

Ottawa, Thursday, September 22, 1994

Appeal No. AP-93-386

IN THE MATTER OF an appeal heard on August 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 January 14, 1994, with respect to a
notice of objection served under section 81.17 of the
Excise Tax Act.

BETWEEN

TIMOTHY EDWARD MARSHALL

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Lise Bergeron
Lise Bergeron
Presiding Member

Raynald Guay
Raynald Guay
Member

Lyle M. Russell
Lyle M. Russell
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-386

TIMOTHY EDWARD MARSHALL

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether the appellant is entitled to a rebate under the Excise Tax Transportation Rebate Program for fuel used for transportation purposes in the course of his business.

***HELD:** The appeal is dismissed. Since the appellant did not comply with the time limit set out in paragraph 68.4(2)(b) of the Excise Tax Act, the Tribunal is of the view that the appeal must be dismissed.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: August 25, 1994
Date of Decision: September 22, 1994*

*Tribunal Members: Lise Bergeron, Presiding Member
Raynald Guay, Member
Lyle M. Russell, Member*

Counsel for the Tribunal: Robert Desjardins

Clerk of the Tribunal: Janet Rumball

Appearance: Anne M. Turley, for the respondent

Appeal No. AP-93-386

TIMOTHY EDWARD MARSHALL

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: LISE BERGERON, Presiding Member
RAYNALD GUAY, 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 Minister) that rejected an application for a fuel tax rebate made under section 68.4² of the Act. The application was rejected on the grounds that it had not been filed before July 1993, as prescribed by paragraph 68.4(2)(b) of the Act.

The issue in this appeal is whether the appellant is entitled to a rebate under the Excise Tax Transportation Rebate Program for fuel used for transportation purposes in the course of his business.

The appellant did not appear at the hearing. The Tribunal heard counsel for the respondent and examined the written documentation which was submitted. In a letter to the Tribunal dated March 21, 1994, the appellant acknowledged that he had returned the prescribed form for the rebate "too late," i.e. after the end of June 1993. Since the appellant did not comply with the time limit set out in paragraph 68.4(2)(b) of the Act, the Tribunal is of the view that the appeal must be dismissed. Although the Tribunal sympathizes with the appellant, it has no authority to vary a time limit clearly prescribed under the Act or to make decisions based on equitable considerations.

Accordingly, the appeal is dismissed.

Lise Bergeron
Lise Bergeron
Presiding Member

Raynald Guay
Raynald Guay
Member

Lyle M. Russell
Lyle M. Russell
Member

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1. R.S.C. 1985, c. E-15.
 2. S.C. 1992, c. 29, s. 1.