

Ottawa, Monday, February 27, 1995

Appeal No. AP-93-036

IN THE MATTER OF an appeal heard on October 25, 1994,
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 February 4, 1993, with respect to a notice
of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

RICKY D. WILLNESS

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

Lyle M. Russell

Lyle M. Russell
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-036

RICKY D. WILLNESS

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The appellant is a farmer in Smeaton, Saskatchewan. On January 10, 1992, the appellant applied for a rebate of fuel taxes paid for gasoline used in his farming operations. The application covered the periods from January 1 to December 29, 1989, and from January 10 to December 31, 1990. The issue in this appeal is whether the appellant is entitled to a fuel tax rebate under subsection 69(6.1) of the Excise Tax Act in relation to gasoline purchased more than two years before the appellant filed his rebate application.

HELD: *The appeal is dismissed. The appellant acknowledged that he did not file a rebate application relating to gasoline purchased in 1989 within the limitation period. Although the Tribunal feels some sympathy for the circumstances discussed by the appellant, it has no basis on which to conclude that the appellant properly filed a rebate application with the respondent.*

Place of Hearing: Saskatoon, Saskatchewan

Date of Hearing: October 25, 1994

Date of Decision: February 27, 1995

Tribunal Members: Charles A. Gracey, Presiding Member
Arthur B. Trudeau, Member
Lyle M. Russell, Member

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Anne Jamieson

Appearances: Ricky D. Willness and Doreen Willness, for the appellant
Christopher Rugar, for the respondent

Appeal No. AP-93-036

RICKY D. WILLNESS

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
ARTHUR B. TRUDEAU, Member
LYLE M. RUSSELL, 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 appellant is a farmer in Smeaton, Saskatchewan. On January 10, 1992, the appellant applied for a rebate of fuel taxes paid for gasoline used in his farming operations. The application covered the periods from January 1 to December 29, 1989, and from January 10 to December 31, 1990. No purchases were made between December 30, 1989, and January 9, 1990.

By notice of determination dated May 12, 1992, the respondent allowed the rebate claim for 1990, but disallowed the claim for 1989 on the basis that the purchases were made more than two years before the application for rebate. The appellant served a notice of objection and, by notice of decision dated February 4, 1993, the respondent upheld the determination.

The issue in this appeal is whether the appellant is entitled to a fuel tax rebate under subsection 69(6.1) of the Act in relation to gasoline purchased more than two years before the appellant filed his rebate application.

The appellant appeared at the hearing and testified along with his wife, Mrs. Doreen Willness. They acknowledged that the rebate application relating to gasoline purchased in 1989 was filed after the statutory time limit, but contended that there were extenuating circumstances that should be considered by the Tribunal. The principal circumstances were the severe illness and subsequent death of Mrs. Willness' father and the effect that this illness had on Mrs. Willness and her ability to tend to matters, such as the rebate application. The illness of Mrs. Willness' father began with the first of several recurring strokes in July 1990 and lasted until his death in late July 1992.

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

During the hearing, Mrs. Willness produced a letter from her doctor testifying to her state of depression over a period from the onset of her father's illness in July 1990 until well after his death when she sought medical help. After this letter was introduced into evidence and following discussions with his client, counsel for the respondent stated that the respondent would undertake to inquire if any sort of *ex gratia* or special investigation could be made into the matter. The Tribunal notes this undertaking on the part of the respondent, but must still deal with the issue before it.

Another factor raised by the appellant was the introduction of a new form for making an application for a fuel tax rebate. Mrs. Willness noted that the new form provided for two years' application to be made on the same form and stated that this led her to conclude that she could put the application aside for a time and deal with more pressing matters, including her father's illness.

Counsel for the respondent submitted that the relevant provision of the Act clearly sets out a requirement that, in order for a person to be entitled to a rebate, he must apply within two years after the gasoline was purchased. Counsel indicated that, as the appellant is not disputing the fact that the application was filed after the statutory time limit, there was no basis upon which the Tribunal could allow the rebate. Counsel submitted that the Tribunal had previously indicated, in circumstances similar to this case, that it did not have the jurisdiction to grant equitable relief.²

As noted by the Tribunal in *Kim Hutton v. The Minister of National Revenue*,³ where an appellant claims the benefit of a refund, it has the onus to establish that every condition necessary for the refund has been satisfied. In the instant case, one of these conditions is that the application for the rebate be filed within the limitation period set by the Act. In this respect, the appellant has acknowledged that he did not file a rebate application relating to gasoline purchased in 1989 within the limitation period. Although the Tribunal feels some sympathy for the circumstances discussed by the appellant, it has no basis on which to conclude that the appellant properly filed a rebate application with the respondent. Furthermore, as previous decisions⁴ of the Tribunal make clear, the Tribunal has no jurisdiction to apply principles of equity.

2. See, for example, *Edwin W. Russell v. The Minister of National Revenue*, Appeal No. AP-91-020, May 10, 1993; and *Faurschou Farms Limited v. The Minister of National Revenue*, Appeal No. AP-92-145, May 10, 1993.

3. Appeal No. AP-90-164, November 19, 1992.

4. In addition to the decisions cited by counsel for the respondent, see also *Pelletrex Ltée v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-89-274, October 15, 1991, and decisions referred to therein.

Accordingly, the appeal is dismissed.

Charles A. Gracey

Charles A. Gracey

Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau

Member

Lyle M. Russell

Lyle M. Russell

Member