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CESTNICK

TAX MATTERS

Lessons from a time-wasting battle with the taxman

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I used to ask my grandfather for advice on all kinds of things. I should have written down the many things he taught me. There's one piece of advice he shared that I won't forget: "Tim, time is precious. So, waste it wisely." To this day, when I waste time, I try to be smart about it. He'd be proud of me.

When it comes to wasting time – and money – there is perhaps no worse idea than getting into a battle with the taxman. I was reminded of this again when I read over a Federal Court decision from December. I'm going to share the story because there are a few things we can all learn from the plight of a woman we'll call Ms. N.

THE STORY

In 2009, Ms. N accidentally made an overcontribution to her tax-free savings account (TFSA), and the Canada Revenue Agency (CRA) sent her a letter in June 2010, to advise her of this. Ms. N was assessed a tax of $34, which she paid. But there's more.

In 2010, Ms. N moved to the United States, where she currently lives and works. As a non-resident, she's not entitled to contribute to a TFSA any longer, but she didn't realize this. So, she continued to contribute small amounts to her TFSA each year between 2010 and 2018. In 2014, she made a larger contribution of $30,000 to catch up her on her unused contribution room and save for retirement.

Before making her 2014 contribution, Ms. N contacted her bank to ensure she was able to contribute. She told the bank representative that she was no longer residing in Canada and, after consulting with his bank manager, the bank employee told her that she could in fact contribute to her TFSA.

It was in 2018 that Ms. N learned that the bank had given her incorrect advice. So, she promptly withdrew all the funds in her TFSA and closed the account. She then called the CRA and was advised to submit a letter, requesting a waiver of any taxes, penalties and interest on these non-resident contributions.

It's important to understand that Ms. N made two separate and unrelated mistakes. The first was overcontributing to her TFSA in 2009 while she was still resident in Canada, and the second was contributing as a non-resident.

Ms. N's initial request for relief was denied by the taxman. The reason? She "continued to make excess TFSA contributions along with non-resident contributions" after she had received the overcontribution letter in 2010. The CRA assessed taxes, penalties and interest of $27,640, effectively wiping out her retirement savings.

Ms. N then requested a second, independent review of her request. This was also denied by the CRA for the same reason noted in the first request.

The problem? Two CRA employees (conducting the first and second reviews) failed to understand that the non-resident contributions (mistake No. 2) made by Ms. N were completely unrelated to the excess contribution made by her in 2009 (mistake No. 1) while she lived in Canada. CRA treated both mistakes as though they were one and the same and that she simply "continued to make excess and non-resident contributions" after receiving her warning letter in 2010.

Fortunately, the judge at the Federal Court was smart enough to recognize CRA's mistake and declared CRA to be unreasonable in denying Ms. N's request for relief. Ms. N won the case.

THE LESSONS

So, what can we all learn from Ms. N's story? A few things come to mind.

CRA employees can get it wrong. Many people believe that, if CRA has explained an issue (even in writing), it must be right. Not always. In this case, two separate CRA employees got it wrong. A note to CRA: Train your staff better. There are too many stories like Ms. N's where CRA employees simply were unable to grasp what was going on.

Banks are generally weak in complex planning. To be fair, I do know people at banks who are very knowledgeable about such matters. But the average bank employee simply isn't equipped to provide sophisticated financial planning advice. In this case, two separate employees concluded that it was just fine for Ms. N to contribute to her TFSA as a non-resident. Honestly, this isn't even a complex issue. If you don't get in front of the right person at the bank, you could be getting bad or mediocre advice.

Seek competent help early. If you're dealing with matters such as cross-border, self-employment, real estate, private company, non-traditional investment, or complex estate planning issues, speak to a CPA, lawyer or CFA with expertise in those areas. If Ms. N had consulted with a knowledgeable professional when leaving Canada, she might have saved herself money and a couple of years of headaches.

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