sur chacun de ces versements, selon le montant que le ministre fixe dans un avis écrit.

Failure to comply

(7) Every person who fails to comply with a requirement under subsection (1), (3) or (6) is liable to pay to Her Majesty in right of Canada an amount equal to the amount that the person was required under subsection (1), (3) or (6), as the case may be, to pay to the Receiver General.

Défaut de se conformer

(7) Toute personne qui ne se conforme pas à une exigence du paragraphe (1), (3) ou (6) est redevable à Sa Majesté du chef du Canada d'un montant égal à celui qu'elle était tenue de verser au receveur général en application d'un de ces paragraphes.

Idem

(8) Every institution or person that fails to comply with a requirement under subsection (2) with respect to moneys to be loaned, advanced or paid is liable to pay to Her Majesty in right of Canada an amount equal to the lesser of

Idem

(8) Toute institution ou personne qui ne se conforme pas à une exigence du paragraphe (2) est redevable à Sa Majesté du chef du Canada, à l'égard des sommes à prêter, à avancer ou à payer, d'un montant égal au moins élevé des montants suivants :

(a) the aggregate of moneys so loaned, advanced or paid, and

a) le total des sommes ainsi prêtées, avancées ou payées;

(b) the amount that the institution or person was required under that subsection to pay to the Receiver General.

b) le montant qu'elle était tenue de verser au receveur général en application de ce paragraphe.

Assessment

(9) The Minister may assess any person for any amount payable under this section by the person to the Receiver General and, where the Minister sends a notice of assessment, sections 296 to 311 apply, with such modifications as the circumstances require.

Time limit

(10) An assessment of an amount payable under this section by a person to the Receiver General shall not be made more than four years after the notice from the Minister requiring the payment was received by the person.

Effect of payment as required

(11) If an amount that would otherwise have been payable to or on behalf of a tax debtor is paid by a person to the Receiver General pursuant to a notice from the Minister issued under this section or pursuant to an assessment under subsection (9), the person is deemed, for all purposes, to have paid the amount to or on behalf of the tax debtor.

Application to Her Majesty in right of a province

(12) Provisions of this Part that provide that a person who has been required to do so by the Minister must pay to the Receiver General an amount that would otherwise be lent, advanced or paid to a particular person who is liable to make a payment under this Part, or to

Cotisation

(9) Le ministre peut établir une cotisation pour un montant qu'une personne doit payer au receveur général en vertu du présent article. Dès l'envoi de l'avis de cotisation, les articles 296 à 311 s'appliquent, compte tenu des adaptations de circonstance.

Délai

(10) La cotisation ne peut être établie plus de quatre ans suivant la réception par la personne de l'avis exigeant le paiement du montant.

Effet du paiement

(11) La personne qui, conformément à un avis que le ministre a délivré aux termes du présent article ou à une cotisation établie en application du paragraphe (9), paie au receveur général un montant qui aurait par ailleurs été payable à un débiteur fiscal, ou pour son compte, est réputée, à toutes fins utiles, payer le montant au débiteur fiscal ou pour son compte.

Application à Sa Majesté du chef d'une province

(12) Les dispositions de la présente partie prévoyant qu'une personne doit payer au receveur général, en exécution d'une obligation en ce sens imposée par le ministre, un montant qui serait par ailleurs prêté, avancé ou payé soit à une personne redevable

that particular person's secured creditor, apply to Her Majesty in right of a province.

d'un paiement aux termes de la présente partie, soit à son créancier garanti, s'appliquent à Sa Majesté du chef d'une province.

Liability of directors

323. (1) If a corporation fails to remit an amount of net tax as required under subsection 228(2) or (2.3) or to pay an amount as required under section 230.1 that was paid to, or was applied to the liability of, the corporation as a net tax refund, the directors of the corporation at the time the corporation was required to remit or pay, as the case may be, the amount are jointly and severally, or solidarily, liable, together with the corporation, to pay the amount and any interest on, or penalties relating to, the amount.

Responsabilité des administrateurs

323. (1) Les administrateurs d'une personne morale au moment où elle était tenue de verser, comme l'exigent les paragraphes 228(2) ou (2.3), un montant de taxe nette ou, comme l'exige l'article 230.1, un montant au titre d'un remboursement de taxe nette qui lui a été payé ou qui a été déduit d'une somme dont elle est redevable, sont, en cas de défaut par la personne morale, solidairement tenus, avec cette dernière, de payer le montant ainsi que les intérêts et pénalités afférents.

Income Tax Act, 1985, c. 1 (5th Suppl.):

Waiver of penalty or interest

220. (3.1) The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer (or in the case of a partnership, a fiscal period of the partnership) or on application by the taxpayer or partnership on or before that day, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the taxpayer or partnership in respect of that taxation year or fiscal period, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.

Renonciation aux pénalités et aux intérêts

220. (3.1) Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin de l'année d'imposition d'un contribuable ou de l'exercice d'une société de personnes ou sur demande du contribuable ou de la société de personnes faite au plus tard ce jour-là, renoncer à tout ou partie d'un montant de pénalité ou d'intérêts payable par ailleurs par le contribuable ou la société de personnes en application de la présente loi pour cette année d'imposition ou cet exercice, ou l'annuler en tout ou en partie. Malgré les paragraphes 152(4) à (5), le ministre établit les cotisations voulues concernant les intérêts et pénalités payables par le contribuable ou la société de personnes pour tenir compte de pareille annulation.

Garnishment

224. (1) Where the Minister has knowledge or suspects that a person is, or will be within one year, liable to make a payment to another person who is liable to make a payment under this Act (in this subsection and subsections 224(1.1) and 224(3) referred to as the “tax debtor”), the Minister may in writing require the person to pay forthwith, where the moneys are immediately payable, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor’s liability under this Act.

Idem

(1.1) Without limiting the generality of subsection 224(1), where the Minister has knowledge or suspects that within 90 days

(a) a bank, credit union, trust company or other similar person (in this section referred to as the “institution”) will lend or advance moneys to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by, a tax debtor who is indebted to the institution and who has granted security in respect of the indebtedness, or

(b) a person, other than an institution, will lend or advance moneys to, or make a payment on behalf of, a tax debtor who the Minister knows or suspects

(i) is employed by, or is engaged in providing services or property to, that person or was or

Saisie-arrêt

224. (1) S’il sait ou soupçonne qu’une personne est ou sera, dans les douze mois, tenue de faire un paiement à une autre personne qui, elle-même, est tenue de faire un paiement en vertu de la présente loi (appelée « débiteur fiscal » au présent paragraphe et aux paragraphes (1.1) et (3)), le ministre peut exiger par écrit de cette personne que les fonds autrement payables au débiteur fiscal soient en totalité ou en partie versés, sans délai si les fonds sont immédiatement payables, sinon au fur et à mesure qu’ils deviennent payables, au receveur général au titre de l’obligation du débiteur fiscal en vertu de la présente loi.

Idem

(1.1) Sans préjudice de la portée générale du paragraphe (1), lorsque le ministre sait ou soupçonne que, dans les 90 jours :

a) soit une banque, une caisse de crédit, une société de fiducie ou une autre personne semblable (appelée l’« institution » au présent article) prêtera ou avancera des fonds à un débiteur fiscal, effectuera un paiement au nom d’un débiteur fiscal ou fera un paiement à l’égard d’un effet négociable émis par le débiteur fiscal qui est endetté envers l’institution et qui a fourni à l’institution une garantie à l’égard de la dette;

b) soit une personne, autre qu’une institution, prêtera ou avancera des fonds à un débiteur fiscal ou effectuera un paiement au nom d’un débiteur fiscal que le ministre sait ou soupçonne :

(i) être employé de cette personne, ou prestataire de biens ou de services à cette

will be, within 90 days, so employed or engaged, or

(ii) where that person is a corporation, is not dealing at arm's length with that person, the Minister may in writing require the institution or person, as the case may be, to pay in whole or in part to the Receiver General on account of the tax debtor's liability under this Act the moneys that would otherwise be so lent, advanced or paid and any moneys so paid to the Receiver General shall be deemed to have been lent, advanced or paid, as the case may be, to the tax debtor.

Garnishment

(1.2) Notwithstanding any other provision of this Act, the Bankruptcy and Insolvency Act, any other enactment of Canada, any enactment of a province or any law, but subject to subsections 69(1) and 69.1(1) of the Bankruptcy and Insolvency Act and section 11.4 of the Companies' Creditors Arrangement Act, where the Minister has knowledge or suspects that a particular person is, or will become within one year, liable to make a payment

(a) to another person (in this subsection referred to as the "tax debtor") who is liable to pay an amount assessed under subsection 227(10.1) or a similar provision, or

(b) to a secured creditor who has a right to receive the payment that, but for a security interest in favour of the secured creditor, would be payable to the tax debtor, the Minister may in writing require the particular person to pay forthwith, where the moneys are immediately payable, and in any

personne ou qu'elle l'a été ou le sera dans les 90 jours,

(ii) lorsque cette personne est une société, avoir un lien de dépendance avec cette personne, il peut exiger par écrit de cette institution ou de cette personne, selon le cas, que les fonds qui seraient autrement prêtés, avancés ou payés au débiteur fiscal soient en totalité ou en partie versés au receveur général au titre de l'obligation du débiteur fiscal en vertu de la présente loi, et les fonds ainsi versés au receveur général sont réputés avoir été prêtés, avancés ou payés, selon le cas, au débiteur fiscal.

Saisie-arrêt

(1.2) Malgré les autres dispositions de la présente loi, la Loi sur la faillite et l'insolvabilité, tout autre texte législatif fédéral ou provincial et toute règle de droit, mais sous réserve des paragraphes 69(1) et 69.1(1) de la Loi sur la faillite et l'insolvabilité et de l'article 11.4 de la Loi sur les arrangements avec les créanciers des compagnies, s'il sait ou soupçonne qu'une personne donnée est ou deviendra, dans les douze mois, débiteur d'une somme :

a) soit à un débiteur fiscal, à savoir une personne redevable du montant d'une cotisation en application du paragraphe 227(10.1) ou d'une disposition semblable;

b) soit à un créancier garanti, à savoir une personne qui, grâce à une garantie en sa faveur, a le droit de recevoir la somme autrement payable au débiteur fiscal, le ministre peut exiger par écrit de la personne donnée que tout ou partie de cette somme soit payé au receveur général, sans délai si la

other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General on account of the tax debtor's liability under subsection 227(10.1) or the similar provision, and on receipt of that requirement by the particular person, the amount of those moneys that is so required to be paid to the Receiver General shall, notwithstanding any security interest in those moneys, become the property of Her Majesty to the extent of that liability as assessed by the Minister and shall be paid to the Receiver General in priority to any such security interest.

Definitions

(1.3) In subsection 224(1.2),

"secured creditor"
« créancier garanti »

"secured creditor" means a person who has a security interest in the property of another person or who acts for or on behalf of that person with respect to the security interest and includes a trustee appointed under a trust deed relating to a security interest, a receiver or receiver-manager appointed by a secured creditor or by a court on the application of a secured creditor, a sequestrator or any other person performing a similar function;

"security interest"
« garantie »

"security interest" means any interest in property that secures payment or performance

somme est payable immédiatement, sinon dès qu'elle devient payable, au titre du montant de la cotisation en application du paragraphe 227(10.1) ou d'une disposition semblable dont le débiteur fiscal est redevable. Sur réception de l'avis de cette exigence par la personne donnée, la somme dont le paiement est exigé devient, malgré toute autre garantie au titre de cette somme, la propriété de Sa Majesté jusqu'à concurrence du montant de la cotisation et doit être payée au receveur général par priorité sur toute autre garantie au titre de cette somme.

Définitions

(1.3) Les définitions qui suivent s'appliquent au paragraphe (1.2).

« créancier garanti »
"secured creditor"

« créancier garanti » Personne qui a une garantie sur un bien d'une autre personne — ou qui est mandataire de cette personne quant à cette garantie —, y compris un fiduciaire désigné dans un acte de fiducie portant sur la garantie, un séquestre ou séquestre-gérant nommé par un créancier garanti ou par un tribunal à la demande d'un créancier garanti, un administrateur-séquestre ou une autre personne dont les fonctions sont semblables à celles de l'une de ces personnes.

« disposition semblable »
"similar provision"

« disposition semblable » Disposition, semblable au paragraphe 227(10.1), d'une loi

of an obligation and includes an interest created by or arising out of a debenture, mortgage, hypothec, lien, pledge, charge, deemed or actual trust, assignment or encumbrance of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for;

"similar provision"
« disposition semblable »

"similar provision" means a provision, similar to subsection 227(10.1), of any Act of a province that imposes a tax similar to the tax imposed under this Act, where the province has entered into an agreement with the Minister of Finance for the collection of the taxes payable to the province under that Act.

Garnishment

(1.4) Provisions of this Act that provide that a person who has been required to do so by the Minister must pay to the Receiver General an amount that would otherwise be lent, advanced or paid to a taxpayer who is liable to make a payment under this Act, or to that taxpayer's secured creditor, apply to Her Majesty in right of Canada or a province.

Minister's receipt discharges original liability

(2) The receipt of the Minister for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

provinciale qui prévoit un impôt semblable à celui prévu par la présente loi, si la province concernée a conclu avec le ministre des Finances un accord pour le recouvrement des impôts payables à celle-ci en vertu de cette loi provinciale.

« garantie »
"security interest"

« garantie » Droit sur un bien qui garantit l'exécution d'une obligation, notamment un paiement. Sont en particulier des garanties les droits nés ou découlant de débiteures, hypothèques, privilèges, nantissements, sûretés, fiducies réputées ou réelles, cessions et charges, quelle qu'en soit la nature, de quelque façon ou à quelque date qu'elles soient créées, réputées exister ou prévues par ailleurs.

Saisie-arrêt

(1.4) Les dispositions de la présente loi exigeant qu'une personne verse au receveur général, par suite d'une requête du ministre en ce sens, un montant qui serait par ailleurs prêté, avancé ou payé soit à un contribuable redevable d'une somme aux termes de la présente loi, soit à son créancier garanti, s'appliquent à Sa Majesté du chef du Canada ou d'une province.

Récépissé du ministre constituant quittance

(2) Le récépissé du ministre relatif à des fonds versés, comme l'exige le présent article, constitue une quittance valable et suffisante de l'obligation initiale jusqu'à concurrence du paiement.

Idem

(3) Where the Minister has, under this section, required a person to pay to the Receiver General on account of a liability under this Act of a tax debtor moneys otherwise payable by the person to the tax debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the requirement applies to all such payments to be made by the person to the tax debtor until the liability under this Act is satisfied and operates to require payments to the Receiver General out of each such payment of such amount as is stipulated by the Minister in the requirement.

Failure to comply with s. (1), (1.2) or (3) requirement

(4) Every person who fails to comply with a requirement under subsection 224(1), 224(1.2) or 224(3) is liable to pay to Her Majesty an amount equal to the amount that the person was required under subsection 224(1), 224(1.2) or 224(3), as the case may be, to pay to the Receiver General.

Failure to comply with s. (1.1) requirement

(4.1) Every institution or person that fails to comply with a requirement under subsection 224(1.1) with respect to moneys to be lent, advanced or paid is liable to pay to Her Majesty an amount equal to the lesser of

(a) the total of moneys so lent, advanced or paid, and

Durée de la saisie-arrêt

(3) Lorsque le ministre a, sous le régime du présent article, exigé d'une personne qu'elle verse au receveur général, à l'égard d'une obligation imposée à un débiteur fiscal en vertu de la présente loi, des fonds payables par ailleurs par cette personne au débiteur fiscal à titre d'intérêt, de loyer, de rémunération, de dividende, de rente ou autre paiement périodique, cette exigence s'applique à tous les versements de ce genre à faire par la personne au débiteur fiscal tant qu'il n'a pas été satisfait à l'obligation imposée par la présente loi, et porte que des paiements soient faits au receveur général sur chacun des versements, selon le montant que le ministre fixe dans l'avis de l'exigence.

Défaut de se conformer aux par. (1), (1.2) ou (3)

(4) Toute personne qui omet de se conformer à une exigence du paragraphe (1), (1.2) ou (3) est tenue de payer à Sa Majesté un montant égal au montant qu'elle était tenue, en vertu du paragraphe (1), (1.2) ou (3), selon le cas, de payer au receveur général.

Défaut de se conformer au par. (1.1)

(4.1) Toute institution ou personne qui omet de se conformer à une exigence du paragraphe (1.1) est tenue de payer à Sa Majesté, à l'égard des fonds à prêter, à avancer ou à payer, un montant égal au moindre des montants suivants :

a) le total des fonds ainsi prêtés, avancés ou payés;

(b) the amount that the institution or person was required under that subsection to pay to the Receiver General.

b) le montant qu'elle était tenue de payer au receveur général en vertu de ce paragraphe.

Service of garnishee

(5) Where a person carries on business under a name or style other than the person's own name, notification to the person of a requirement under subsection 224(1), 224(1.1) or 224(1.2) may be addressed to the name or style under which the person carries on business and, in the case of personal service, shall be deemed to be validly served if it is left with an adult person employed at the place of business of the addressee.

Signification de la saisie-arrêt

(5) Si une personne exploite une entreprise sous un nom ou une raison sociale autre que son propre nom, l'avis à la personne de l'exigence prévue aux paragraphes (1), (1.1) ou (1.2) peut être adressé au nom ou à la raison sociale sous lequel elle exploite l'entreprise et, en cas de signification à personne, est réputé valablement signifié s'il est laissé à une personne adulte employée au lieu d'affaires du destinataire.

Idem

(6) Where persons carry on business in partnership, notification to the persons of a requirement under subsection 224(1), 224(1.1) or 224(1.2) may be addressed to the partnership name and, in the case of personal service, shall be deemed to be validly served if it is served on one of the partners or left with an adult person employed at the place of business of the partnership.

Signification à une société de personnes

(6) Si des personnes exploitent une entreprise en société de personnes, l'avis à ces personnes de l'exigence prévue aux paragraphes (1), (1.1) ou (1.2) peut être adressé au nom de la société de personnes et, en cas de signification à personne, est réputé valablement signifié s'il l'est à l'un des associés ou s'il est laissé à une personne adulte employée au lieu d'affaires de la société de personnes.

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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THE ATTORNEY GENERAL OF CANADA**

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APPEARANCES:

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