



CESTNICK

TAX MATTERS

Three lessons you can learn from this couple's battle with the taxman

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Thanks to the many readers who e-mail me each week with your stories. From time to time, I stumble across a story that I think is worth sharing. So, I want to thank Mr. and Mrs. Smith (not their real names) for allowing me to share theirs. There may be things to learn here.

THE STORY

Mr. and Mrs. Smith are doing their best to save for retirement. Mr. Smith has had a significantly higher income than his wife over the years since she took a decade off to be at home with their children. The couple's investment accounts, including registered retirement savings plans, tax-free savings accounts, a registered education savings plan, a locked-in retirement account and non-registered accounts, are all at Questrade – a Canadian investment broker that offers robo-adviser services.

In 2013, the couple opened a spousal RRSP. They understood that Mr. Smith

would be the contributor, and that he'd claim an RRSP deduction for the contributions. The intention was that Mrs. Smith would pay the tax on the withdrawals later. But when they set up the account, they got it backwards.

You see, the owner of a spousal RRSP is the annuitant (the spouse who will be making withdrawals – or Mrs. Smith in this case), who is different than the contributor. The plan should have been in the name of Mrs. Smith (as the owner) and designated as a spousal plan, which would allow Mr. Smith to make contributions and claim the deduction. Instead, the couple opened a spousal RRSP with Mr. Smith as the owner and annuitant.

Mr. Smith contributed about \$20,000 annually to the spousal RRSP for the years 2013 to 2018 inclusive. As far as the taxman is concerned, these are contributions made by Mrs. Smith to a spousal plan for Mr. Smith. But Mrs. Smith didn't have sufficient RRSP room to make these contributions – so, the

taxman believes that she overcontributed. Further, the taxman believes that Mr. Smith, although he has RRSP contribution room, has not made RRSP contributions, despite claiming a deduction on his tax return for contributions each year.

It was in 2019 that the couple realized the mistake when the CRA sent them letters. Today, they both face penalties which amount to more than \$100,000 combined. Clearly there's been an honest mistake here. They took corrective action as soon as they learned there was a problem. They completed Form T3012A – one for each year – which can allow a withdrawal or transfer from an RRSP with no withholding taxes in certain cases.

The CRA approved the T3012A forms and Questrade was helpful by moving the six years of contributions to a new spousal account that was set up properly. Questrade even reissued the RRSP contribution slips showing Mr. Smith as the contributor and Mrs. Smith as the annuitant.

The challenge the Smiths face now is getting CRA to correct the problem from their end and cancel the penalties. The problem? They simply can't find someone at CRA who can make a decision. They had submitted a request for a review in February 2020, with supporting documentation, but CRA lost the paperwork.

THE LESSONS

So, what can be learned from the plight of Mr. and Mrs. Smith? A few of things come to mind:

File a notice of objection if necessary: Mr. and Mrs. Smith have not yet filed a Notice of Objection (NOO),

but this may be the best next step for them. A NOO forces CRA to deal with your issue within a system designed for this and to, supposedly, have it reviewed by an experienced staff member. A NOO must be filed within one year from the normal filing due date for the tax return in question, or 90 days after the date printed on a Notice of Assessment, whichever is later. And you can apply to the CRA within one year of the deadline for an extension of time to object.

Use registered mail with the CRA: Fortunately, the Smiths had sent their lost submission last year to the CRA by registered mail and had a copy of what was sent. Registered mail is critical when sending information by mail to the CRA.

Professional advice can be worth it: If you believe the ads on television for various robo-adviser platforms, you'd think that working with a professional financial adviser should be unthinkable if you want financial success. The fact is, if Mr. and Mrs. Smith had used a professional, and human, adviser they wouldn't be battling the CRA today over penalties that now exceed \$100,000. To be fair, these platforms are trying to help people avoid situations like the Smiths', but investment, tax, estate, insurance, education, cash-flow budgeting, retirement, and related planning issues all affect each other, and robo-advisers aren't there to integrate your various areas of planning – which can leave big gaps – or worse.

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