

Ottawa, Tuesday, March 25, 1997

Appeal No. AP-96-086

IN THE MATTER OF an appeal heard on February 7, 1997,  
under section 81.19 of the *Excise Tax Act*, R.S.C. 1985, c. E-15;

AND IN THE MATTER OF decisions of the Minister of National  
Revenue dated October 12, 1995, with respect to a notice of  
objection served under section 81.17 of the *Excise Tax Act*.

**BETWEEN**

**INTRAURBAN PROJECTS**

**Appellant**

**AND**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Charles A. Gracey

Charles A. Gracey  
Presiding Member

Raynald Guay

Raynald Guay  
Member

Patricia M. Close

Patricia M. Close  
Member

Michel P. Granger

Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-96-086**

**INTRAURBAN PROJECTS**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

The issue in this appeal is whether, in light of the fact that the appellant did not file its federal sales tax new housing rebate applications within the time limit prescribed by the *Excise Tax Act*, it is barred from recovery pursuant to subsection 121(4) of the *Excise Tax Act*.

**HELD:** The appeal is dismissed. The *Excise Tax Act* provides a mandatory time limit for the filing of federal sales tax new housing rebate applications. Neither the respondent nor the Tribunal has the power to waive or extend that time limit.

Place of Hearing: Ottawa, Ontario  
Date of Hearing: February 7, 1997  
Date of Decision: March 25, 1997

Tribunal Members: Charles A. Gracey, Presiding Member  
Raynald Guay, Member  
Patricia M. Close, Member

Counsel for the Tribunal: John L. Syme

Clerk of the Tribunal: Margaret Fisher

Appearance: R. Jeff Anderson, for the respondent

**INTRAURBAN PROJECTS**

**Appellant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member  
RAYNALD GUAY, Member  
PATRICIA M. CLOSE, Member

**REASONS FOR DECISION**

This is an appeal under section 81.19 of the *Excise Tax Act*<sup>1</sup> (the Act) of determinations of the Minister of National Revenue that disallowed the appellant's applications for federal sales tax (FST) new housing rebates under section 121 of the Act. The appellant's representative did not appear at the time set for the hearing of this matter. The Tribunal proceeded to hear the appeal on the basis of the record and the submissions of counsel for the respondent.

The facts in this matter, which are not in dispute, are as follows:

- the appellant is a builder carrying on business in the Toronto, Ontario, area;
- in 1994, the appellant sold two housing units (the two units) which it had constructed;
- the appellant applied for FST new housing rebates in respect of the two units in 1995;
- by notices of determination dated April 14 and May 25, 1995, the appellant was advised that its rebate applications had been disallowed on the grounds that they were filed outside the time period prescribed by the Act;
- the appellant served a notice of objection in respect of both determinations;
- by notices of decision dated October 12, 1995, the respondent disallowed the objection and confirmed the determinations; and
- the appellant appealed the respondent's decisions to the Tribunal.

In its brief, the appellant indicated that, for a number of reasons, including the relocation of its offices and various operating problems that it experienced in 1994, it inadvertently failed to file its rebate applications before 1995. The appellant asks, "in view of the severe financial consequences" associated with its rebate applications being disallowed, that the Tribunal "reconsider" its request to allow the processing of its two rebate applications as filed with the respondent. In the alternative, the appellant requests the Tribunal to allow it to "refile" its December 1994 rebate application for unsold units and to include the two units in that application, notwithstanding the fact that they were sold at that time.

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

In argument, counsel for the respondent submitted that subsection 121(4) of the Act bars the payment of a rebate to the appellant, as the appellant did not file its application before 1995. Subsection 121(4) provides as follows:

(4) A rebate in respect of a residential complex shall not be paid under this section to a person where the person fails to apply to the Minister for the rebate in prescribed form and manner before 1995 or where a rebate under this section in respect of the complex was paid to any other person entitled thereto.

In response to a reference in the appellant's brief to the Department of National Revenue's Fairness Review Committee, counsel for the respondent submitted that section 281.1 of the Act, the provision from which that committee derives its authority, only provides the respondent with the discretion to waive interest and penalties on FST which is remitted after it is due. It does not provide the respondent with the discretion to waive or extend time limits imposed by the Act.

In the Tribunal's view, the issue in this appeal is whether, in light of the fact that the appellant did not file its FST new housing rebate applications before 1995, it is barred from recovery pursuant to subsection 121(4) of the Act.

Subsection 121(3) of the Act provides the respondent with the authority to pay FST rebates to builders of qualifying residential housing in certain circumstances. However, the respondent's authority under that provision is subject to subsection 121(4). In the Tribunal's view, subsection 121(4) is clear. It provides that an FST new housing rebate "shall" not be paid under section 121 unless application is made before 1995. In other words, the respondent has no power or discretion to allow the payment of a rebate for which application was made after 1994.

The Tribunal has not previously had an appeal in which it considered the time limit prescribed under subsection 121(4) of the Act. It has, however, heard numerous appeals relating to the time limit prescribed under subsection 120(8). Section 120 establishes a scheme whereby applicants may obtain rebates of FST paid in respect of certain goods held in inventory by them as of January 1, 1991. Subsection 120(8) provides that "[n]o rebate shall be paid under this section unless the application therefor is filed with the Minister before 1992."

In appeals under section 120 of the Act, the Tribunal has consistently maintained that it has no authority to allow an appeal where an appellant has not filed its rebate application before 1992.<sup>2</sup> In *Wellsley Investments*, in dismissing the appeal concerning the late filing of an FST rebate application, the Tribunal stated:

In making its decision, the Tribunal acknowledges that its jurisdiction is strictly limited by statute and that it lacks the authority to render a decision based on equity or fairness. While the appellant's application for the rebate may have been filed late for good reasons, it was acknowledged not to have been filed before 1992. The Act is clear in requiring the application to be filed with the Minister before 1992 for the rebate to be paid. Although the Tribunal sympathizes with the appellant, there is no authority in the Act allowing payment of the rebate to the appellant.<sup>3</sup>

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2. See, for example, *Wellsley Investments Inc. v. The Minister of National Revenue*, Appeal No. AP-93-251, December 2, 1996; and *Arnold Forsythe v. The Minister of National Revenue*, Appeal No. AP-93-273, September 9, 1996.

3. *Wellsley Investments*, *ibid.* at 2.

The Tribunal is of the view that the same principles applied by it in cases involving subsection 120(8) of the Act are equally applicable in the present context. In short, in enacting subsection 121(4), Parliament has imposed a mandatory time limit for the filing of FST new housing rebate applications. Neither the respondent nor the Tribunal has the power to waive or extend that time limit.

Finally, the Tribunal is of the view section 281.1 of the Act only provides the respondent with the power to waive or cancel “interest” and “penalties” in respect of tax not remitted when it was due. It does not provide the respondent with the power to waive statutory time limits.

For the foregoing reasons, the appeal is dismissed.

Charles A. Gracey

Charles A. Gracey  
Presiding Member

Raynald Guay

Raynald Guay  
Member

Patricia M. Close

Patricia M. Close  
Member