



**Tax**

# Detail, documentation critical to taxpayer relief application

By AdvocateDaily.com Staff



Taxpayer relief applications are one way in which individuals can seek to have the Canada Revenue Agency (CRA) waive or cancel penalties or interest — but when filing a request, there are a number of tips taxpayers should keep in mind to ensure the greatest chance of success, Toronto tax litigator [Adrienne Woodyard](#) tells AdvocateDaily.com.

Woodyard, a partner with [DLA Piper \(Canada\) LLP](#), explains that while subsection 220(3.1) of the *Income Tax Act* allows the Minister of National Revenue to waive or cancel all or any portion of any penalty or interest imposed under the *Act* — as long as the application is made within 10 years after the end of the year in which the penalty or interest is imposed — there is a lack of transparency and consistency in the CRA's system for processing taxpayer relief applications.

This, she says, stems from “the need to maintain taxpayer confidentiality and to the fact that relief requests are considered on a case-by-case basis by different individuals operating in different tax services offices.”

As a result, Woodyard says it can be difficult to predict the outcome of relief requests.

However, she explains, “unrepresented taxpayers often fare worse than others in the application process because they are not sufficiently informed about the CRA's administrative policy regarding relief requests.”

In particular, says Woodyard, relief applications are typically successful only where it is demonstrated that the circumstances fall within one or more of the grounds for relief described in Information Circular 07-1, namely: error or delay on the part of the CRA,



financial hardship/inability to pay or extraordinary circumstances such as natural disaster, civil disturbances, or serious illnesses, accidents or other emotional or mental distress.

Although Woodyard says there is also a catch-all category of unspecified, “other” circumstances in which relief may be granted, she says “the CRA in practice adheres quite stringently to the three grounds.” In some cases the CRA also fails to provide detailed reasons for the rejection of a relief request.

“This practice offers unsuccessful applicants hardly any clue as to where they went wrong,” she adds.

In most cases, Woodyard says, the real reason for the rejection is that the applicant failed to explain clearly the extenuating circumstances and to connect those circumstances to the need for relief.

“While the lingering effects from events such as illness, death, employee fraud, or the loss of a professional advisor may appear self-evident, the CRA will not necessarily appreciate how they resulted in the applicant’s failure to address or remedy a tax issue. The connection between events must be made clear,” she explains.

Applicants must also be sure to explain how the timing of the event in question relates to the tax issue, as applications are frequently rejected where the failure to address the tax issue arose prior to the event and was not clearly a result of it, Woodyard says.

In addition, taxpayers also often fail to explain extended periods of inaction or non-compliance, Woodyard says.

“This is often a challenge in cases where an applicant has failed to file tax returns for many years or has a long-outstanding tax debt for which it is requesting interest relief. The CRA will often assume, in the absence of any alternative explanation, that such delays are simply due to lack of diligence,” she says.

Woodyard also cautions that the CRA will also be generally unsympathetic to cases in which its letters did not reach the applicant because of a change in address unless the applicant can establish that all necessary steps were taken to ensure that the mailing address was updated.



A further reason why applications are rejected, she explains, is a failure to demonstrate that the applicant took proper measures to prevent the failure or remedy once it was discovered.

“If an applicant asserts that the delay was because he was unaware of a CRA communication that was sent to him, the onus will be on him to demonstrate that he took action as soon as he became aware of it,” says Woodyard. Applicants who claim that they acted based on erroneous information from the CRA should be able to produce a record of those discussions, or at least the name and number of the CRA personnel they spoke with, she adds.

Another common problem, she says, is a lack of sufficient documentation — such as doctors’ notes, death certificates, third-party correspondence, and financial disclosure. “Such items are often important components of a relief application,” Woodyard explains. And applicants who seek relief on the basis of financial hardship have an additional burden — the need to verify their inability to pay with appropriate documentation, such as bank account statements, loan documents, copies of bills and credit card statements. The CRA will also usually require a detailed statement of income and expenses.

For applicants who do submit supporting documentation, Woodyard suggests labeling each item with the applicant’s name, contact number, business number or social insurance number, the date of the relief application, and, if available, the CRA-assigned reference number.

“It is not uncommon for supporting documentation to be misplaced or separated from the application form - labelling everything is a hedge against this risk,” she says. “The worst reason to be rejected is because the CRA lost your paperwork.” She adds, “You should also keep a copy of the entire application for your own records, so that if something does get lost, it’s easy to replace. Putting together a comprehensive application can be a lot of work; you don’t want to do it twice.”

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