



Ottawa, Wednesday, November 19, 1997

**Appeal No. AP-93-373**

IN THE MATTER OF an appeal heard on June 17, 1997, 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 10, 1993, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

**BETWEEN**

**GAS KING OIL CO. LTD.**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

Patricia M. Close  
Patricia M. Close  
Member

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

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-93-373**

**GAS KING OIL CO. 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 with respect to the imposition of the tobacco products inventory tax on the appellant. The appellant owns four gas stations in Alberta, all of which sell tobacco products. The issue in this appeal is whether the appellant is entitled to the 200,000 unit exemption provided for under section 31 of the *Excise Tax Act* in respect of each of its four locations.

**HELD:** The appeal is allowed. The appeal turns on the question of whether each of the appellant's stores is a "separate retail establishment" within the meaning of the *Excise Tax Act*. The resolution of that issue, in turn, revolves around the issue of whether separate records, books of account and accounting systems were maintained in respect of each of the stores. The Tribunal is satisfied, based on the testimony presented and, in particular, the documentary evidence introduced, that separate records, books of account and accounting systems were maintained in respect of each of the appellant's stores.

Places of Video Conference

Hearing: Hull, Quebec, and Calgary, Alberta  
Date of Hearing: June 17, 1997  
Date of Decision: November 19, 1997

Tribunal Members: Charles A. Gracey, Presiding Member  
Patricia M. Close, Member  
Robert C. Coates, Q.C., Member

Counsel for the Tribunal: John L. Syme

Clerks of the Tribunal: Margaret Fisher and Anne Jamieson

Appearances: Thomas H. Olson, for the appellant  
Janet Ozembloski, for the respondent

**Appeal No. AP-93-373**

**GAS KING OIL CO. LTD.**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member  
PATRICIA M. CLOSE, Member  
ROBERT C. COATES, Q.C., 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 with respect to the imposition of the tobacco products inventory tax on the appellant.<sup>2</sup> The appellant owns four gas stations in Alberta, all of which sell tobacco products. The issue in this appeal is whether the appellant is entitled to the 200,000 unit exemption provided for under section 31 of the Act in respect of each of its four locations.

The provisions of the Act relevant to this appeal are as follows:

29. In this Part,  
“separate retail establishment” of a person means a shop or store of the person

- (a) that is geographically separate from other places of business of the person,
- (b) at which, in the ordinary course of the person’s business, the person regularly sells, otherwise than through vending machines, tobacco products to consumers, within the meaning of section 123, attending at the shop or store, and
- (c) in respect of which separate records, books of account and accounting systems are maintained.

31. Tax under this Part in respect of the inventory of all taxed tobacco<sup>[3]</sup> of a person that is held at the beginning of February 27, 1991 at a separate retail establishment of the person is payable only on the quantity of that inventory in excess of 200,000 units.<sup>[4]</sup>

Sections 33 and 34 of the Act required persons liable to pay tax under section 31 to file a return on or before May 31, 1991, and to remit any tax owing within a prescribed time frame. At no time did the appellant file a return.

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1. R.S.C. 1985, c. E-15.
  2. This appeal was heard together with Appeal No. AP-93-372, *Eldorado Petroleums Ltd. v. The Minister of National Revenue*. The appellants and the respondent, respectively, were represented by the same counsel in each of the appeals. The appeals were heard through the medium of video conferencing, the Tribunal sitting in Hull, Quebec, with counsel for the respondent and counsel for the appellants and their witnesses sitting with a Tribunal representative in Calgary, Alberta.
  3. Under section 29 of the Act, “taxed tobacco” of a person means cigarettes, tobacco sticks and loose tobacco that, at the beginning of February 27, 1991, were owned by that person for sale in the ordinary course of a business of the person.
  4. Note: 200,000 units represents 1,000 cartons of cigarettes.

The appellant was audited by the respondent in 1992 and assessed an amount for unpaid taxes, penalty and interest. The assessment was made based on the respondent's determination that the appellant's stations were not "separate retail establishment[s]." To qualify as a separate retail establishment under section 29 of the Act, a location must be "a shop or store of the person" (a) that is geographically separate; (b) where tobacco products are sold to consumers; and (c) in respect of which separate records, books of account and accounting systems are maintained. The respondent determined that the appellant's four gas stations satisfied conditions (a) and (b), but did not satisfy condition (c). The respondent maintained that position in this appeal.

Counsel for the appellant called Mr. Brent Morris, Vice-President of Gas King Oil Co. Ltd., to testify. In his testimony, he indicated that the appellant operated its four stores in a nearly identical fashion to the way in which Eldorado Petroleum Ltd. managed its three stores. Each store had a local manager who was responsible for, among other things, ordering inventory, keeping track of sales and cash receipts and managing store employees. Counsel introduced, through Mr. Morris, financial statements for each of the appellant's four stores. Mr. Morris testified that the statements had been prepared by the appellant for management purposes. He also indicated that, for income tax purposes, the appellant had had a consolidated financial statement for all of its stores prepared.

In cross-examination, Mr. Morris acknowledged that the appellant had only one bank account for all four stores. All of the stores' invoices and their payrolls were paid by the appellant on cheques drawn on that account.

As noted earlier, this appeal was heard together with Appeal No. AP-93-372. As the fundamental legal issue in each of these appeals is identical, with one exception, counsel for the appellant and counsel for the respondent made a single "generic" argument in respect of the two appeals. The exception is that, in her argument in this appeal, counsel for the respondent argued that the fact that the appellant had only one account on which all cheques in respect of each of its four stores were drawn added further support to her argument that there were not separate accounting systems in respect of each of the appellant's four stores.

The Tribunal has issued its reasons for decision in Appeal No. AP-93-372. Given the fundamental similarity of issues raised in this appeal and in Appeal No. AP-93-372, the Tribunal does not consider it necessary to set out the reasoning which underpins its decision in this appeal. In the Tribunal's view, the fact that the appellant had one bank account for all four of its stores did not preclude it from maintaining separate records, books of account and accounting systems for each of its stores, as is evidenced by the fact that it produced separate financial statements for each store. Consequently, the appeal is allowed.

Charles A. Gracey

Charles A. Gracey  
Presiding Member

Patricia M. Close

Patricia M. Close  
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Member