



Ottawa, Tuesday, January 14, 1992

Appeal No. AP-91-060

IN THE MATTER OF an appeal heard on  
November 13, 1991, under section 81.19 of the  
*Excise Tax Act*, R.S.C., 1985, c. E-15;

AND IN THE MATTER OF a decision of the Minister of  
National Revenue dated March 20, 1991, with respect to a  
notice of objection served under section 81.15 of the  
*Excise Tax Act*.

**BETWEEN**

**PRINT ABILITY INC.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

John C. Coleman  
John C. Coleman  
Member

W. Roy Hines  
W. Roy Hines  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

*UNOFFICIAL SUMMARY*

**Appeal No. AP-91-060**

**PRINT ABILITY INC.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*This appeal deals with whether the appellant can avoid sales tax liability because of the alleged negligence by the respondent's officials.*

**HELD:** *The appeal is dismissed.*

*Place of Hearing: Ottawa, Ontario*  
*Date of Hearing: November 13, 1991*  
*Date of Decision: January 14, 1992*

*Tribunal Members: Charles A. Gracey, Presiding Member*  
*John C. Coleman, Member*  
*W. Roy Hines, Member*

*Counsel for the Tribunal: Clifford Sosnow*

*Clerk of the Tribunal: Janet Rumball*

*Appearances: Michael J. Lancop, for the appellant*  
*Howard A. Baker, for the respondent*

**Appeal No. AP-91-060**

**PRINT ABILITY INC.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member  
JOHN C. COLEMAN, Member  
W. ROY HINES, Member

**REASONS FOR DECISION**

This appeal arises because the respondent, the Minister of National Revenue (the Minister), decided that the appellant was liable to pay sales tax in addition to that which it has already submitted. The Minister says that the appellant has used the wrong tax rate in assessing its sales tax liability. The appellant, through its President, Mr. Michael J. Lancop, says that the Minister should be denied the additional taxes because officials of Revenue Canada failed to inform it that the sales tax rate had changed. Indeed, the appellant claims that these officials misinformed it as to the correct sales tax rate to apply in assessing sales tax liability.

The appellant, a commercial printer, has been a licensed manufacturer since May 1985. As of April 1, 1986, pursuant to the *Excise Tax Act* (the Act), the appellant was required to use the rate of 12 percent in assessing its sales tax liability.<sup>1</sup> This Act was amended and, effective June 1, 1989, the rate was changed to 13.5 percent.<sup>2</sup>

Up until June 1989, the appellant had remitted its sales tax using the appropriate sales tax rate. However, for the months of June, July and August 1989, the appellant used the rate of 12 percent rather than 13.5 percent in calculating its sales tax remittance. The appellant used the rate of 13.5 percent beginning in September 1989. The respondent's claim for additional sales tax is based on the difference in the applicable sales tax rate for the months of June through August 1989.

The appellant testified that it did not use the new rate for several reasons. The appellant provided preprinted tax remittance forms that it received from Revenue Canada officials for the month of June 1989 that indicated a sales tax rate of 12 percent. The forms for July and August did not specify a rate. For the month of June, the appellant relied on the 12 percent figure in calculating its tax remittance. For the month of July, the appellant says there was no reason to believe that the rate had changed. Mr. Lancop was informed by a friend that the rate had changed, but this was not until the third week of August. Nevertheless, the appellant continued to use the old rate for the rest of August to avoid the accounting difficulties that, it said, a rate

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1. R.S.C., 1985, c. 42 (2nd Supp.), subsection 5(2).

2. S.C., 1989, c. 22, subsection 3(2).

change would entail at such a late date in the month. As noted earlier, the appellant used the new rate in calculating its September sales tax remittance.

Mr. Lancop said that his local Revenue Canada reporting officer did not contact him after the company had submitted its remittance forms for June and July to notify the company that an error had been made in the assessment of tax liability. Previously, Mr. Lancop had received telephone calls when errors had been made. Mr. Lancop also claimed that, although he normally receives the bulletin published by Revenue Canada entitled Excise News, he did not receive the special edition containing the notice of the sales tax rate change, nor the follow-up edition no. 65.

The appellant argued that as a licensed manufacturer, it is really a tax collector for the Government of Canada and that the tax claimed would have to be paid out of its own resources since it did not charge the incremental tax in the first place.

The appellant also argued that Revenue Canada's provision of remittance forms that specified the incorrect sales tax rate, its failure to contact the appellant when the company had submitted incorrect remittance forms, and its failure to ensure that the appellant received the special and follow-up editions of Excise News amounted to negligence. The appellant submitted that it should not be held liable for Revenue Canada's negligence by being required to pay the additional sales tax amounts.

Counsel for the respondent argued that neither the Minister nor his servants or agents are under a statutory obligation to assist licensees in complying with the Act by informing them about legislative and administrative changes. The obligation to obtain proper information rests with the taxpayer. He contended that Revenue Canada officials did not misinform the appellant. Counsel also provided several precedents in support of his contention that even if the appellant was misinformed by Revenue Canada officials, this would not excuse a taxpayer from paying its taxes, nor would it constitute a reason for avoiding a tax liability. The appellant was obliged to comply with the legislation regardless of the representations made by the Minister's officials.

Given that the appellant is on the mailing list and continues to receive the Excise News, it is difficult to blame Revenue Canada for the apparent non receipt of the two relevant editions. In any event, even if the appellant did not receive the relevant editions, the obligation to obtain the proper information rests with the taxpayer.

To the appellant's credit, it is clear that soon after it became aware that the higher rate was in force, it began to charge and remit sales tax at the proper rate. However, the appellant did so only commencing with the next month and made no attempt to collect, report and remit the proper rate of tax on the date it became aware of the change.

Revenue Canada may be criticized for using the preprinted tax form that contained the wrong rate for the month of June. By the same token, the appellant made no effort to inform itself whether the rate had changed when it received the preprinted forms for July that showed no rate at all.

Having considered the evidence and arguments of both parties, the Tribunal concludes that the appeal should be dismissed. The Tribunal is empowered by statute to determine, amongst other things, whether the Minister has properly assessed the appellant. It does not have the jurisdiction to alleviate the appellant's tax liability, properly assessed by the Minister, because of the alleged negligence of the Minister's agents or servants.

It is clear from the law that the appellant was properly required to assess sales tax at the rate of 13.5 percent for the months of June through August 1989. This, the appellant did not do and, thus, the Minister was correct in his assessment of the appellant's additional sales tax liability. On this basis, the appeal must fail.

CONCLUSION

In view of the foregoing, the appeal is dismissed.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

John C. Coleman  
John C. Coleman  
Member

W. Roy Hines  
W. Roy Hines  
Member