Remittance Violation Quiz



Is an Honest Mistake an Excuse for a Remittance Violation?

Auer Badd, a Threshold 2 employer, is required to remit deductions from employees' salaries to the CRA through a bank. On the day the remittance is due, the company sends a courier to the bank with a cheque for the full remittance amount ($105,000) and remittance form. Upon arriving at the bank, the courier discovers that he's misplaced the remittance form. The teller refuses to accept the cheque. So the courier rushes over to the CRA Tax Services Office and explains the situation to the cashier who agrees to accept the cheque without a remittance form. The cashier also issues the courier a receipt. The courier gives the receipt to the company's payroll administrator. A week later, CRA hits the company with a $10,500 penalty for not remitting payment to a bank. The company explains what happened and asks the CRA to waive the penalty. CRA refuses. The company appeals.

QUESTION

Can the company win the appeal?

A. No, because a court can't reverse a CRA decision not to grant a waiver

B. No, because failure to remit through a bank is a "strict liability" offence for which there are no excuses

C. Yes, but only if it can show that it exercised reasonable care to prevent the violation

D. Yes, but only if it can show that its failure to remit was the result of "extraordinary circumstances"

C. The company can win the appeal and ultimately get a waiver if it can persuade CRA that it showed reasonable care to prevent the violation.

EXPLANATION

Section 220(3.1) of the *Income Tax Act* gives the CRA discretion to waive or cancel all or any portion of a tax penalty. CRA Information Circular 92-2 sets out guidelines the Agency considers when deciding whether to grant a waiver. One factor is whether the employer "exercised a reasonable amount of care and has not been negligent or careless in conducting their affairs under a self-assessment system."

This scenario is based on the facts of an actual case called *McNaught Pontiac Buick Cadillac Ltd. v. Canada*. There was conflicting evidence about whether the company in this case exercised "reasonable care." However, the court faulted the CRA for not even considering the question in refusing the waiver. Consequently, the court set aside the decision and ordered the CRA to reconsider in light of how reasonably the company behaved. So C is the right answer.

WHY WRONG ANSWERS ARE WRONG

A is wrong because courts are allowed to review CRA decisions on waivers under Sec. 220(3.1). The standard of review is "reasonableness." In other words, a court can reverse a CRA decision that it finds unreasonable. And that is, in fact, what happened in this case.

B is wrong because the failure to remit to the CRA through a bank is not a "strict liability" offence, that is, an offence for which the mere commission of the act (or omission) is enough to establish guilt. A taxpayer can avoid liability by giving a satisfactory explanation for acting the way it did.

D is wrong because while it *is* one of the factors the CRA considers when waiving penalties, "extraordinary circumstances" includes external events such as disasters, postal strikes and serious injuries or illnesses. Simple human error like the courier's misplacing of the remittance form doesn't count as "extraordinary circumstances"—although it may, as in the *McNaught* case, be a factor in determining if the taxpayer showed reasonable care to prevent the violation.