

BETWEEN:

9848-3173 QUÉBEC INC.,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Application heard on February 17, 2003, at Trois-Rivières, Quebec

Before: The Honourable Judge Alain Tardif

Appearances:

Agent for the Applicant: André Cantin

Counsel for the Respondent: Danny Galarneau

ORDER

UPON application for an order extending the time within which an appeal may be instituted from assessment no. 02306036 made under the *Excise Tax Act* ("the *Act*") on October 10, 2001, for the period of August 1, 1997, to April 30, 2001;

UPON hearing what was alleged by counsel for the Respondent against the application;

AND IN LIGHT OF sections 300(1), 303(1), 303(5), 303(7) and 304(1) of the *Act*;

The application for an extension of time is dismissed in accordance with the attached Reasons for Order.

Signed at Ottawa, Canada, this 7th day of April 2003.

"Alain Tardif"

J.T.C.C.

Translation certified true
on this 11th day of March 2009.

Brian McCordick, Translator

Citation: 2003TCC217
Date: 20030407
Docket: 2002-4314(GST)APP

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REASONS FOR ORDER

Tardif, J.T.C.C.

[1] This is an application for an extension of the time for appealing an assessment. The Respondent opposed the application by alleging the following:

[TRANSLATION]

1. On October 10, 2001, the Respondent issued notice of assessment no. 02306036 to the Applicant in relation to a tax rebate application for the period of August 1, 1997, to April 30, 2001, that had been denied.
2. On March 14, 2002, the Applicant objected to the above-mentioned notice of assessment.
3. Since the Applicant had objected out of time, it applied to the Respondent for an extension of time on April 24, 2002.

4. On October 8, 2002, the Respondent refused the application for an extension of time.
5. The Applicant failed to apply to the Tax Court of Canada for an extension of the time for serving a notice of objection within the time limit of 30 days set out in section 304 of the *Excise Tax Act*.
6. The application to the Tax Court of Canada to extend the time for filing a notice of objection was filed in the Registry of the Court on November 8, 2002.
7. The Respondent submits that this application for an extension of time should be dismissed for the following reasons:
 - (a) The application for an extension under subsection 304(1) of the *Act* was not made within 30 days after the day the Respondent mailed the decision refusing the application for an extension of time, as required by the second paragraph of subsection 304(1) of the *Act*;
 - (b) The time limit set out in the second paragraph of subsection 304(1) of the *Act* is a strict time limit;
 - (c) The only discretion the Court has to extend the time for serving a notice of objection is provided for in subsection 303(5) of the *Act*, namely the 90 days referred to in subsection 303(1.1) of the *Act*;
 - (d) The Court has no jurisdiction to grant the Applicant's application;
8. The Respondent concludes that the application for an extension of time, which is unfounded in fact and in law, should be dismissed;

[2] The provisions of the *Excise Tax Act* are as follows:

Section 300(1) reads as follows:

Objection to assessment Any person who has been assessed and who objects to the assessment may, within ninety days after the day notice of the assessment is sent to the person, file with the Minister a notice of objection in the prescribed form and manner setting out the reasons for the objection and all relevant facts.

Section 303(1) reads as follows:

Extension of time by Minister Where no objection to an assessment is filed under section 301, or no request has been made under subsection 274(6), within the time limit otherwise provided, a person may make an application to the Minister to extend the time for filing a notice of objection or a request and the Minister may grant the application.

Section 303(5) reads as follows:

Duties of Minister On receipt of an application made under subsection (1), the Minister shall, with all due dispatch, consider the application and grant or refuse it, and shall thereupon notify the person of the decision by registered or certified mail.

Section 303(7) reads as follows:

When order to be made No application shall be granted under this section unless

(a) the application is made within one year after the expiration of the time otherwise limited by this Part for objecting or making a request under subsection 274(6), as the case may be; and

(b) the person demonstrates that

(i) within the time otherwise limited by this Part for objecting,

(A) the person was unable to act or to give a mandate to act in the person's name, or

(B) the person had a bona fide intention to object to the assessment or make the request,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application was made as soon as circumstances permitted it to be made.

Section 304(1) reads as follows:

Extension of time by Tax Court A person who has made an application under section 303 may apply to the Tax Court to have the application granted after either

(a) the Minister has refused the application, or

(b) ninety days have elapsed after service of the application under subsection 303(1) and the Minister has not notified the person of the Minister's decision,

but no application under this section may be made after the expiration of thirty days after the day the decision has been mailed to the person under subsection 303(5).

[3] On reading the applicable provisions, there is no doubt that the time limit set out in the second paragraph of section 304(1) leaves this Court with no discretion; it is a strict time limit against which the Court has no authority.

[4] In the circumstances, I must dismiss the application for an extension of time on the ground of lateness.

Signed at Ottawa, Canada, this 7th day of April 2003.

"Alain Tardif"

J.T.C.C.

Translation certified true
on this 11th day of March 2009.

Brian McCordick, Translator

CITATION: 2003TCC217

COURT FILE NO.: 2002-4314(GST)APP

STYLE OF CAUSE: 9048-3173 Québec Inc. and Her Majesty the Queen

PLACE OF HEARING: Trois-Rivières, Quebec

DATE OF HEARING: February 17, 2003

REASONS FOR ORDER BY: The Honourable Judge Alain Tardif

DATE OF ORDER: April 7, 2003

APPEARANCES:

For the Appellant: André Cantin

For the Respondent: Danny Galarneau

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Morris Rosenberg
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