Taxpayer Challenges Procedural Technicality and Wins: Objecting to a Notice of Assessment

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Revenu Québec refused certain business expenses claimed by the defendant (the Taxpayer) for the 2005 to 2010 taxation years, as well as for 2012. The Taxpayer objected to each yearly assessments (the Notice of Assessment) in a timely manner and began legal proceedings to appeal them before the Court. While the appeal was still pending, the Taxpayer filed an amended return requesting to carry back losses incurred in 2015 to the 2012 taxation year. Revenu Québec served the Taxpayer with a new notice of assessment (the Notice of Reassessment) for the 2012 taxation year, to which the Taxpayer did not formally object. When the appeal was ultimately brought before the Court, Revenu Québec submitted that the appeal for the 2012 fiscal period was inadmissible given that the Notice of Assessment that the Taxpayer had objected to ceased to exist following the issuance of the Notice of Reassessment. According to Revenu Québec, given that no new formal objection was filed within the prescribed period of 90 days with respect to the Notice of Reassessment, the Taxpayer had therefore lost his right to appeal the 2012 taxation year.

Arguments

Revenu Québec refers to section 93.1.10 of the *Tax Administration Act* (the Act), which states that an appeal of an assessment to the Court of Québec may only occur following a notice of objection filed under section 93.1.1 of the Act. Revenue Québec argues that the Notice of Reassessment replaced and cancelled the Notice of Assessment and that in the absence of a formal objection to the Notice of Reassessment, the Taxpayer's right to appeal ceased to exist.

The Taxpayer set forth that the Notice of Reassessment is simply a derivative of the Notice of Assessment and therefore does not require a subsequent objection. In essence, the Notice of Assessment must be distinguished between its form (*i.e.,* the notice) and its substance (*i.e.,* the assessment), which in this case was the denial of business expenses. The assessment contained in the Notice of Assessment and in the subsequent Notice of Reassessment remained unchanged and given that the charging provision to file for an appeal provides that a Taxpayer must object to an assessment (and not a notice of assessment), no additional objection to the Notice of Reassessment was required.

Decision

The Court accepted the Taxpayer's argument and stated that the assessment (*i.e.,* denial of certain business expenses) remained unchanged in both the Notice of Reassessment and Notice of Assessment, therefore a subsequent objection was not required. The Court cited judge Fournier's decision in *Teitelbaum*[1] to specify that in cases where a Notice of Reassessment was served after an objection to a Notice of Assessment, the parties need only modify their original application pursuant to section 206 of the *Code of Civil Procedure* (the Code) to account for the new objection. In fact, the Code authorizes such modification as long as the amendment does not result in an entirely new application having no connection with the original one. In this case, the Court determined that the Taxpayer's modified application was sufficiently connected to his original application (*i.e*., objection to the denied business expenses). The Court further concluded that it would not be equitable or efficient to require a Taxpayer to support the cost associated to initiate a proceeding each time they receive a Notice of Reassessment. Therefore, it is in the best interest of justice to allow for the pliability of procedures to account for any subsequent objections with respect to the same assessment.

Takeaway

An objection to a Notice of Assessment filed within the prescribed period may remain valid with respect to any subsequent Notice of Reassessment depending on the circumstances. The court seems to have taken the position that a distinction must be made between the Notice of Assessment itself and the actual substance of the notice (*i.e.,* the assessment). It remains that a Taxpayer's objection is to the assessment and therefore, even where a Notice of Reassessment is issued, it does not necessarily invalidate a Taxpayer's original objection.

This judgment breaks from a long-standing line of case law that has allowed Revenu Québec to set aside a Taxpayer's appeal in court due to a procedural technicality.

[1] *Teitelbaum* c. *Agence du revenue du Québec*, 2017 QCCQ 8039

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