

Ottawa, Wednesday, May 25, 1994

**Appeal No. AP-93-002**

IN THE MATTER OF an appeal heard on December 1, 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 December 11, 1991, with respect to a  
notice of objection served under section 81.15 of the *Excise  
Tax Act*.

**BETWEEN**

**XTC INDUSTRIES LTD.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Charles A. Gracey

Charles A. Gracey  
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau  
Member

Lise Bergeron

Lise Bergeron  
Member

Michel P. Granger

Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-93-002**

**XTC INDUSTRIES LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

*The appellant is a small manufacturing and retail outlet for recreational vehicles. In the course of its manufacturing operations, the appellant sometimes converts vehicles that it owns, or that are owned by other retailers, into motor homes or recreational vehicles. Those vehicles are then sold to either consumers or other retailers. The issue in this appeal is the manner in which the appellant's sales to consumers are treated in comparison with its sales to other retailers.*

**HELD:** *The appeal is dismissed. The appellant has failed to demonstrate that the assessment is incorrect either in law or in fact.*

*Place of Hearing: Vancouver, British Columbia*

*Date of Hearing: December 1, 1993*

*Date of Decision: May 25, 1994*

*Tribunal Members: Charles A. Gracey, Presiding Member  
Arthur B. Trudeau, Member  
Lise Bergeron, Member*

*Counsel for the Tribunal: Gilles B. Legault*

*Clerk of the Tribunal: Nicole Pelletier*

*Appearances: Merv Hawthorne, for the appellant  
Linda J. Wall, for the respondent*

**Appeal No. AP-93-002**

**XTC INDUSTRIES LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member  
ARTHUR B. TRUDEAU, Member  
LISE BERGERON, Member

**REASONS FOR DECISION**

This is an appeal under section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) of an assessment of the Minister of National Revenue.

The appellant is a small manufacturing and retail outlet for recreational vehicles. In the course of its manufacturing operations, the appellant converts vehicles that it owns, or that are owned by other retailers, into motor homes or recreational vehicles. Those vehicles which it owns are then sold to consumers, while the vehicles that are owned by other retailers are returned to them for a price that includes the conversion costs and the appellant's profit margin.

At the hearing, XTC Industries Ltd. was represented by its President, Mr. Merv Hawthorne, who also testified on behalf of the appellant. Although the appellant's representative had other grievances with respect to the assessment, he clarified that the only issue in this appeal was the manner in which the appellant's sales to consumers had been treated in comparison with the sales to other retailers. From the documents on file, as well as from the evidence gathered at the hearing, it appears that the appellant remitted sales tax using the same method for both types of sales.

However, as revealed by the testimony of Mr. Bryan Beaulieu, the officer of the Department of National Revenue (Revenue Canada) who carried out the audit of the appellant's business, the appellant was assessed on the final sale price of its sales to consumers. Mr. Beaulieu also testified that, with respect to those sales, the assessment takes into account and deducts the sales tax already paid on the cost of the chassis, which tax was remitted by the car manufacturer. Moreover, a credit for the tax that was remitted by the appellant in relation to the conversion was also deducted. Mr. Beaulieu further allowed a 15-percent deduction from the sale price before calculating the tax. He explained that the deduction applies only to the sales to consumers. The deduction, he said, is an administrative concession granted to offset an inequity between licensees, such as the appellant, and car dealers, which are considered small manufacturers under the Act and which do not have the same tax burden as does the appellant.

The appellant's representative argued that the sales tax is a manufacturing tax and that, on that basis, the only manufacturing operation in this case was with respect to the conversion

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

and not the chassis. Therefore, he argued that the appellant should only remit sales tax on the manufacturing cost and not on its profits. The appellant's representative further argued that sales tax was included and paid on the chassis purchased by the appellant. He also contended that the 15-percent deduction should be allowed on all sales made by the appellant.

Counsel for the respondent submitted that sales tax must be assessed on the full sale price of the converted vehicles sold to consumers. The sale price, she said, is constituted of an amount for the chassis, an amount for the conversion work and an amount representing markup and profit, in other words, the "sale price" as defined in section 42 of the Act.

The Tribunal is of the view that this appeal should be dismissed. The appellant, that had the burden to prove that the assessment is incorrect either in law or in fact, has failed to convince the Tribunal. The Tribunal notes that, to support his position that the appellant's profits should not be included in the calculation of the sale price, the appellant's representative argued that those profits concern only the appellant and not the respondent. However, section 42 of the Act defines the words "sale price" for purposes of the sales tax provisions of the Act. There is no doubt, in light of that definition, that the sale price on which sales tax is imposed under subsection 50(1) of the Act is, by law, the price charged by the appellant to its customers, which price undoubtedly includes any amount for profit or markup. As for the rest of the assessment, the Tribunal is convinced that the auditor did everything possible to minimize the appellant's liability under the Act, as he deducted the tax paid on the chassis, thus avoiding double taxation, and allowed the 15-percent deduction permitted under the departmental administrative concession for sales to consumers.

After hearing this case, the Tribunal believes that, more than anything else, this appeal reveals a misunderstanding, first, as to how the sales tax provisions of the Act operate and, second, as to the availability and scope of some administrative concessions that Revenue Canada allows from time to time in specific circumstances. In the case at hand, the appellant was granted those concessions. A deduction was properly allowed for the tax already paid on the chassis and, with respect to those vehicles that the appellant owned, a 15-percent deduction from the sale price was allowed.

For all these reasons, the appeal is dismissed.

Charles A. Gracey

Charles A. Gracey  
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau  
Member

Lise Bergeron

Lise Bergeron  
Member