

Paul Kvas V. The Queen, 2016 DTC 1169

October 24, 2016

Facts: The appellants were brothers who had incorporated a company (the "Corporation") which was, in January 2008, involuntarily dissolved for failure to file corporate tax returns as required. In 2014, the minister issued an assessment under section 160 Notice of Assessment against the appellants. In issuing that assessment, the minister relied on the fact that a balance sheet prepared for the company after the dissolution date afforded a deductive dissipation of assets and that T5s were issued in 2009 describing dividends paid in 2008 to the appellants, in roughly the same amounts as the assumed dissipated assets.

The appellants appealed from the section 160 assessment and their appeals were heard on common evidence.

Held: The appeals were allowed.

The Tax Court held that the primary issue for determination was whether an entity which was involuntarily dissolved at law and had taken no step on its own could be a transferor and transfer property within the meaning of section 160, through actions taken by others. The Court concluded that it could not.

In the Court's view, the application of section 160 required that:

1. there be a transfer;
2. the parties to the transfer not be dealing at arm's length;
3. there be an absence or insufficiency of consideration; and
4. the transferor be liable for tax at the time of the transfer.

As well, the jurisprudence requires the commission of an act or execution of a document divesting the transferor and investing the transferee with the property and the contemporaneous placement of that action at the time the tax debt was owed.

The Tax Court held that the existence of a transfer was an essential element to a section 160 assessment and that the alleged transferor, the Corporation, did not exist after the dissolution date. On the basis of that involuntary dissolution and the absence of any prior "transfer documentation", no transfer was possible after the dissolution date. In the Court's view, retroactive T5s and post-facto financial statements could not create a transfer where none existed.

Since no transfer of property took place under section 160, the section was not engaged and the taxpayers' appeal from the section 160 assessment was allowed

By

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