



A Faster and Simpler  
Procedure for  
Income Tax Appeals  
to the Tax Court  
of Canada

This publication contains information on the *Tax Court of Canada Act* and on the *Income Tax Act*. It does not contain the official text of these acts and should not be considered legal advice.

Published by authority of the Minister of  
Justice and Attorney General of Canada

by

The Communications and Consultation Branch  
Department of Justice Canada

Ottawa, Ontario

K1A 0H8

(613) 957-4222

Cat. No.: J34-3/1992

ISBN: 0-662-59017-1

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If you are a taxpayer who disagrees with Revenue Canada's assessment of your income tax, penalty or interest, and you have not been able to resolve your disagreement with that Department, you may file a Notice of Objection with Revenue Canada. If this does not resolve the disagreement, you may appeal to the Tax Court of Canada, provided your appeal is filed within the time limit set out in the *Income Tax Act*. The Court hears income tax appeals using two procedures: the General Procedure and the Informal Procedure.

## General Procedure

Your appeal is heard under the General Procedure unless you are eligible to proceed under the Informal Procedure and elect to do so. Appeals under the General Procedure are subject to a number of procedural steps and are heard in accordance with the rules of evidence. Under the General Procedure, if you do not wish to represent yourself, your representative must be a lawyer. If your corporation is making its appeal under the General Procedure, it must be represented by a lawyer as well.

To help resolve disputes more quickly under the General Procedure, the Court may require parties to attend a status hearing after one year from the filing of the reply to the appeal or from the last day permitted for filing the reply. At that time the judge may dismiss or allow the appeal, or give directions for hearing it.

# Informal Procedure

The rules governing appeals under the Informal Procedure are far less complex, and disputes are usually resolved in a much shorter period of time. A taxpayer may select the Informal Procedure:

- where the amount of federal tax and penalty involved in a disagreement over an assessment is \$7,000 or less (it is important to note that neither interest nor provincial tax is included in determining the amount involved);
- where there has been a determination of loss of \$14,000 or less; or
- where the only matter at issue is interest on federal tax and penalties.

## Filing an Appeal

No special form is required to institute an informal appeal, and there is no filing fee. The Notice of Appeal, which must be in writing, could be in the form suggested by the Rules of the Tax Court (see the last page of this brochure), or it could be in the form of a letter. You must state that you wish to have your appeal dealt with under the Informal Procedure, and set out the relevant facts and the reasons for the appeal.

If your appeal could be heard under the Informal Procedure but has been commenced under the General Procedure, you can still

elect the Informal Procedure if you do so at least 20 days (or less if the Court so allows) before the start of the hearing. You may represent yourself or be represented by an agent, who does not necessarily have to be a lawyer.

The Notice of Appeal must be filed by being delivered or mailed to an office of the Registry of the Court. The Court currently has offices in Ottawa, Montréal, Toronto and Vancouver. If delivered by hand, the Notice of Appeal will be stamped with the date received, which will be treated as the date of filing. If the Notice is mailed, the earliest postal date on the envelope will be treated as the date of filing.

The Court will forward a copy of the Notice of Appeal to Revenue Canada. Revenue Canada must reply within 45 days after the Notice is forwarded, and will mail a copy of its Reply to Notice of Appeal to you or your representative. You should review the Reply carefully, because it sets out Revenue Canada's position on the issues that are being raised. The Reply should state the facts assumed by the Minister in making the assessment, the sections of the *Income Tax Act* on which the Minister relies, and the arguments that will be advanced to support the assessment. If the Reply has been filed on time, and you do not successfully argue that the assessment was not based on the facts assumed, you will have the responsibility of showing that Revenue Canada's position is wrong. If the Reply has been filed late, you may still have to show that Revenue Canada's

position is wrong, but the responsibility for establishing the facts supporting the assessment may shift to the Minister. This shifting of the burden of presenting evidence also occurs in the assessment of penalties for false statements or omissions or where the Minister has assessed beyond the statutory time limit.

The appeal should be heard within 90 days of the last day for filing the Reply. The Registrar of the Court will send you a Notice of Hearing by registered mail at least 30 days before the hearing date. If you have not obtained an adjournment and fail to appear on the day fixed for your hearing, the Court will dismiss your appeal on motion from the representative of Revenue Canada. You may, however, apply to have this order set aside, provided that you act as soon as circumstances permit and no later than 180 days after the order was mailed to you.

## Preparing for the Hearing

In the Informal Procedure, the rules of evidence and procedure are not strictly applied. However, if you have evidence that would establish your appeal, you should take care to see that it is properly presented. It is important to bring the relevant documents if they are available to you, and it is helpful to have copies for the representative of Revenue Canada and for yourself when you present the documents to the Court. As a rule, if a document is important in establishing your case, you should present it through the person who wrote or signed it; however, the Court

may exercise a discretion to permit you to introduce a document in some other way when it is reasonable in the given circumstances. You may be able to resolve uncertainty about the presentation of evidence by obtaining, before the hearing commences, the agreement of the representative of Revenue Canada to the introduction of a document without formal proof; but bear in mind that the Court makes the final determination as to what is acceptable.

It is often a good idea to arrange your documents in chronological order. You may also want to prepare a summary chart of the information contained in the documents for presentation as part of your case. This is particularly helpful when you are presenting records of expenses or disbursements.

If you intend to present an expert witness to give opinion evidence on some relevant issue, such as the value of real estate at a particular time, you must file your expert's report with the Court and serve it on the representative of Revenue Canada at least 10 days before the commencement of the hearing.

## The Hearing Process

At the hearing, unless you and the representative of Revenue Canada have agreed on some other way acceptable to the Court to present the facts and arguments, testimony will be taken under oath and recorded by a stenographer. To establish certain facts, you may want to call witnesses to

testify on your behalf. If you have concerns that a witness may not come to the hearing, you may obtain a subpoena from the Court which will direct that witness to attend. Ordinarily, a witness will only be allowed to testify on matters of which he or she has personal knowledge. For example, Mrs. A may testify, "I paid \$100 to Mr. B," but usually would not be allowed to testify, "Ms. C told me that she paid \$100 to Mr. B."

While the Court adopts the procedure best suited to the circumstances of each case and considerations of fairness, a hearing normally takes place as follows. The taxpayer or a representative will call his or her witnesses (usually including the taxpayer). Each witness will be sworn or will make an affirmation to tell the truth. The taxpayer will examine a witness and then the representative of Revenue Canada will cross-examine the witness. After this is completed, Revenue Canada will call its witnesses, who may in turn be cross-examined by the taxpayer or a representative. After all the witnesses have been called, the taxpayer should be ready to argue and show under the law why the appeal should be allowed. Revenue Canada may then argue why it should not be allowed. Finally, the taxpayer may reply to Revenue Canada's argument.

After the close of argument the judge will consider the matter. The judge may take a few minutes at the end of the hearing to render judgment immediately, or the judgment may be reserved and rendered at a later date. In most cases when a judgment is reserved, it will be given within 60 days of the end of the hearing.



Although Revenue Canada is not entitled to any costs from you if your appeal is dismissed, should your appeal be allowed the judge has a discretion to award costs to you where you are more than 50 percent successful in your appeal.

If you are dissatisfied with a judgment in the Informal Procedure of the Tax Court you are entitled to apply for judicial review in the Federal Court of Appeal. You must apply within 30 days of the time the judgment was first communicated to you.

## Offices of the Registry of the Tax Court of Canada

- Principal office:** 2nd Floor  
200 Kent Street  
Ottawa, Ontario  
K1A 0M1  
(613) 992-0901  
Fax: (613) 957-9034
- Montréal:** Suite 350, 3rd Floor  
445 Saint Laurent Boulevard  
Montréal, Quebec  
H2Y 3T8  
(514) 283-9912  
Fax: (514) 496-1996
- Toronto:** Suite 902  
200 King Street West  
P.O. Box 10  
Toronto, Ontario  
M5H 3T4  
(416) 973-9181  
Fax: (416) 973-5944
- Vancouver:** 17th Floor  
700 West Georgia Street  
P.O. Box 10091  
Vancouver, British Columbia  
V7Y 1A1  
(604) 666-7987  
Fax: (604) 666-7967

# Calculating the Amount in Issue

Here are two examples to illustrate the calculation of the amount of tax in issue, and to determine which appeal procedure may be followed.

## **Example 1**

A taxpayer filed a tax return showing federal tax of \$18,000. Revenue Canada reassessed her and increased the federal tax to \$21,500 because it disallowed certain claims for dependants. The taxpayer still believes she should be entitled to claim the dependants. Because the amount in dispute is \$3,500 (i.e. less than \$7,000), the taxpayer may decide to proceed to Tax Court using the Informal Procedure.

## **Example 2**

A taxpayer who operates a small business calculated his federal tax to be \$7,000. Revenue Canada increased his federal tax to \$14,700 on the grounds that certain expenses he deducted could not be claimed in that tax year but must be claimed in the future. Because the amount in issue is \$7,700 (i.e. more than \$7000), the taxpayer cannot use the Informal Procedure; he must file his appeal under the General Procedure. (However, if the taxpayer wanted to avoid the extra expense associated with the General Procedure, he could limit his claim to \$7,000 and use the Informal Procedure to settle the matter. But if he did so and then won his appeal entirely, his assessment would be reduced only by \$7,000, not \$7,700.)

# Model of Notice of Appeal

## NOTICE OF APPEAL (INFORMAL PROCEDURE) (SECTION 4)

### TAX COURT OF CANADA

BETWEEN:

(name)

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### NOTICE OF APPEAL

TAKE NOTICE THAT (name) appeals to the Court from (identify the assessment(s) under appeal, including date of the assessment(s) and taxation year(s)).

A. Reasons for the appeal. Here state why you say the assessment(s) is (are) wrong.

B. Statement of relevant facts in support of the appeal.

I ELECT to have the informal procedure provided by sections 18.1 to 18.28 of the *Tax Court of Canada Act* apply to this appeal.

Date:

\_\_\_\_\_  
(Signature)

TO: The Registrar  
Tax Court of Canada  
200 Kent Street  
Ottawa, Ontario  
K1A 0M1  
or  
Any other office of  
the Court mentioned  
in section 2.

(Set out name,  
address for service  
and telephone  
number of appellant,  
appellant's counsel  
or appellant's agent)

PLEASE NOTE that if the aggregate of all amounts in issue exceeds \$7,000 or the amount of loss in issue exceeds \$14,000 and you wish to proceed under the informal procedure, use Schedule 17.