

FEDERAL COURT

BETWEEN:

ERROL MCHAYLE

- and -

THE MINISTER OF NATIONAL REVENUE (CANADA REVENUE AGENCY)

Respondent

- and -

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER Section 18.1 of the *Federal Courts Act*, R.S.C., 1985, c. F-7

NOTICE OF APPLICATION FOR JUDICIAL REVIEW

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made and relief sought by the Applicant appear on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at the Federal Court, 180 Queen Street West, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

August , 2023

Issued by: _____

Address of local office:

Federal Court Registry
180 Queen Street West, Suite 200
Toronto, ON M5B 3L6

TO:

THE MINISTER OF NATIONAL REVENUE
c/o Canada Revenue Agency
Prince Edward Island Tax Centre
275 Pope Road
Summerside PE C1N 5Z7

AND TO:

THE ATTORNEY GENERAL OF CANADA
Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West, Suite #400
Toronto, Ontario M5H 1T1

APPLICATION

This is an application for judicial review in respect of a decision of the Canada Revenue Agency (the “CRA”) on behalf of the Minister of National Revenue (the “Minister”) dated July 13, 2023 (the “Decision”), which the Applicant (I, me or my) received via regular mail on July 24, 2023 from a Second Review request for relief of penalties and interest levied on me in spite of my prompt response to CRA bringing to my attention one of my 2019 T5’s including notional interest income that I did not receive in the mail from the Tangerine Bank. Immediately upon such alert, I tracked down the 2020 T5 including notional interest income and voluntarily disclosed it to CRA which I also did not receive from the Tangerine Bank. I provided full explanations to CRA for its first and second reviews which were unfairly rejected with the stiff penalties with interest for both the 2019 and 2020 taxation years not changed, albeit the assessed taxes with interest were paid promptly for the one unreceived T5 for both years.

THE APPLICANT MAKES APPLICATION FOR:

- (a) An Order granting the application, setting aside the decision of the CRA for grounds below for my Application and as the Honourable Court may allow to include another CRA Decision dated July 13, 2023 by the same second Team Lead reviewer with respect to the 2021 taxation year for arrears interest as a result of CRA’s representative lack of due diligence;
- (b) A Declaration that I am entitled as a taxpayer and in the interest of fairness to be given the benefits of any doubt since I was responsive to CRA’s alert and promptly paid the amounts of applicable taxes and interest for the unreceived T5s including notional interest income for the respective taxation years;
- (c) A Declaration that CRA representatives did not take into account that I could not verify such amount reported on the T5s as such amount was not all paid to me. I informed CRA in my communication that the respective T5s include notional interest income which accounts for interest accrued or earned but not all paid as it is from Guaranteed Investment Certificate (GIC), which is only paid upon maturity;
- (d) A Declaration that CRA should have provision for employees who invest in GICs that they should not be liable for instalment payment and interest for notional interest income reported on T5s until such is paid;
- (e) A Declaration that the CRA second Team Leader reviewer did not address the information provided in the second request as was agreed by the first reviewer that I was not given the benefit of any doubt in my conversation with her as she encouraged me to request a second review for which she promised to have notes on my file to the effect of my call to her that she admitted she failed to consider in her review;
- (f) An Order setting aside the CRA’s representative decisions and expedite a hearing date for the hearing of the within application for judicial review;
- (g) My costs of the within application; and
- (h) Such further and other relief that the Honourable Court seems just.

THE GROUNDS FOR THE APPLICATION ARE:

- (a) I am a responsible ordinary taxpayer paying my fair share as an employee and have manually filed my tax returns on time with declaring all my income and T5 slips received for financial institutions which include notional interest income and paying any outstanding balance owing upon filing before the due date.
- (b) I have always been promptly responsive to CRA for any questions and/or concerns in providing any required information for verification and in compliance to date with all my tax return filings for all years.
- (c) The CRA representative ignored the fact that I was responsive in acknowledging that I did not receive one of my 2019 T5s which included notional interest income that existed even though I could not verify the reported amount paid to me in my stated reply dated September 17, 2021 via fax, but I however paid the tax and the interest promptly upon the amount being assessed.
- (d) I submit it is unreasonable as was agreed by the CRA first reviewer, Ms. Maan, in my telephone conversation with her on July 20, 2022 that I was not given the benefit of the doubt in rejecting my 2020 Voluntary Disclosure for one 2020 T5s including notional interest income that I tracked down since I did not receive it in the mail. This was after CRA contacted me about the 2019 T5 which included notional interest income that I also promptly paid upon being assessed with the required interest which the CRA second reviewer also wrongly ignored and/or rejected.

- (e) The CRA representative ignored the fact in my case that my T5s contain notional interest income which I paid tax upon filing my income tax returns, even though they are not all money or income I actually received. As well, I have included all the T5s that I received upon filing my yearly tax returns.
- (f) CRA should take into account that I being an employee where my income tax is withhold at source as I am being paid, then it is unreasonable to assess me on notional interest income before it is paid to me, and more severely to further assessed penalties and interest on such amount not received.
- (g) As Tangerine Bank is virtual, I could only confirm via telephone calls by two different representatives of Tangerine Bank that my T5 issues are not necessarily all income received, but include notional interest income which means income accrued or earned but not necessarily paid to me.
- (h) The CRA representative failed to address my request concerns in writing as to what provision it has for requiring me to pay instalment tax and interest on notional interest income that I have not received that is issued on a T5 to me if it triggers tax of over \$3,000 owing per year, considering if I were to pull out my investment due to any undue hardship, then I would not receive any interest for breaking such GIC term.
- (i) CRA is not consistent and fair in its application with individuals for due process as opposed to large businesses. The fact is, I reported to CRA that my pension was reduced by \$119,250.40 by my unionized pension plan (Ontario Public Service Employees' Union Pension Plan Registration Number 1012046), which I pursued and claimed my legal fees, but the CRA has not pursued when it is losing its fair share of tax on about 20,000 ongoing terminating plan members from the pension plan who are taxpayers. The CRA has, however, unfairly assessed me for penalties and interest upon the assessed tax and interest paid by me for a T5 that I did not receive that included notional interest income.
- (j) CRA has failed to accept that it has a responsibility to exercise its due diligence in reviewing my tax returns that I file manually every year. Upon its review of my 2021 return, it was accepted as filed and I promptly paid the balance owing including all T5s with notional interest income. A further review by CRA revealed an inadvertent error which triggered an amount owing, but it is unreasonable of CRA to charge interest on the assessed amount when no information was missing from my timely filed return. CRA also missed the inadvertent error on its initial review. I paid the tax owing, but seek judicial review for the interest levied.
- (k) In making the Decision, the CRA representatives erred by:
 - i. Making a perverse finding by not accepting my 2020 voluntary disclosure T5 and to take into account that I do not have access to see their record when I took step to track down and paid the assessed tax with interest including the notional interest income on the T5 that I did not received, that got reported on both the 2019 and 2020 T5s;
 - ii. Providing contradictory mixed messages to me from the first reviewer Ms Maan who informed me in our telephone conversation on July 20, 2022 that she would provide appropriate notes on file for the second reviewer to consider since her file was closed and she could not reopen to provide me with any credit. It was clear to me in my conversation with Ms Maan that I was not given the benefit of any doubt, yet the second reviewer's decision dated July 13, 2023 did not reflect what I was told as cited in my letter dated July 25, 2022 for second review. I was instead only provided with a mere paraphrase of Ms Maan's decision dated July 18, 2022 from the second reviewer;
 - iii. Not considering that I am an ordinary employee taxpayer who only has ordinary knowledge in manually filing my tax returns myself and is responsive to paying my fair share based on the information at my disposal including receipt of my T5s;
 - iv. Not being responsive to provide answers to my questions and also does not take any responsibility in the interest of fairness to exercise due diligence as expected and ought to in reviewing my tax return particularly for the 2021 for due process as stated in item (j) above;
 - v. Breaching the duty of fairness and the principles of natural justice for due process by failing to consider and misapprehending the evidence provided by me, the applicant, who is responsive and always manually filing my yearly tax returns on time and paying my fair share of tax;

vi. Not being tolerant and encouraging in accepting my submissions that the COVID affects everyone differently and was my contributing factor while I endeavour to be responsive in paying my fair share in the voluntary compliance tax system being a regular employee taxpayer.

- (l) It is just and appropriate that the hearing of this application for judicial review be expedited;
- (m) The applicant pleads and relies on the following: Part 5 of the *Federal Courts Rules*; sections 18.1 and 18.4 of the *Federal Courts Act*; the further and other grounds set out in the affidavit to be filed in support of this application; and such further and other grounds as applicant may advise and this Honourable Court may permit.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

- (a) The affidavit of the Applicant, Errol McHayle to be filed in support of the within application, and the exhibits thereto, including:
- i. documents within the possession of the Applicant; and,
 - ii. documents with the same issue for 2021 and 2022 as referenced above.
- (b) Such further and other material as may advise which the Honourable Court admits.

The applicant requests the Minister of National Revenue to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the Minister of National Revenue to the applicant and to the Registry:

- (a) All materials created or considered by the Minister of National Revenue or by any person or entity acting on behalf of the Minister of National Revenue, and including all documentation and communication, pertaining or relevant to the decisions to deny my request being the Applicant for relief of the penalties and interest imposed for the missing T5s for the 2019 taxation year as well as the voluntary disclosure of the T5 for the 2020 taxation year including all telephone or electronic recordings.
- (b) I will request of the same immediately above in (a) for subsequent taxation years, 2021 and 2022 related to the same issue including instalment payments and interest assessed which include notional interest income that this Honourable Court may permit.

All of the foregoing is respectfully submitted to the Court.

August 9, 2023



Errol McHayle
Self-represented Taxpayer
159 Duncanwods Drive
Toronto, Ontario M9L 2E2
Home (416)740-5275
Cell (647)409-7951
Email emusic@rogers.com