



Ottawa, Monday, February 28, 1994

Appeal No. AP-92-266

IN THE MATTER OF an appeal heard on November 4, 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 October 23, 1992, with respect to a
notice of objection served under section 81.17 of the *Excise
Tax Act*.

BETWEEN

WILLIAM F. ADAMSON

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Presiding Member

Anthony T. Eyton

Anthony T. Eyton
Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-266

WILLIAM F. ADAMSON

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 81.19 of the Excise Tax Act of a determination of the Minister of National Revenue (the Minister) dated February 25, 1992, rejecting an application for a federal sales tax (FST) new housing rebate in the amount of \$2,783.83 on the basis that the appellant, as the builder of the single unit residential complex, was not entitled to the FST new housing rebate. On April 30, 1992, the appellant served a notice of objection. The Minister confirmed the determination in a notice of decision dated October 23, 1992. The issues in this appeal are whether the appellant is entitled to an FST new housing rebate on a single unit residential complex which he built and then sold to an individual on December 5, 1991, and whether the Minister should be held responsible for misinformation provided to the appellant by officials of the Department of National Revenue (Revenue Canada).

HELD: *The appeal is dismissed. The legislation is clear and unambiguous. On December 5, 1991, the appellant made a taxable supply of a single unit residential complex to an individual. On January 31, 1992, when the appellant filed the application for an FST new housing rebate, the only eligible claimant was the purchaser. Since the purchaser had not assigned his right to the appellant, the latter could not file an application for an FST new housing rebate. The Tribunal is not convinced that the appellant's representative was misinformed by Revenue Canada officials. The Tribunal notes, however, that it is well settled law that the Minister is not bound by representations made and interpretations given to taxpayers by authorized officials of Revenue Canada if such representations and interpretations are contrary to the clear provisions of the law.*

*Place of Hearing: Calgary, Alberta
Date of Hearing: November 4, 1993
Date of Decision: February 28, 1994*

*Tribunal Members: Robert C. Coates, Q.C., Presiding Member
Anthony T. Eyton, Member
Sidney A. Fraleigh, Member*

Counsel for the Tribunal: Joël J. Robichaud

Clerk of the Tribunal: Anne Jamieson

*Appearances: Barry Adamson, for the appellant
Brian Tittlemore, for the respondent*

Appeal No. AP-92-266

WILLIAM F. ADAMSON

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
ANTHONY T. EYTON, Member
SIDNEY A. FRALEIGH, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*¹ (the Act) of a determination of the Minister of National Revenue (the Minister) dated February 25, 1992, rejecting an application for a federal sales tax (FST) new housing rebate under section 121 of the Act.² On April 30, 1992, the appellant served a notice of objection. The Minister confirmed the determination in a notice of decision dated October 23, 1992.

The appellant is a building contractor who built a single unit residential complex and sold it to an individual. On June 28, 1990, the appellant commenced construction on the house and, on December 5, 1991, the owner took possession of the new house. Relying on information that he had received from an official of the Department of National Revenue (Revenue Canada), the appellant filed, on January 31, 1992, an application for an FST new housing rebate in the amount of \$2,783.83, which was rejected by the respondent on the basis that the only eligible claimant was the purchaser.

The issues in this appeal are whether the appellant is entitled to an FST new housing rebate on a single unit residential complex which he built and then sold to an individual on December 5, 1991, and whether the respondent should be held responsible for misinformation provided to the appellant by Revenue Canada officials.

At the hearing, the appellant was represented by his accountant, Mr. Barry Adamson, who also testified on behalf of the appellant. Basically, the appellant's representative reiterated the facts as they had been presented in the appellant's written submissions. He explained that, based on information received from Ms. Donna Holland, Unit Manager, Audit Division, Excise/GST District Office Branch of Revenue Canada, the appellant waited until the date of sale of the residential complex before applying for the FST new housing rebate. He explained that he had understood that the builder was entitled to apply for an FST new housing rebate at such time. Because he thought that the appellant would receive the FST new housing rebate, the amount of the rebate was not included in the selling price to the purchaser.

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

2. S.C. 1990, c. 45, s. 12, as amended by S.C. 1993, c. 27, s. 7.

Ms. Holland, who is in charge of FST new housing rebates, also testified on behalf of the appellant. She explained that she informed the appellant's representative that there had been some discussion regarding possible changes to the new housing rebate legislation and that, if the appellant resubmitted his application, there might be a possibility that Revenue Canada would reconsider it. The legislation was not changed, and the appellant's application was not reconsidered.

Counsel for the respondent did not present any evidence.

The appellant's representative argued that the respondent should be held responsible for errors made by Revenue Canada officials. He submitted that Revenue Canada officials informed him that, as a builder, the appellant was entitled to apply for an FST new housing rebate at the time of the sale of the residential complex. The appellant, therefore, relied on this information and took it into consideration when he negotiated the selling price of the house to the purchaser. Basically, the appellant's representative argued that the Tribunal should grant the appellant equitable relief.

Counsel for the respondent alleged that the legislation is clear and unambiguous. He argued that, at the time that the appellant filed his FST new housing rebate application, section 121 of the Act clearly provided that the only eligible claimant was the purchaser. Since the purchaser had not assigned his right to the appellant, the latter could not file an application for an FST new housing rebate. Furthermore, relying on *Granger v. Canada Employment and Immigration Commission*,³ counsel argued that the Minister is not bound by representations made and interpretations given to taxpayers by authorized officials of Revenue Canada if such representations and interpretations are contrary to the clear provisions of the law.

For purposes of this appeal, the relevant rebate provisions are found at subsection 121(2) of the Act, which states, in part, as follows:

(2) *Where*

(a) *a builder of a specified single unit residential complex*

(i) *gives possession of the complex to a person under a lease, licence or similar arrangement and thereby is deemed under subsection 191(1) or (3) to have made a taxable supply of the complex, or*

(ii) *makes a taxable supply by way of sale of the complex to an individual,*

(c) *the individual or person, as the case may be, first takes possession of the complex after 1990 and before 1995, and*

(d) *the construction or substantial renovation of the complex is substantially completed*

(ii) *before 1991, ...*

the Minister shall, subject to subsections (4) and (4.1), pay a rebate to the individual or, in the case described in subparagraph (a)(i), to the builder.

The Tribunal is of the opinion that the legislation is clear and unambiguous. On December 5, 1991, the appellant made a taxable supply of a single unit residential complex to an individual under paragraph 121(2)(a) of the Act. Under paragraph 121(2)(d) of the Act, on

3. [1986] 3 F.C. 70, affirmed [1989] 1 S.C.R. 141.

January 31, 1992, the only eligible claimant for an FST new housing rebate was the purchaser of the single unit residential complex. If the purchaser were to assign his right to the appellant, then the latter could file an application for an FST new housing rebate. Having considered the evidence, the Tribunal is not convinced that the appellant's representative was misinformed by Revenue Canada officials. Whether or not he was, the Tribunal notes that it is well settled law that the Minister is not bound by representations made and interpretations given to taxpayers by authorized officials of Revenue Canada if such representations and interpretations are contrary to the clear provisions of the law.⁴

Accordingly, the appeal is dismissed.

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

4. *Ibid.*