



Ottawa, Tuesday, July 27, 1993

**Appeal No. AP-91-103**

IN THE MATTER OF an appeal heard on  
December 10, 1992, 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 April 15, 1991, with respect to a  
notice of objection served under section 81.15 of the  
*Excise Tax Act*.

**BETWEEN**

**QUEBECOR PRINTING (CANADA) INC.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Michèle Blouin  
Michèle Blouin  
Presiding Member

John C. Coleman  
John C. Coleman  
Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

Michel P. Granger  
Michel P. Granger  
Secretary



Ottawa, Tuesday, July 27, 1993

**Appeal No. AP-91-104**

IN THE MATTER OF an appeal heard on  
December 10, 1992, 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 April 15, 1991, with respect to a  
notice of objection served under section 81.15 of the  
*Excise Tax Act*.

**BETWEEN**

**QUEBECOR PUBLITECH INC.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Michèle Blouin  
Michèle Blouin  
Presiding Member

John C. Coleman  
John C. Coleman  
Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

Michel P. Granger  
Michel P. Granger  
Secretary



Ottawa, Tuesday, July 27, 1993

**Appeal No. AP-91-105**

IN THE MATTER OF an appeal heard on  
December 10, 1992, 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 April 15, 1991, with respect to a  
notice of objection served under section 81.15 of the  
*Excise Tax Act*.

**BETWEEN**

**BRITISH AMERICAN BANK NOTE INC.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Michèle Blouin  
Michèle Blouin  
Presiding Member

John C. Coleman  
John C. Coleman  
Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

Michel P. Granger  
Michel P. Granger  
Secretary



Ottawa, Tuesday, July 27, 1993

**Appeal No. AP-91-106**

IN THE MATTER OF an appeal heard on  
December 10, 1992, 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 April 15, 1991, with respect to a  
notice of objection served under section 81.15 of the  
*Excise Tax Act*.

**BETWEEN**

**BRITISH AMERICAN BANK NOTE INC.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Michèle Blouin  
Michèle Blouin  
Presiding Member

John C. Coleman  
John C. Coleman  
Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

*UNOFFICIAL SUMMARY*

**Appeal Nos. AP-91-103, AP-91-104, AP-91-105 and AP-91-106**

**QUEBECOR PRINTING (CANADA) INC.  
QUEBECOR PUBLITECH INC.  
BRITISH AMERICAN BANK NOTE INC.**

**Appellants**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The appellants work in the printing field. They print and sell cheques to major financial institutions and their depositors. The issue in these appeals is whether the expenses incurred by the appellants in performing certain activities on their premises before the cheques are acquired by the Canada Post Corporation (for example, the sorting of the cheques and their packaging in appropriate containers) represent costs that can be excluded in calculating the sale price of the cheques under clause 46(c)(ii)(B) of the Excise Tax Act and the Sales Tax Transportation Allowance Regulations.*

***HELD:** The appeals are dismissed. The expenses incurred are viewed as expenses incurred prior to the transportation, per se, by the Canada Post Corporation. Moreover, the appellants were unable to provide the documents specifically required by law to support the alleged costs relating to the in-house postal sorting.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: December 10, 1992  
Date of Decisions: July 27, 1993*

*Tribunal Members: Michèle Blouin, Presiding Member  
John C. Coleman, Member  
Sidney A. Fraleigh, Member*

*Counsel for the Tribunal: Robert Desjardins*

*Clerk of the Tribunal: Dyna Côté*

*Appearances: Thérèse Desjardins, for the appellants  
Rosemarie Millar, for the respondent*



**Appeal Nos. AP-91-103, AP-91-104, AP-91-105 and AP-91-106**

**QUEBECOR PRINTING (CANADA) INC.  
QUEBECOR PUBLITECH INC.  
BRITISH AMERICAN BANK NOTE INC.**

**Appellants**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member  
JOHN C. COLEMAN, Member  
SIDNEY A. FRALEIGH, Member

**REASONS FOR DECISIONS**

These are four appeals under section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) with respect to assessments made by the Minister of National Revenue (the Minister) under section 81.15 of the Act.

The appellants work in the printing field. They print and sell cheques to major financial institutions and their depositors.

In the case of Appeal Nos. AP-91-103 and AP-91-104, the appellants were assessed \$43,352.12 and \$20,880.25, respectively, in unpaid taxes. As for Appeal Nos. AP-91-105 and AP-91-106, the amounts assessed for non-payment of taxes were \$137,522.94 and \$231,365.20, respectively. The appellants served notices of objection and, on April 15, 1991, four notices of decision were issued confirming the assessments on the grounds that there was no legislative basis to allow the notices of objection. According to the respondent, the costs deducted as transportation costs in calculating the sale price are in fact costs relating to activities performed prior to the transportation of the goods between the manufacturer's premises or to the delivery of the goods from these same premises to its clients. These decisions were appealed, and the four cases were heard by the Tribunal at the same time.

The issue before the Tribunal is whether the expenses incurred by the appellants with respect to certain activities performed (for example, the sorting of the cheques and their packaging in appropriate containers, the weighing of said containers) in their commercial facilities prior to the cheques being acquired by the Canada Post Corporation (Canada Post) and performed in order to reduce postal invoices and to speed delivery of the cheques to their clients, represent costs that can be excluded in calculating the sale price of the cheques under clause 46(c)(ii)(B) of the Act and the *Sales Tax Transportation Allowance Regulations*<sup>2</sup> (the Regulations).

Mrs. Thérèse Desjardins, a sales tax consultant, represented the appellants and testified on their behalf. After pointing out that the price lists for the cheques indicate that the costs of shipping are not included in the sale price, she explained the method used to account for

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

2. SOR/83-95, January 21, 1983, *Canada Gazette* Part II, Vol. 117, No. 3 at 497.

transportation costs. In effect, all amounts received from clients as transportation costs are placed in a controlling account, to which are charged the expenses paid to Canada Post. These expenses are the amounts charged to the appellants by Canada Post and are substantiated by invoices (receipts) given by Canada Post. The invoices (receipts) from Canada Post do not make mention of the exact credit to the appellants for the work done by them to accelerate the delivery of the cheques to its clients. The credit balance is due to an 18 percent discount or credit which Canada Post gives the appellants because of the volume of mail and the sorting operations performed. Mrs. Desjardins testified that the labour costs and indirect costs are assumed by the appellants. Lastly, she explained that the discount is not passed on to the financial institutions nor the depositors.

During cross-examination, Mrs. Desjardins admitted that, due to the discount given by Canada Post, the amount paid by several clients for transportation was always higher than that actually paid by the appellants to Canada Post.

Mrs. Lucie Bergevin-Given, who was the auditor in the case of Appeal No. AP-91-106 and who is familiar with the other cases, testified on behalf of the respondent. She outlined the events that had led to the assessments at issue and recalled that the application for refund made by the appellant had been approved in November 1988, subject to an audit at a later date. That audit was begun in January 1989 and, as a result of the findings, a notice of assessment was sent to collect the amount paid to the appellant. Using an invoice placed in evidence, the witness then explained how the controlling account worked. In response to a question from counsel for the respondent, Mrs. Bergevin-Given acknowledged the existence in evidence of invoices submitted by Canada Post. She hastened to point out, however, the absence of any numerical documentary evidence substantiating the expenses at issue incurred by Custom Cheques of Canada (a division of British American Bank Note Inc.) and which are debited from the surplus charged to the banks.

During cross-examination, Mrs. Bergevin-Given admitted that she was not familiar with the documents which the appellant submitted to the respondent in September 1990 following the serving of the notice of objection. Mrs. Desjardins then submitted in evidence, as Exhibit A-1, an accounting document from Custom Cheques of Canada, which showed the costs incurred by the appellant during the sorting operations. Mrs. Bergevin-Given also mentioned that there had generally been no reply to numerous requests made during the audit to the appellant's accounting firm and to certain employees of the British American Bank Note Inc. to substantiate the costs. Lastly, the witness stated that there was no way to establish a tie-in between the surplus and the figures in Exhibit A-1. Mrs. Bergevin-Given commented that an audit of these figures would require the taxpayer to breakdown the content of the product account and would necessitate specific documents substantiating such a breakdown.

Mrs. Dawn Schellenberg, Director of Finance at Custom Cheques of Canada, was the second witness for the appellants. She explained that only a small amount of documentation was provided along with the application for the refund in the case of Appeal No. AP-91-106 and that the company had never received a request for additional documentation explaining the debits and credits. However, in reply to a question from the Tribunal, Mrs. Schellenberg acknowledged that she did not know if the appellant's accounting firm had been contacted to this effect. In reply to a question from counsel for the respondent, this witness admitted that there was no tie-in between the surplus and the figures in Exhibit A-1. Commenting on this reply by Mrs. Schellenberg, Mrs. Desjardins stated that the difference between the price obtained and the price requested from clients was due, in part, to the discount given by Canada Post for doing the postal sorting and, in part, to a discount for volume. Mrs. Desjardins then added that the surplus had to be viewed in a broader context; it is used to cover the costs incurred in-house and a small portion of it is not covered by costs, because that portion corresponds, in fact, to a

volume discount. She did not specify the exact portion of the surplus attributable to the discount given by Canada Post for the postal sorting work.

During the presentation of arguments, Mrs. Desjardins first argued that it was not necessary to refer to the provisions stipulated in the Regulations because it is "absolutely clear" that the sale price of the cheques is "separated, identified and invoiced separately" from the transportation costs. To this end, she cited Decision No. 1135/17-1 of the Department of National Revenue, dated November 17, 1982, with respect to shipping services for printed matter. She also relied upon an equity argument, citing the difference in the treatment of costs incurred in-house compared to those paid by a third party, even though the operations in question are the same.

For her part, counsel for the respondent argued that the issue was not one of equity but of law. While acknowledging that the appellants were entitled to a deduction for transportation costs, she clarified that these transportation costs must be actual costs. After having examined the relevant legislative provisions, including the definition of sale price given in section 42 of the Act, counsel for the respondent argued that the sale price on which the tax is calculated must include transportation costs except those deductible under section 46 of the Act. In her opinion, the surplus paid by the appellants' clients does not qualify as transportation costs, and it is clear that it must be included in the computation of the sale price for the purposes of the sales tax.

Continuing along these lines, counsel for the respondent emphasized the importance of the exception provided in section 46 of the Act, because it constitutes the basis for the deduction. In her opinion, the expenses identified as transportation costs by the appellants were not transportation costs within the meaning of the Act, because they were not incurred during the actual shipping of the goods. In support, she cited the decision of the Federal Court of Appeal in *Chevron Canada Limited v. The Minister of National Revenue*.<sup>3</sup> According to counsel, the transportation of the cheques has not actually occurred until Canada Post assumes responsibility for sending out the manufactured goods. Finally, citing the provisions of the Regulations, and especially section 4, she argued that the only amounts that could be excluded from the sale price were costs substantiated by postal receipts from Canada Post. She also pointed out that the costs identified by the appellants are non-verifiable; in this argument, she was referring to the absence of any tie-in, which Mrs. Schellenberg had admitted. In conclusion, she asked for a strict interpretation of the relevant provisions.

After having reviewed all of the evidence and the arguments presented by the parties, the Tribunal finds that the appeals must be dismissed. Firstly, the Tribunal does want to clarify that the expanded definition of "sale price" given in section 42 of the Act leaves no doubt, according to the Tribunal, that the transportation costs paid to the appellants by their many clients are indeed part of the "sale price" of the cheques. It is, therefore, necessary to refer to the exception provided in section 46 of the Act and to determine whether the conditions stipulated therein by the legislator are satisfied in this instance. Clause 46(c)(ii)(B) of the Act provides for the exclusion, in the circumstances set forth by the Governor in Council, of the cost of transportation of the goods, incurred either between the manufacturer's premises in Canada or, as in the case of the current appeals, in delivering the goods from the manufacturer's premises to the purchaser.

The Tribunal is of the opinion that the expenses incurred in the sorting operations performed in-house by the appellants are not covered by clause 46(c)(ii)(B) of the Act. In light of clause 46(c)(ii)(B) of the Act, the Tribunal believes that only the actual costs of transportation,

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3. 86 D.T.C. 6595, Federal Court of Appeal, Court File No. A-931-85, November 13, 1986.



incurred in the process of Canada Post getting the cheques for delivery, can be excluded from the sale price.

Even if the Tribunal had been prepared to accept the appellants' claims with respect to the nature of the pre-delivery expenses, it does not change the fact that it would have dismissed the appeals on the grounds of non-compliance with the conditions set forth by the Governor in Council. After reading the specific conditions stipulated in the enabling Regulations with respect to section 46 of the Act, the Tribunal is of the opinion that the only provision that would apply in this instance is subsection 4(1) of the Regulations. This subsection stipulates that where goods on which sales tax is payable "are transported by the Canada Post Corporation ... the amount excluded in respect of the cost of that transportation shall be supported by postal receipts or transportation receipts that identify the goods transported." There is no ambiguity in this provision. When Canada Post is the carrier of the goods, the manufacturer is required to provide postal receipts to support any amount excluded from the sale price as costs of transportation. This deliberate choice by the Governor in Council ensures that transportation costs incurred through the postal service are substantiated by documentary evidence that is easy to obtain and therefore easily verifiable. In the present appeals, the Tribunal noted the inability of the appellants to produce postal receipts in support of their sorting expenses. There was no mention on the receipts or invoices from Canada Post of a percentage discount for the mail sorting done by the appellants. The appellants were unable to establish the exact discount obtained from Canada Post, by contract, for the performance of the sorting work normally done by Canada Post. Indeed, in the agreement between Canada Post and the appellants, only an all-inclusive discount of 18 percent is mentioned.

The Tribunal also points out that it would have been disposed to consider the argument that transportation costs can include certain discounts given by Canada Post. These discounts, arranged by contract with Canada Post, would however have to be clearly identified on the postal receipts as representing work done in-house that would normally be done by Canada Post. Ultimately, this argument would be based on the idea that the legislator did not wish to prevent businesses and Canada Post from reaching arrangements which would reduce postal costs and increase the efficiency of delivery of the goods. Having said this, it follows that such arrangements would have to be transparent and substantiated by documentation that would allow a verification of the actual expenses incurred by such businesses.

Finally, and as the Tribunal has stated in previous decisions, issues of equity are not within its jurisdiction. The Tribunal is required to apply the Act.

For these reasons, the appeals are dismissed.

Michèle Blouin  
Michèle Blouin  
Presiding Member

John C. Coleman  
John C. Coleman  
Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member