



## The HST Blog

Posted at 2:08 AM on January 5, 2016 by Cyndee Todgham Cherniak

### One Of The Common Objection Mistakes - Missing The Deadline

There have been many times that a potential client contacts me (or any tax lawyer) to discuss filing a notice of objection to challenge a notice of assessment from the Canada Revenue Agency ("CRA"). The potential client seems to have a good legal position. Then, I ask for the notice of assessment date and --- yikes --- it is more than 3 months ago.

The deadline to file a GST/HST notice of assessment is **90 days from the date on the notice of assessment**. Three months is a short amount of time that seems to tick by quickly. Some of that time passes while the notice of assessment is in the mail. Some of the time is spent looking for a tax lawyer. Unfortunately, some of the time is spent avoiding the issue of a GST/HST assessment.

If a taxpayer misses the 90 day deadline, is there any chance to still file a notice of objection? The answer is that it depends.. Section 303 of the *Excise Tax Act* gives taxpayers an opportunity to apply to the Minister for an extension of time to file a notice of objection within one year of the expiration of the 90 days deadline. In the application for an extension of time, the taxpayer must:

- 1) demonstrate that within the 90 day deadline for the notice of objection the taxpayer was unable to act or give instructions to a representative to file a notice of objection OR the taxpayer had a *bona fide* intention to object; and
- 2) give good reasons why the Minister should grant the application for an extension of time.

It is not a sure thing that the Minister will grant an extension of time to file a notice of objection. We have been successful in receiving an extension of time when a client did not receive the notice of assessment, where the client asked for information from the auditor and was waiting for the information, where the client continues to discuss the audit file with the auditor or a supervisor after the date of the notice of assessment (and the T2020 report has recorded this contact), and when the client has communicated with the CRA about a desire to object.

It is important to note that while a telephone call does not constitute a notice of objection, telephone calls can evidence a desire to object. That being said, if the notice of assessment was issued in 2013 and you contact a lawyer in 2016, the 90 days plus 1 year period for seeking an extension of time will have expired. In this scenario, there is no opportunity to file a notice of objection late.

If the Minister rejects an extension of time request, the taxpayer may appeal to the Tax Court of Canada to

have the extension of time reconsidered (see section 304 of the *Excise Tax Act*). The Tax Court of Canada may dismiss the request or grant the request. The taxpayer must be able to present the Tax Court of Canada with evidence that they intended to object to the assessment and that it would be just and equitable to grant the extension of time to file the notice of objection. The Tax Court will not be moved by arguments that the taxpayer forgot about the deadline.

**Comments (0)** Read through and enter the discussion with the form at the end

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