



Ottawa, Monday, January 13, 1992

**Appeal No. 2894**

IN THE MATTER OF an appeal heard on October 24, 1991,  
under section 51.19 of the *Excise Tax Act*, R.S.C., 1970,  
c. E-13;

AND IN THE MATTER OF a decision of the Minister of  
National Revenue dated August 21, 1987, relating to a notice  
of objection served under section 51.17 of the *Excise Tax Act*.

**BETWEEN**

**COUNTY OF WHEATLAND NO. 16**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed. No new evidence was produced at the hearing to sustain the appellant's position. The appellant cannot use both the "simplified method" and the "identification method" on the same project to support refund claims.

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Presiding Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

W. Roy Hines  
W. Roy Hines  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. 2894**

**COUNTY OF WHEATLAND NO. 16**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The sole issue in this appeal is whether the use of a "simplified method" to calculate the refund in previous claims precludes the use of an alternative method, namely the "identification method," in another refund claim pertaining to the same construction project.*

**HELD:** *The appeal is dismissed. The appellant had the choice of selecting either the simplified method or the identification method to secure refunds from the federal sales tax paid on building materials.*

*The municipal corporation chose the simplified method to secure its refund of federal sales tax. The municipal corporation is precluded from using the identification method for a tax refund after it has opted to use the simplified method unless it decides, within the time period required under the Excise Tax Act, to withdraw from the use of the simplified method and meets the requirements of the identification method and resubmits. This was not done by the appellant.*

*The appellant sought, at the hearing, to have the Tribunal examine the exclusions decided upon in the determination of federal sales tax refundable under the simplified method. However, this was not at issue in the determination of the Deputy Minister of National Revenue for Customs and Excise under appeal and, therefore, could not be considered by the Tribunal.*

*Place of Hearing: Calgary, Alberta  
Date of Hearing: October 24, 1991  
Date of Decision: January 13, 1992*

*Tribunal Members: Robert C. Coates, Q.C., Presiding Member  
Sidney A. Fraleigh, Member  
W. Roy Hines, Member*

*Clerk of the Tribunal: Janet Rumball*

*Counsel for the Tribunal: Gilles B. Legault*

*Appearances: Ken Stepaniuk, for the appellant  
Linda J. Wall, for the respondent*

**Appeal No. 2894**

**COUNTY OF WHEATLAND NO. 16**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member  
SIDNEY A. FRALEIGH, Member  
W. ROY HINES, Member

**REASONS FOR DECISION**

This is an appeal under section 51.19 of the *Excise Tax Act*<sup>1</sup> (the Act) from a decision made by the Minister of National Revenue (the Minister) on August 21, 1987.

The appellant is a municipal corporation under Alberta law which contracted for the construction of a new high school. The construction began in June 1985. On February 13, 1987, the County of Wheatland (the appellant) claimed the last of several refunds for federal sales tax paid on materials used in the construction of the high school. The amount of the refund claim was \$25,439.27. The refund claim number was 6453. The refund claim was disallowed because the appellant used the identification method to determine the amount of the refund after having opted to use the simplified method for the determination of refunds of federal sales tax when the project was initiated.

The appellant sought, at the hearing, to have the Tribunal examine the exclusions decided upon in the determination of federal sales tax refund; however, this issue was not related to the determination of the Deputy Minister of National Revenue, Customs and Excise, under appeal and, therefore, could not be considered by the Tribunal. Hence, the sole issue in this appeal is whether the use of a simplified method to calculate the refund in previous claims precludes the use of an alternative method, namely the identification method, in another refund claim pertaining to the same construction project.

The relevant provisions of the Act at the time of the refund claim read as follows:

*44.27 Where tax under Part V has been paid in respect of any materials and the materials have been purchased by or on behalf of*

*(a) a school, university or other similar educational institution for use exclusively in the construction of a building for that institution,*

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1. R.S.C., 1970, c. E-13, as amended.

*an amount equal to the amount of that tax shall, subject to this Part, be paid to that institution, organization or corporation if it applies therefor within two years after the materials were purchased.*

*49.2 Where circumstances render it difficult to determine the exact amount of any payment that may be made pursuant to any of sections 44 to 44.3 or any deduction that may be made under section 48 or 49, the Minister, with the consent of the person to whom the payment or by whom the deduction may be made, may in lieu of that amount make a payment pursuant to, or authorize a deduction under, that section in an amount determined, in such manner as the Governor in Council may by regulation prescribe, to be the exact amount of the payment or deduction.*

The Formula Refunds Regulations<sup>2</sup> (the Regulations) set out the manner to calculate refunds in circumstances where it is difficult to determine the exact amount refundable. In accordance with its subsection 3(2), the sale price of the goods or their contract price may be reduced by a percentage determined by the Minister after taking into account the class of the goods and the nature of and parties to the transaction.

Excise Memorandum ET 406, for instance, deals with the refund of sales tax paid by schools, universities and other similar educational institutions. It outlines two methods of tax computation. They are the identification method and the simplified method. Using the identification method, documentary evidence substantiates the exact amount of sales tax paid on the materials and must be filed with the Department of National Revenue (the Department); using the simplified method, a formula is set out in the aforementioned Regulations. The method applies to progress payments for goods installed. Roughly summarized, it first takes the total amount of the contract from which fees and expenses, such as legal, architectural and engineering fees, are excluded. Then, 66 percent of that amount is subtracted to extract non-taxable factors such as the contractor's on-site labour as well as his profit. The provincial retail tax is further subtracted. The result gives a taxable value of materials on which federal sales tax refund may be calculated. A sales tax factor set forth in the Excise Memorandum is finally applied to that amount, which results in the amount refundable.

Mr. Rajan, the Audit Unit Manager in the Calgary District Office of the Department, testified for the respondent. According to the witness, the appellant did have an option, within the time period set out in the Act, to revert to the identification method as long as it submitted all relevant documentation associated with the project to substantiate such a claim. However, the appellant did not avail itself of that option.

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2. C.R.C., Vol. VI, c. 591, p. 3933.

The Tribunal found that the appellant had decided to use the simplified method for the calculation of refunds of federal sales tax and that once this decision was taken it could not, during the latter stages of the project, revert to the identification method to recover a portion of the federal sales tax. In light of Excise Memorandum ET 406 and taking into account the respondent witness's explanations, the Tribunal is of the view that both methods cannot be used alternatively for different refund claims pertaining to one single construction project.

Therefore, the appeal is dismissed.

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Presiding Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

W. Roy Hines  
W. Roy Hines  
Member