



Ottawa, Thursday, May 28, 1992

Appeal No. AP-90-065

IN THE MATTER OF an appeal heard on March 19, 1992,
under section 81.19 of the *Excise Tax Act*, R.S.C., 1985,
c. E-15, as amended;

AND IN THE MATTER OF a decision of the Minister of
National Revenue dated June 29, 1990, relating to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

**LIFE SKILLS PROGRAM
COMMUNITY LIVING HUNTSVILLE**

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The refund claim filed by the appellant was made after the two-year time limit imposed by subsection 68.24(6) of the *Excise Tax Act*. Also, no evidence was produced to justify a refund under the provisions of subsection 68.24(7) of the *Excise Tax Act*.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member

Desmond Hallissey
Desmond Hallissey
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-90-065

**LIFE SKILLS PROGRAM
COMMUNITY LIVING HUNTSVILLE**

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

On January 10, 1984, the appellant entered a 48-month lease-purchase contract for the use of a 15-passenger van. On January 19, 1990, the appellant filed an application for a refund under the Excise Tax Act in the amount of \$951.46, which represents the sales tax, at 7.2 percent, on \$13,214.70, the invoice price of the vehicle sold by the manufacturer to the dealer. The claim was rejected and that decision was confirmed by the respondent. The issue in this appeal is whether the appellant, as a certified institution, is entitled to a sales tax refund under section 68.24 of the Excise Tax Act.

HELD: *The appeal is dismissed. The appellant cannot claim the refund pursuant to subsection 68.24(6) of the Excise Tax Act since the claim was filed two years after the date of purchase. Moreover, the appellant is not entitled to a refund under subsection 68.24(7) as no evidence was presented to satisfy one of the qualifying conditions of that subsection.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: March 19, 1992

Date of Decision: May 28, 1992

*Tribunal Members: Arthur B. Trudeau, Presiding Member
Charles A. Gracey, Member
Desmond Hallissey, Member*

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Janet Rumball

Appearance: Gilles Villeneuve, for the respondent

Appeal No. AP-90-065

**LIFE SKILLS PROGRAM
COMMUNITY LIVING HUNTSVILLE**

Appellant

and

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TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
CHARLES A. GRACEY, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

The appellant is a public non-profit organization, recognized on December 28, 1989, as a certified institution under section 68.24 of the *Excise Tax Act*¹ (the Act). On January 10, 1984, it entered into a 48-month lease-purchase contract for the use of a 15-passenger van. On January 10, 1988, after the expiry of the contract, it purchased the van for the residual amount of \$647. On January 19, 1990, the appellant filed an application for a tax refund of \$951.46. This amount represents the sales tax, at 7.2 percent, on \$13,214.70, which is the invoice price of the vehicle sold by the manufacturer, Chrysler Credit Canada Ltd., to the dealer, West End Motors Huntsville Limited, according to an invoice dated December 5, 1983. The claim was rejected and that decision was confirmed by the respondent on June 29, 1990.

The appellant did not appear at the hearing, but the respondent was represented by counsel. The sole issue in this appeal is whether the appellant, as a certified institution, is entitled to a sales tax refund under section 68.24 of the Act.

The appellant's right to a sales tax refund under section 68.24 of the Act is subject to the ordinary time limit of two years under subsection 68.24(6) of the Act and, therefore, the refund cannot be allowed as it is statute barred. The appellant's refund claim is dated January 19, 1990, while January 10, 1988, is the van's purchase date and the expiry date of the lease-purchase contract. The evidence also clearly suggests that the appellant did not pay at the time of the purchase an amount which included the claimed sales tax as the residual purchase price reflected only a fraction of the tax as calculated.

Part of the appellant's claim could have benefited from the two-year retroactive application granted by subsection 68.24(7) of the Act, but the appellant did not submit any evidence with respect to a specific condition set forth in that provision. Subsection 68.24(7) reads as follows:

Where tax under Part VI has been paid in respect of any goods and a non-profit organization or charity to which a certificate was subsequently issued under subsection (2) or this section, as it read immediately before February 11, 1988,

1. R.S.C., 1985, c. E-15, as amended.

or a person acting on behalf of such an organization or charity, has purchased the goods within two years before the specified day for the sole use of the organization or charity and not for resale and the organization or charity was constructing a building for its own use at the time of the purchase, an amount equal to the amount of that tax shall, subject to this Part, be paid to that organization or charity if it applies therefor within two years after the day on which the certificate was issued to the organization or charity. (emphasis added)

The substance of subsection 68.24(7) of the Act is to provide, within two years following the date that an organization is certified, a right to claim the sales tax paid on the purchase of goods up to two years before the date of its certification. However, to benefit from the exemption, it must be established that the organization "was constructing a building for its own use at the time of the purchase." No evidence to that effect was presented to the Tribunal.

For the foregoing reasons, the appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Charles A. Gracey

Charles A. Gracey
Member

Desmond Hallissey

Desmond Hallissey
Member