

Ottawa, Wednesday, August 20, 1997

**Appeal No. AP-91-170**

IN THE MATTER OF an appeal heard on June 16, 1997, 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 July 31, 1991, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

**BETWEEN**

**JIM DEREWIANKA**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau  
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Member

Charles A. Gracey

Charles A. Gracey  
Member

Michel P. Granger

Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-91-170**

**JIM DEREWIANKA**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

This is an appeal under section 81.19 of the *Excise Tax Act* of a decision of the Minister of National Revenue dated July 31, 1991, which rejected the appellant's application for a fuel tax rebate for gasoline and diesel fuel purchased between 1986 and 1989.

**HELD:** While the Tribunal may be sympathetic to the appellant's case, particularly with respect to diesel fuel purchases, it cannot render an affirmative decision in the absence of evidence to support his claims. The onus is on the appellant to demonstrate that the respondent's decision is wrong and should be reversed on appeal. The appellant has not discharged this onus.

Places of Video Conference

Hearing: Hull, Quebec, and Calgary, Alberta  
Date of Hearing: June 16, 1997  
Date of Decision: August 20, 1997

Tribunal Members: Arthur B. Trudeau, Presiding Member  
Robert C. Coates, Q.C., Member  
Charles A. Gracey, Member

Counsel for the Tribunal: Gerry H. Stobo

Clerks of the Tribunal: Margaret Fisher and Anne Jamieson

Appearance: Frederick B. Woyiwada, for the respondent

**Appeal No. AP-91-170**

**JIM DEREWIANKA**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member  
ROBERT C. COATES, Q.C., Member  
CHARLES A. GRACEY, Member

**REASONS FOR DECISION**

This is an appeal heard by way of video conference in Hull, Quebec, and Calgary, Alberta, under section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) of a decision of the Minister of National Revenue dated July 31, 1991, which rejected the appellant's application for a fuel tax rebate for gasoline and diesel fuel purchased between 1986 and 1989.

The appellant, a qualified farmer pursuant to subsection 69(1) of the Act, received a rebate for gasoline and diesel fuel purchases. An audit of the appellant's fuel purchases was conducted by officials of the Department of National Revenue. They concluded that he received a tax rebate of \$2,217.45 between 1986 and 1989 to which he was not entitled, as the fuel was, in their view, used for unqualified purposes, i.e. non-farm related (highway) use. Furthermore, they concluded that the appellant did not provide appropriate receipts to support his application for the rebate, as required by the *Sales Tax Bulk Permit Regulations*.<sup>2</sup> Consequently, the appellant was assessed that amount together with interest of \$466.27 and a penalty of \$266.44, for a total of \$2,950.16.

The appellant did not appear on the date set for the hearing, despite being informed of it well in advance.<sup>3</sup> There was no request from him for a postponement of this hearing.

Notwithstanding the appellant's absence, the Tribunal proceeded with the hearing. At the outset of the hearing, counsel for the respondent suggested that the appeal be dismissed on the grounds that the appellant had not appeared to advance the appeal or for lack of evidence. Counsel had wanted to examine the appellant on a number of issues relating to his application. It was, in counsel's view, not possible for the claim to succeed, as the information submitted by the appellant when he filed his appeal in 1991 had not been tested by examination and cross-examination.

Reluctantly, the Tribunal must agree that, although there is information on the file which suggests that the diesel fuel used by the appellant may have been used exclusively for off-highway farm-related activities and, therefore, subject to fuel rebates, there was no evidence introduced onto the record on this point.

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1. R.S.C. 1985, c. E-15.
  2. SOR/86-648, June 12, 1986, *Canada Gazette* Part II, Vol. 120, No. 13 at 2573.
  3. Letters sent to the appellant by the Tribunal on April 17, 1997, and May 26, 1997.

The Tribunal attempts to conduct its appeal hearings as informally as the circumstances of the case warrant. It has, for example, allowed other appellants to appear by way of a teleconference or, as in this case, by way of a video conference hearing. Also, it regularly allows the parties to conduct file or “paper” hearings, thereby dispensing with the need for personal appearances. Notwithstanding these options, the appellant has not tendered any evidence upon which the Tribunal can render a decision.

While the Tribunal may be sympathetic to the appellant’s case, particularly with respect to diesel fuel purchases, it cannot render an affirmative decision in the absence of evidence to support his claim. The onus is on the appellant to demonstrate that the respondent’s decision is wrong and should be reversed on appeal.<sup>4</sup> The appellant has not discharged this onus.

For the foregoing reasons, the appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau  
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Member

Charles A. Gracey

Charles A. Gracey  
Member

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4. *Assessment Commissioner v. Mennonite Home Association* (1972), [1973] S.C.R. 189 at 194.