

Ontario tax collectors should lighten up

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Six years after the bankruptcy of a car dealership, an Ontario tax collector began pressing its ailing former director for unpaid sales taxes.

The disabled and unemployed victim of multiple heart attacks said the collections officer refused to believe he was so ill, had no money and could not pay.

He said the officer nearly frightened him to death when she warned him and his wife they would lose the small home his wife had bought with her own funds and a loan from their son.

Other taxpayers might cheer the ministry's aggressive approach to collecting more than \$360,000 in taxes, interest and penalties.

But it turned out the former director was no longer responsible for paying the tax bill.

So, in this case, the stress of the collection process during a lengthy objection process was not warranted.

Lawyer Richard Fitzsimmons of Fitzsimmons & Co. in Toronto said Ontario tax collectors frequently push small-business owners to the brink. He has written to Revenue Minister Monique Smith, urging the province to abandon its "pay now, dispute later" practices.

He wants Ontario to do as the Canada Revenue Agency does: suspend collection efforts while assessment notices are under objection or appeal, although interest charges do accumulate.

Ontario businesses will soon be dealing with the CRA over the province's corporate income taxes, but the provincial revenue ministry will continue to collect Ontario sales taxes after the handover to the CRA on April 3.

"We have no difficulty dealing with the CRA on income taxes and goods and services taxes," Fitzsimmons said in an interview. "But it's impossible to deal with some Ontario collection officers."

He said collections and appeals officers do not communicate with each other, and the collectors keep pressing for payment even when there are reasonable grounds for dispute. And, to make matters worse, it can take months before an appeal is heard and resolved.

TAX TORMENT

March 2000: Car dealership declares bankruptcy. The sole director has lost his savings and is later disabled by heart disease.

October 2004: Ontario Ministry of Revenue asks former director about unpaid sales tax. He explains his situation and that cause of dealership failure is unknown. Collector agrees not to propose collection procedures.

June 2006: Another tax collector notifies director of intent to assess, and later sends assessment.

November 2006: Lawyer files notice of objection, tells collector about director's health and financial problems. Officer says that's not her concern. Ministry refuses a modest payment plan.

A ministry spokesperson insisted there is no backlog of appeals and, for the period April to December of last year, 60 per cent of appeals were resolved within six months. He did not disclose what percentage of appeals are resolved in favour of taxpayers.

Fitzsimmons's concerns, however, are shared by the Canadian Federation of Independent Business. Ontario vice-president Judith Andrew said her recent pre-budget presentation included three recommendations.

"Surveys show that challenges with provincial sales tax rank second-highest in terms of regulatory burden after workers' compensation," she said.

The PST rules are so complicated that misunderstanding is a frequent cause of assessments for large sums of unpaid taxes, interest and penalties.

So the federation is calling for a new fairness and rights code; a new type of compliance audit that would educate business people rather than penalize them for inadvertent failure to collect sales tax; and, finally, more compensation to businesses for the work of collecting billions of dollars in taxes. Compensation rates have not changed in about 20 years.

When a business fails and sales taxes are still owing, the directors remain personally liable for up to two years after they resign formally to the trustee in bankruptcy.

Ontario finance officials did not accept the car dealer's explanation that an employee mishandled the books and computer records so badly that a major auditing firm could not find missing money.

Luckily, [Peter Aprile], an eager young lawyer at Fitzsimmons, was able to show the dealership's corporate registration was dissolved more than two years before the assessment. So, the sole director was off the hook, but he was sorely shaken by the experience.

James Daw, CFP, can be reached at jdaw@thestar.ca by email.

December 2006: Ministry acknowledges objection, but later holds wife jointly responsible, puts a lien on family home, calls and writes after lawyer asks to be only point of contact. Wife had registered husband as half owner of home she bought with her savings and loan from son, but later takes him off title.

March 2007: Lawyer sends second notice to ask for no more contact with wife. The ministry complies.

October 2007: Lawyer shows limit of personal liability passed two years after corporation was dissolved. Assessment is dropped.