

Ottawa, Monday, January 22, 1996

**Appeal No. AP-93-138**

IN THE MATTER OF an appeal heard on July 13, 1995, 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 June 30, 1993, with respect to a notice of objection served under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**REICHERT'S SALES AND SERVICE LTD.**

**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

Lyle M. Russell

Lyle M. Russell  
Member

Michel P. Granger

Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-93-138**

**REICHERT'S SALES AND SERVICE LTD.**

**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 that rejected an application for a federal sales tax inventory rebate made under section 120 of the Excise Tax Act. The issue in this appeal is whether the respondent correctly determined that the appellant was not entitled to the federal sales tax inventory rebate claimed, on the basis that the application was filed beyond the time limit prescribed under subsection 120(8) of the Excise Tax Act.*

**HELD:** *The appeal is dismissed. The Tribunal's powers are strictly limited by statute, and it does not have the authority to render a decision based on equity or fairness. The appellant's representatives admitted that the application for an inventory rebate was filed late. The Excise Tax Act is clear that an application must be filed with the respondent before 1992 if a rebate is to be paid. There is no provision in the Excise Tax Act authorizing payment of the rebate with the imposition of a penalty for late filing.*

*Place of Hearing: Vancouver, British Columbia*

*Date of Hearing: July 13, 1995*

*Date of Decision: January 22, 1996*

*Tribunal Members: Robert C. Coates, Q.C., Presiding Member  
Anthony T. Eyton, Member  
Lyle M. Russell, Member*

*Counsel for the Tribunal: David M. Attwater*

*Clerk of the Tribunal: Nicole Pelletier*

*Appearances: Edward and Marguerite Reichert, for the appellant  
Brian Tittlemore, for the respondent*

**Appeal No. AP-93-138**

**REICHERT'S SALES AND SERVICE LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member  
ANTHONY T. EYTON, Member  
LYLE M. RUSSELL, Member

**REASONS FOR DECISION**

This is an appeal under section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) of a determination of the Minister of National Revenue that rejected an application for a federal sales tax (FST) inventory rebate made under section 120<sup>2</sup> of the Act. The issue in this appeal is whether the respondent correctly determined that the appellant was not entitled to the FST inventory rebate claimed, on the basis that the application was filed beyond the time limit prescribed under subsection 120(8) of the Act.

The appellant is a small family-owned business, operated out of the home of Edward and Marguerite Reichert in Tulameen, British Columbia. The Reicherts operate an excavation business and sell and service snowmobiles.

On February 25, 1993, the appellant filed an application for an FST inventory rebate in the amount of \$8,325.35 in respect of its tax-paid inventory held as of January 1, 1991. On March 26, 1993, the respondent issued a notice of determination that rejected the application, on the basis that it was filed beyond the time period specified by the Act. In response to a notice of objection served by the appellant on May 31, 1993, the respondent confirmed the determination in a decision dated June 30, 1993. Reichert's Sales and Service Ltd. appealed the determination to the Tribunal on July 27, 1993.

Mr. Reichert told the Tribunal that he and his wife are very active in the small community within which they reside and are busy with their small family-run business. It was his belief that they had two years within which to claim the FST inventory rebate. However, a new bookkeeper informed them that the deadline for filing the application had passed. Mr. Reichert acknowledged that the appellant's application had been filed late. He asked to be treated fairly and insisted that the appellant is prepared to pay a penalty for filing late.

Counsel for the respondent submitted that the time limit for filing applications for FST inventory rebates is specifically determined by statute. Subsection 120(8) of the Act provides that "[n]o rebate shall be paid under [section 120 of the Act] unless the application therefor is filed with the Minister before 1992." Counsel added that the Tribunal lacks the jurisdiction to grant equitable remedies and that it is bound to

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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. 6.

apply the law and cannot refuse to apply the law even on the grounds of equity. Furthermore, taxing statutes cannot be construed to avoid the effects of the legislation, no matter how great the hardship may appear to be.

In making its decision, the Tribunal acknowledges that its powers are strictly limited by statute and that it does not have the authority to render a decision based on equity or fairness. Mr. Reichert admitted that the appellant's application for an FST inventory rebate was filed late. The Act is clear that an application must be filed with the respondent before 1992 if a rebate is to be paid. There is no provision in the Act authorizing payment of the rebate with the imposition of a penalty for late filing.

Accordingly, the appeal is dismissed.

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

Anthony T. Eyton  
Anthony T. Eyton  
Member

Lyle M. Russell  
Lyle M. Russell  
Member