

Ottawa, Thursday, January 25, 1996

Appeal No. AP-94-114

IN THE MATTER OF an appeal heard on August 30, 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 May 17, 1994, with respect to a notice of  
objection served under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**AEROTEC SALES & LEASING 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-94-114**

**AEROTEC SALES & LEASING 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 the appellant's application for a fuel tax rebate on the basis that it was filed outside the statutorily prescribed time limit.*

**HELD:** *Although the Tribunal sympathizes with the appellant with regard to the unfortunate circumstances surrounding its application, it has no jurisdiction to ignore or vary a statutorily prescribed limitation period. Consequently, it cannot exempt the appellant from the application of the limitation period prescribed under subsection 68.4(3) of the Excise Tax Act.*

*Place of Hearing: Ottawa, Ontario*  
*Date of Hearing: August 30, 1995*  
*Date of Decision: January 25, 1996*

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

*Counsel for the Tribunal: Heather A. Grant*

*Clerk of the Tribunal: Anne Jamieson*

*Parties: James D. Johnston, for the appellant*  
*Josephine A.L. Palumbo, for the respondent*

**Appeal No. AP-94-114**

**AEROTEC SALES & LEASING 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 the appellant's application for a fuel tax rebate under subsection 68.4(2) of the Act.

The appellant filed an application dated December 3, 1993, for a tax rebate in respect of fuel purchased or imported in 1991. In a notice of determination dated February 8, 1994, the application was rejected on the basis that it had not been filed before July 1, 1993, which was the time limit prescribed under the Act for filing such applications. The appellant served a notice of objection to the determination dated February 16, 1994. In a notice of decision dated May 17, 1994, the respondent disallowed the objection and confirmed the determination.

The issue in this appeal is whether the appellant is entitled to a fuel tax rebate, notwithstanding its application was filed beyond the statutorily prescribed limitation period.

This appeal proceeded by way of written submissions under rule 25 of the *Canadian International Trade Tribunal Rules*,<sup>2</sup> on the basis of the Tribunal's record, which included an agreed statement of facts and briefs submitted by the parties.

Subsection 68.4(3) provides, in part, the following:

*Where a person who is a trucker in a calendar year*

*(b) applies before July 1993 to the Minister in prescribed form containing prescribed information for a fuel tax rebate in respect of that fuel,*

*a fuel tax rebate equal to the lesser of an amount equal to one and one-half cents for each litre of the fuel and \$500 shall be paid to the trucker.*

In its brief, the appellant asked the Tribunal to take into consideration certain extenuating circumstances which prevented the appellant from filing its application prior to the time limit prescribed

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

2. SOR/91-499, August 14, 1991, Canada Gazette Part II, Vol. 125, No. 18 at 2912.

under the Act. The appellant indicated that a fire at the appellant's premises on December 27, 1991, had destroyed its accounting records. The application for a fuel tax rebate, therefore, required the reconstruction of fuel purchases from suppliers, which was a very time-consuming exercise. Counsel for the respondent submitted that the Tribunal has no jurisdiction to consider principles of equity. More precisely, the Tribunal has no equitable jurisdiction to ignore or vary a limitation period prescribed under the Act on the basis that it would be fair or just to do so.

The Tribunal is of the view that the terms of subsection 68.4(3) of the Act are clear; a rebate application under that provision must be filed before July 1993. The appellant does not dispute the fact that the application was filed after that date. Therefore, the application was not filed within the time limit prescribed under the Act.

Although the Tribunal sympathizes with the appellant with regard to the unfortunate circumstances surrounding its application, it has no jurisdiction to ignore or vary a statutorily prescribed limitation period.<sup>3</sup> Consequently, it cannot exempt the appellant from the application of the limitation period prescribed under subsection 68.4(3) of the Act.

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

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3. See, for example, *Pelletrex Ltée v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-89-274, October 15, 1991.