



Disagreeing with the taxman

Have you been assessed a tax amount that seemed too high? Sooner or later, you'll get a bill from the tax department that you'll disagree with.

CBC recently did a story on carpenter/business-owner Dennis Collins from Pemberton, B.C. CRA says Mr. Collins owes \$500,000 in back taxes, but Collins claims he only draws \$50,000 in personal income from his business and the rest goes to legitimate operating expenses.

Collins' accountant handles his taxes, but CRA sent the assessments to the wrong address. Neither Collins nor his accountant ever received them. Now, with penalties and interest, the taxman is asking for more than half a million dollars.

How would something like this change your life? Collins says this will not only wipe him out, but after they take his house and other possessions, he will still owe them money. Needless to say, he is appealing the whole mess!

In their new book, *The Taxman is Watching*, father-and-son tax lawyers Paul and Philippe DioGuardi of DioGuardi & Co. in Toronto tell a story about one of their clients who was on his deathbed while CRA collectors persisted on his case. DioGuardi threatened to hold a press conference if they didn't back off. Eventually, CRA gave in, but it took a big scare.

Last year, Minister of National Revenue Gordon O'Connor announced the creation of a new position, the Taxpayer's Ombudsman, giving taxpayers the right to file complaints about such situations. The government also revamped the old grievance procedure with a redefined Taxpayers' Bill of Rights, assuring taxpayers fairness in accountability, timeliness in handling their affairs, impartiality and accuracy of information.

The majority of rights in the Taxpayer's Bill of Rights fall under the Fairness Program and Voluntary Disclosure.

Fairness covers situations of undue hardship, such as illness, natural disaster or circumstances beyond a taxpayer's control that impact the tax situation. A taxpayer can apply for relief whether or not CRA is on to them.

Voluntary disclosure is more like sanctuary or protection that CRA extends to allow a taxpayer to disclose such things as unreported income, overstated deductions or similar items unfavourable to the taxpayer. Unlike fairness, the taxpayer cannot take advantage of voluntary disclosure if the CRA is already on to their situation and chasing them. Both these programs offer the taxpayer relief from late penalties, interest, fines and other punishment—like imprisonment.

All taxpayers have the right to legal representation, whether through an accountant, lawyer or both. Deciding which you need can be a lengthy process, but the long and short of it is, if



you are taking your case beyond the CRA appeals system and into the courts, it is best to get a lawyer. Most accountants will not get involved in the courts, but they should be able to tell you who is best-suited to handle your situation.

The first level of court is the Tax Court of Canada, followed by the Federal Court and finally the Supreme Court of Canada. While you can always represent yourself, it is common practice to have a lawyer—I've heard that judges prefer it that way.

You will need to sign a business consent form as a contracting business. Most practitioners use their own engagement letter, which usually requires a non-refundable retainer.

It is important to remember that, whether you are appealing to CRA or going beyond them to the courts, there is never a guarantee that you will win. You must be prepared to lose not only the professional fees but also what you may end up paying CRA in the end.

Have you heard rumours of people successfully negotiating their tax bill? I get lots of calls from people who are in debt to the CRA but can't pay. The first thing I ask is, "Are you disputing the amount?" When they say "no," I reply, "Then you don't have a tax problem—you have a financial problem."

Really, unpaid taxes are like any other debt, and the only person who can negotiate a debt is a bankruptcy trustee. The only thing the appeals process does is relieve you of penalties and interest on top of the taxes you owe and give you a bit more time to pay. There is no truth to the myth that you can make a deal with the taxman. If there were, everybody would be doing it.

In the more than ten years I have been handling late filers and taxpayers in dispute with CRA, I have found the stereotype of people deliberately trying to evade the system, or not caring about their personal integrity or society in general, to be untrue. On the contrary, most taxpayers are honest and hard-working and want to settle matters fairly. The common reason they wind up behind the eight ball is that they have no clue how the system works! ♦

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