



## Tax Court of Canada Confirms that a Corporation May be Liable for Payments to Tax Debtor Shareholder

### May 2023 Tax Alert

Under the *Income Tax Act* and the *Excise Tax Act*, the CRA has a wide variety of options to collect unpaid taxes from any tax debtor. One of those options is to issue a Requirement to Pay, under ss. 244(1) of the *Income Tax Act*. A Requirement to Pay is issued where the CRA believes that a party will be making payments to a person who is a tax debtor. The Requirement to Pay then forces that party to redirect the money to the CRA. If the party fails to redirect the money to the CRA, then the party is personally liable. The Requirement to Pay forces the garnishment, even if the tax debtor would otherwise be entitled to the money or has very good reason for needing the money.

In the recent Tax Court of Canada decision of *240514 Ontario Ltd. v. The King*, the CRA issued a Requirement to Pay to a corporation. The sole shareholder of the corporation was a tax debtor. After the Requirement to Pay was issued, the shareholder experienced health issues and withdrawals were made from the corporation on 15 occasions. The shareholder stated that the withdrawals were made by his spouse or one his children. The withdrawals were then applied to the credit card of the shareholder's spouse, which had various family charges on it. The corporation argued that as the funds were not used for the shareholder's credit cards, it had not violated the Requirement to Pay. In response, the Minister stated that the withdrawals were

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made further to money owed to the shareholder and were authorized as such by the shareholder, accordingly the Requirement to Pay was violated. The Tax Court of Canada agreed with the Minister. In particular, the Tax Court of Canada held that the funds were withdrawn directly or indirectly for the tax debtor, and thus should have been remitted to the CRA. The Tax Court of Canada confirmed that it does not matter what the money was used for after it was withdrawn for the tax debtor. As such, the Tax Court of Canada dismissed the appeal and confirmed that the corporation was now liable.

In review of the above, it is important for businesses to be mindful to comply with any Requirement to Pay that is received. The garnishment obligations are broadly written and accordingly will apply even if the funds are indirectly received by the tax debtor. Where the tax debtor is a shareholder, employee, or contractor, the business should be mindful that redirecting the owed dividends, salary, or fees, to a third-party, will result in the business becoming liable. Any garnishment avoidance tactic a tax debtor can dream up is one that will be caught by the various collection provisions under the Acts.

For more information or to ensure you are properly dealing with your potential garnishment obligations, please speak with one of our tax litigators.

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