CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, June 16, 1993

Appeal No. AP-92-142

IN THE MATTER OF an appeal heard on February 18, 1993, 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 24, 1992, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

WILLIAM J. HARMON **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

Desmond Hallissey
Desmond Hallissey
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

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TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-92-142

WILLIAM J. HARMON **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The appellant operates a farm and, as such, is entitled to a fuel tax rebate under the Excise Tax Act. The issue in this appeal is whether the appellant was correctly assessed on fuel not consumed for exempt purposes.

HELD: *The appeal is dismissed. Without any evidence on the part of the appellant as to the use of his fuel, it would simply be improper for the Tribunal to intervene in the administration of the policy that has fixed a certain percentage to help determine what portion of fuel is considered to be used for farming purposes under subsections 69(6.1) and (7) of the Excise Tax Act.*

Place of Hearing:	*Winnipeg, Manitoba*
Date of Hearing:	*February 18, 1993*
Date of Decision:	*June 16, 1993*
Tribunal Members:	*Michèle Blouin, Presiding Member* *Desmond Hallissey, Member* *Lise Bergeron, Member*
Counsel for the Tribunal:	*Gilles B. Legault*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*William J. Harmon, for the appellant* *Rick Woyiwada, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-92-142

WILLIAM J. HARMON **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
DESMOND HALLISSEY, Member
LISE BERGERON, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*[1] (the Act) from an assessment that was confirmed in part by the Minister of National Revenue.

The appellant operates a farm and, as such, is entitled to a fuel tax rebate under the Act. The issue in this appeal is whether the appellant was correctly assessed on fuel not consumed for exempt purposes.

The facts of this case are slightly difficult to understand as it involves several notices of determination and assessment. On October 26, 1990, the appellant was assessed for the period from January 1, 1986, to November 21, 1987, in the amount of $6,659.38 including unpaid taxes, interest and penalty. On November 16, 1990, a second assessment was issued reducing the total amount unpaid to $1,700.19. On the same day, the appellant received a notice of determination in which a sum of $42.75 was approved. On December 14, 1990, the appellant objected to the assessment. The appellant's objection was partly allowed to take into consideration the refund of $42.75 that was granted in the determination. Thus, the appellant remained assessed for a sum of $1,692.12.

Mr. John Wiebe, an officer with the Department of National Revenue (Revenue Canada), testified at the hearing. In his view, the amount in the second assessment corresponds to an overpayment that was made to the appellant for the period from 1986 to 1987 because, in previous refund claims, Mr. Harmon had not deducted a percentage of fuel for personal use. The witness explained that Revenue Canada has a policy of accepting, without any supporting documents, that 80 percent of the fuel is used for exempt purposes. In this case, more precisely, the appellant had deducted 20 percent of his utilization of gasoline, but claimed 100 percent of his utilization of diesel fuel. Mr. Harmon, who testified at the hearing, stated that he does not own a diesel truck, but owns diesel tractors which are used solely in farming operations. Mr. Wiebe explained, in this regard, that the 80-percent policy applies for the total fuel purchases and suggested that, if it looks inequitable to consider diesel fuel in isolation, one must consider that, taken also in isolation, gasoline would not always meet the 80-percent standard.

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

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As the Tribunal understands the facts of this case, the appellant has not substantiated his refund claims of sales tax. Accordingly, the respondent has applied an 80-percent standard to limit the appellant's claim to the maximum utilization percentage of fuel for farming purposes deemed to have been used without supporting documents. The appellant argued, in this regard, that the equipment that uses diesel fuel is used only on the farm. It remains, however, that the 80-percent standard applies to all fuel and that the only way to obtain full or almost full refund of diesel fuel is for the appellant to substantiate his claim with supporting documents. In the Tribunal's view, although the appellant may have used all diesel fuel for farming purposes, there was simply no evidence as to his use of gasoline. Without such evidence substantiating the refund claim, it would simply be improper for the Tribunal to intervene in the administration of the policy, which has established a certain percentage to help determine what portion of fuel is considered to be used for farming purposes under subsections 69(6.1) and (7) of the Act.

For all these reasons, the appeal is dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

Desmond Hallissey
Desmond Hallissey
Member

Lise Bergeron
Lise Bergeron
Member