

Docket: 2006-697(GST)G

BETWEEN:

RENÉ PATOINE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on January 30 and 31, 2007, in Trois-Rivières, Quebec

Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Alain Bolduc

Counsel for the Respondent: Louis Cliche

JUDGMENT

The appeal from the reassessment of goods and services tax under Part IX of the *Excise Tax Act*, the notice of which was dated December 1, 2005, and bears number 02307594, is allowed, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment taking into consideration the admissions made in paragraph 13 of the Reasons for Judgment, which mention the minor changes to be made to the assessment giving rise to this appeal. The penalties are warranted, and I confirm that they are well founded. Costs are awarded to the respondent in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 18th day of May 2007.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of February 2008.

François Brunet, Revisor

Citation: 2007TCC86
Date: 20070518
Docket: 2006-697(GST)G

BETWEEN:

RENÉ PATOINE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Tardif J.

[1] This is an appeal from a reassessment of goods and services tax ("GST") bearing number 02307594 and dated December 1, 2005, in an amount of \$16,139.89, made under the *Excise Tax Act* (the "Act"), concerning the period from January 1, 1998, to December 31, 2003. The reassessment imposes \$10,086.21 in tax, \$4,909.05 in penalties and \$1,144.63 in interest.

[2] Essentially, at issue is whether the reassessment dated December 1, 2005, is warranted under sections 165, 168, 225, 228 and 285 and subsections 221(1), 280(1), 298(4) and 299(4) of the *Act*.

[3] The Appellant asks that the tax, penalties and interest be cancelled. In addition, he submits that the reassessment dated December 1, 2005, concerns the years 1998 and 1999 and part of 2000 and must be cancelled because it is time-barred.

[4] The assessment currently under appeal was made by the Minister of National Revenue (the "Minister") on the basis of the following assumptions of fact:

- (a) The facts admitted above;
- (b) The Appellant is a registrant for the purposes of the GST;
- (c) As a registrant, the Appellant is also an agent of the Minister with the obligation of collecting and remitting the GST applicable to the taxable supplies he makes;
- (d) The Appellant is operating a business;
- (e) In 1992, the Appellant registered for the GST for the purposes of his agricultural activities;
- (f) The Appellant has also been a practicing accountant since 1965;
- (g) From January 1, 1998, to December 31, 2003 (the period in issue), the Appellant's professional activities consisted of keeping books, preparing financial statements, preparing income tax returns and providing other accounting services;
- (h) The Appellant was also a lecturer, *inter alia* at the CEGEP level, in accounting and bookkeeping;
- (i) He was also a representative of Sigma informatique Inc., a company for which he gave training on Sigma Finance software;
- (j) During the period in issue, the Appellant operated a transportation company under the name of *Transport mon rêve à moi*: this business ceased operations in March 2003;
- (k) The Appellant also sold dog, horse and sleigh harnesses for which he did not collect any GST;
- (l) The Appellant did his own bookkeeping and prepared his own tax statements;
- (m) He did not use the services of an external auditor and did not put in place an internal control system;
- (n) The Appellant's bookkeeping shows many shortcomings in spite of his experience in accounting;

- (o) For example, his business expenses include his own personal expenses and undocumented expenses;
- (p) On April 3, 1998, and on September 18, 1998, the Appellant made an application to cancel the registrations with regard to the two enterprises he operated, even though his tax returns for the four calendar quarters preceding the quarter in question showed taxable supplies of \$34,269;
- (q) In addition, during the period subsequent to April 18, 1998, the Appellant still had annual income greater than \$30,000;
- (r) The Appellant did not always invoice every client for whom he prepared income tax returns;
- (s) An examination of the Appellant's invoice books shows that from 1999 to 2002, he only invoiced 341 of his 2,170 clients, that is, 14.7% of his clientele for whom he prepared electronic income tax returns;
- (t) The Appellant received income from commissions and training income for which the Sigma company paid him the applicable GST, which the Appellant did not remit to the Minister;
- (u) On the one hand, the Appellant was reimbursed for his travel expenses by Sigma Inc. and, on the other hand, claimed them as business expenses for tax purposes, in addition to claiming the related inputs for tax purposes;
- (v) To support the expenses for which he claimed the inputs, the Appellant submitted irrelevant invoices, invoices that had even been amended after having been submitted twice to representatives of the Minister, and invoices for personal expenses that were not incurred in relation to the Appellant's commercial activities, for expenses for which no invoice was available and for which various reasons were given at one time or another to explain the lack of any invoice, and for expenses claimed twice;
- (w) Among the personal expenses that were refused, we find the following:
 - Repair and maintenance of a television, electrical appliances and electrical tools;
 - Purchase of cookware;
 - Purchase of dishwashing soap, laundry detergent and fabric softener;

- Repair of a lawn mower and a chain saw and purchase of chain oil;
 - Purchase of a sink mat and a chimney sweep brush;
 - Purchase of lawn and garden accessories and maintenance equipment;
 - Expenses for swimming pool maintenance;
 - Expenses for snow removal at his cottage;
 - Invoices for groceries purchased at Costco;
 - Purchase of bird seed and feed for dogs, cats and small domestic animals;
 - Purchase of clothing for himself and family members;
 - Registration fees for his spouse's automobile;
 - His membership fees at Costco and the Association québécoise de gérontologie;
 - Expenses for which no tax input credit is allowed, including a subcontract awarded to his wife and life insurance premiums;
- (x) The Appellant does not keep any logbook for the automobiles he uses for his business activities;
- (y) He also claims input tax credits for the maintenance and repair of automobiles belonging to his spouse and children;
- (z) He even claimed inputs for purchases of *unleaded* gasoline, whereas the automobile used for business purposes runs on *diesel*;
- (aa) The Appellant also claimed inputs for expenses incurred by the enterprise belonging to his spouse, who was unable to claim them because of her *small supplier* status;
- (bb) This is not the Appellant's first audit under the Act;
- (cc) He once again claimed inputs for expenses which had been refused in the past because of their personal nature;

- (dd) The above-mentioned facts which show the Appellant's carelessness in respect of his obligations as a registrant, his training in the field of accounting, his professional activities in the field of accounting, the fact that this is not his first audit of this sort, and the large amounts at stake lead to the conclusion that the Appellant made a false statement or an omission in a return when he applied to cancel his registration;
- (ee) The Appellant also made a false statement or an omission in his return forms by not reporting all the taxable supplies he made;

[5] Several facts stated in the Notice of Appeal and the Reply to Notice of Appeal were admitted.

Facts stated in Notice of Appeal admitted by respondent

[TRANSLATION]

1. The Appellant is appealing from notice of reassessment number 02307594, dated December 1, 2005, for the period from January 1, 1998, to December 31, 2003.
2. On November 12, 2004, Revenu Québec sent the Appellant a notice of reassessment for the period from January 1, 1998 to December 31, 2003.
3. Following this notice of reassessment, Revenu Québec claimed unpaid tax from the Appellant under the *Excise Tax Act* as well as penalties and interest under this Act for a total amount of twenty-one thousand nine hundred and forty-six dollars and fifteen cents (\$21,946.15).
4. On or about January 27, 2005, the Appellant filed a notice of objection challenging this notice of reassessment dated November 12, 2004.
5. Following the submissions made by the Appellant in support of his objection, Revenu Québec issued a reassessment dated December 1, 2005, to claim unpaid tax from the Appellant under the *Excise Tax Act* as well as penalties and interest under that Act for a total amount of sixteen thousand one hundred and thirty-nine dollars and eighty-nine cents (\$16,139.89).

Facts

...

9. These businesses were registered for GST purposes under numbers 11936 6847 RT0001 and 130898521RT respectively.

...

14. The notice of reassessment dated November 12, 2004, was issued following an audit by a representative of Revenu Québec.

...

Facts stated in Reply to Notice of Appeal admitted by appellant

[TRANSLATION]

9.- Following an audit of the Appellant, the Minister reassessed the Appellant's GST for the period from January 1, 1998, to December 31, 2003, in an amount of \$13,301.24 in tax plus \$6,871.95 in penalties and \$1,862.96 in interest, as of November 12, 2004. The notice of assessment dated November 12, 2004, bears number 2307202;

10.- On January 31, 2005, the Appellant filed a notice of objection to the Minister's assessment;

11.- Following the Appellant's submissions in support of his objection, in rendering a decision on the objection by means of a notice of reassessment, the Minister made a reassessment for an amount of \$10,086.21 in tax, \$4,909.05 in penalties and \$1,144.63 in interest. The notice of reassessment dated December 1, 2005, bears number 2307594;

12.- The Minister assessed the Appellant on the basis of the following assumptions of fact and conclusions:

...

- (b) The Appellant is a registrant for the purposes of the GST;
- (c) As a registrant, the Appellant is also an agent of the Minister under a duty of collecting and remitting the GST applicable to the taxable supplies he makes;
- (d) The Appellant is operating a business;
- (e) In 1992, the Appellant registered for the GST for the purposes of his agricultural activities;
- (f) The Appellant has also been a practicing accountant since 1965;

- (g) From January 1, 1998, to December 31, 2003 (the period in issue), the Appellant's professional activities consisted of keeping books, drafting financial statements, preparing income tax returns and providing other accounting services;
- (h) The Appellant was also a lecturer, *inter alia* at the CEGEP level, in accounting and bookkeeping;
- (i) He was also a representative of Sigma informatique Inc., a company for which he gave training on Sigma Finance software;
- (j) During the period in issue, the Appellant operated a transportation company under the name of *Transport mon rêve à moi*: this enterprise ceased operations in March 2003;
- ...
- (l) The Appellant did his own bookkeeping and prepared his own tax reports;
- (m) He did not use the services of an external auditor and did not put in place an internal control system;
- (n) The Appellant's bookkeeping shows many shortcomings in spite of his experience in accounting;
- (o) For example, his business expenses include his own personal expenses and undocumented expenses;
- (p) On April 3, 1998, and on September 18, 1998, the Appellant made an application to cancel the registrations with regard to the two enterprises he operated, even though his tax returns for the four calendar quarters preceding the quarter in question showed taxable supplies of \$34,269;
- (q) In addition, during the period subsequent to April 18, 1998, the Appellant still had annual income greater than \$30,000;
- (r) The Appellant did not always invoice every client for whom he prepared income tax returns;
- ...
- (t) The Appellant received income from commissions and training income for which the Sigma company paid him the applicable GST, which the Appellant did not remit to the Minister;

...

- (x) The Appellant does not maintain any logbook for the automobiles he uses for his business activities;

[6] In support of his submissions, the Appellant called two persons to testify. These two persons, who operated a service station with a convenience store in the small community where he resided, essentially stated that the Appellant purchased only gasoline and diesel fuel and never bought any other product sold at their convenience store, such as food or beer.

[7] France Morasse, who worked at that time at the credit union where the Appellant did business, explained the Appellant's usual way of depositing cheques. His way of doing things was so unusual that she asked the Appellant why he did it. The answer she received was the one submitted by the Appellant.

[8] Instead of simply depositing certain cheques, he cashed them in and then immediately deposited the cash.

[9] According to the Appellant, this generally involved small amounts which he cashed in this way because he believed there were fewer chances that the cheques would be refused because of "not sufficient funds".

[10] On another point, the Appellant's son testified that the two amounts, one of \$300 and another of \$400, were from him and his brothers and sisters to pay back the Appellant for the purchase of tickets for a show, with an additional amount of \$40 to cover the Appellant's fuel costs for a more than three-hour trip. In spite of the dubious explanations, which did not convince me, the Minister's representative accepted this explanation as being adequate; therefore, there is no use in dwelling on this point.

[11] Martin Bérard testified as an expert witness. His expert witness status was accepted by the respondent. Mr. Bérard had prepared numerous documents, divided into two categories.

[12] First, he explained the work regarding income. He enclosed copies of the supporting documentation which had led him to make some corrections. However, the expert unequivocally admitted that the reassessment was in part well founded with respect to both income and expenses.

[13] Following the testimony given by this expert and discussions with the auditor in charge of the case, the parties agreed to make some changes in favour of the Appellant, which had the effect of closing the gap between the two positions as regards income. The respondent's admissions concerned the following amounts.

The table is on the following page.

DETAILS OF CHANGES MADE TO INCOME

	2003	2002	2001	2000	1999	1998
Income determined by RQ before notice of appeal	\$49,392.99	\$42,597.73	\$41,721.76	\$32,680.55	\$41,504.64	\$37,968.87
<u>Reduction of taxable supplies</u>						
<u>2006-10-26</u>						
Supporting document (salary deposit)		\$284.83				
Supporting document (income from an account transfer)				\$250.00		\$500.00
<u>Reduction of taxable supplies</u>						
<u>2007-01-31</u>						
Supporting document (release of debt by Daniel Brisson)		\$700.00				
Supporting document (spouse's income deposited in his account)		\$1,077.76				
Supporting document (income from an account transfer)		\$800.00				
Supporting document (income from an account transfer)		\$300.00				
Confirmation by Patrick Patoine of 2 deposits used to reimburse tickets for a show						
Supporting document (insurance deposits)	\$700.00					
Supporting document (insurance deposits)			\$1,900.00			
Supporting document (reimbursement of tuition paid by Mr. Patoine and reimbursed by Jean Patoine)			\$1,353.28			
			\$2,000.00			
Final income determined by RQ	<u>\$700.00</u>	<u>\$3,162.59</u>	<u>\$5,253.28</u>	<u>\$250.00</u>	<u>0.00</u>	<u>\$500.00</u>
	\$48,692.99	\$39,435.14	\$36,468.48	\$32,430.55	\$41,504.64	\$37,468.87

[14] As regards the second category, expenses, the auditor explained that he redid the analysis using the available documents. From this analysis, he drew his own conclusions as to whether or not certain expenses were allowable.

[15] He admitted having reached certain conclusions on the basis of verbal explanations given by the Appellant. He also admitted having accepted as being sufficient certain handwritten notes on certain invoices. Clearly, he did not examine the content of some of the documents in detail.

[16] Whenever he concluded that some expenses had to be refused, Mr. Bérard noted the reason under the heading "comments".

[17] There are numerous comments or observations under this heading, some of which appear repeatedly:

[TRANSLATION]

- expenses reimbursed by Sigma;
- amounts sometimes mentioned twice;
- several invoices in the spouse's name;
- two invoices in the spouse's name;
- one invoice without tax not allowable because the automobile was in the spouse's name;
- invoice for lawnmower repair;
- amount refused because gasoline expenses are included in the income tax return of Cécile Patoine;
- sometimes there was only one invoice for a transaction—impossible to determine whether it is for gasoline or diesel;
- invoices made out to Garage P.E. Grimard;
- handwritten document;
- amounts reimbursed in full by Sigma;
- insurance costs are not allowable;
- expenses allowable for only 50%;
- refused because no payment made to spouse;
- no invoice supplied;
- already included in household maintenance;
- included in office supplies;
- three invoices without tax;
- not allowable because the automobile is in the spouse's name;

- invoice already entered;
- not allowable because invoice in name of Les Éditions Lemay CIL enr.

[18] These comments and observations say a great deal about not only the poor quality of certain documents and accounting records in the claimant's tax file, but also the Appellant's negligence and carelessness with respect to his obligations.

[19] Finally, the Appellant testified. He gave surprising, even shocking explanations for someone who has several graduate degrees, but especially for someone who gives accounting courses, and not to illiterate persons but to Secondary V and CEGEP-level students. I consider it important to note certain admissions:

[TRANSLATION]

(d) The Appellant is operating a business; **(admitted)**

...

(f) The Appellant has also been a practicing accountant since 1965; **(admitted)**

...

(h) The Appellant was also a lecturer, *inter alia* at the CEGEP level, in accounting and bookkeeping; **(admitted)**

(i) He was also a representative of Sigma informatique Inc., a company for which he gave training on Sigma Finance software; **(admitted)**

...

(o) For example, his business expenses include his own personal expenses and undocumented expenses; **(admitted)**

...

(q) In addition, during the period subsequent to April 18, 1998, the Appellant still had annual income greater than \$30,000; **(admitted)**

(r) The Appellant did not always invoice every client for whom he prepared income tax returns; **(admitted)**

[20] He never kept a logbook for the use of the three automobiles, which would have allowed him to distinguish the use of these vehicles for business activities from personal use. He arbitrarily determined the percentage of use for personal purposes, for business purposes and for use by his spouse. According to him, the authorities should be satisfied with his explanations and that is all.

[21] He stated that he prepared several hundred federal and provincial income tax returns for fees of \$5, \$10 or \$15, claiming that some community groups such as C.L.S.C.s did the same thing.

[22] Not only did he claim insignificant fees for his work, but he also testified to that he had to adopt a special habit, since small cheques were the ones most often refused because of "not sufficient funds".

[23] It would have been far more relevant to have persons testify to the Appellant's great generosity, as I do not believe that he generally completed income tax returns for \$5 or \$10, especially since, according to his testimony, these small cheques were the ones which gave him problems.

[24] He stated that he had put in place three distinct computerized accounting systems while admitting having used some expenses more than once. In other words, the same expense was attributed to different business activities. He also admitted having claimed input tax credits (ITCs) for expenses related to a business operated by his spouse, who could not claim them because she was not registered.

[25] The Appellant also admitted having claimed ITCs for personal expenses.

[26] The personal expenses in question were listed at paragraph 12(w) of the Reply to Notice of Appeal and described as follows:

[TRANSLATION]

(w) Among the personal expenses that were refused, we find the following:

- Repair and maintenance of a television, electrical appliances and electrical tools;
- Purchase of cookware;
- Purchase of dishwashing soap, laundry detergent and fabric softener;
- Repair of a lawn mower and a chain saw and purchase of chain oil;
- Purchase of a sink mat and a chimney sweep brush;
- Purchase of lawn and garden accessories and maintenance equipment;

- Expenses for swimming pool maintenance;
- Expenses for snow removal at his cottage;
- Invoices for groceries purchased at Costco;
- Purchase of bird seed and feed for dogs, cats and small domestic animals;
- Purchase of clothing for himself and family members;
- Registration fees for his spouse's automobile;
- His membership fees at Costco and the Association québécoise de gérontologie;
- Expenses for which no tax input credit is allowed, including a subcontract awarded to his wife and life insurance premiums;

[27] To explain why he made claims for what were essentially personal expenses, the Appellant stated that, during a previous audit, the Minister had accepted 20% of the expenses for flowers, the swimming pool and so on, which appears to me to be a very surprising and even audacious interpretation. Given that the Appellant had been audited in the past, it is quite simply surprising that he did not mend his ways with regard to the quality of his records and essential supporting documentation so as to his meet his tax obligations, which are clearly specified in the Act.

[28] He also claimed feed expenses for small animals because he had a guard dog, which was just as valid as having an alarm system, an expense which would have been partially allowable. However, the evidence did not show whether the cats also helped to guard the premises, perhaps chasing mice.

[29] Finally, he tried to give all kinds of explanations, which were somewhat relevant in some cases and totally inadequate in others, particularly for the groceries bills at Costco, which he stated were for goods related to his office and automobiles.

[30] It is surprising that a person with such training and experience would give explanations like these, especially since he had been audited several times in the past.

[31] Did the Appellant not apply for the cancellation of his GST registration even though his income was greater than the \$30,000 limit established under the Act? Once again, in spite of the obviously false and misleading statements, he claimed that the errors were due to misinformation.

[32] There are two possible causes of misinformation: the first is the incompetence of the person giving the information, and the second is the incompetence, the poorly worded question or simply the bad faith of the person seeking the information.

[33] Once again, there is more than enough evidence to find that the appellant completely disregarded his duty to comply with the provisions of the Act, which required that his accounting be consistent and in compliance with standards of good accounting practice.

[34] His spouse operated a business selling harnesses, saddles and other similar items. These items were acquired at auctions, repaired and resold. The Appellant argued that this was only a hobby that generated just a few thousand dollars in income a year. According to him, the small size of the business warranted a lack of an accounting of the purchase and selling prices. His spouse reported the income from her small business.

[35] As an accounting specialist, how could the Appellant justify such aberrations on one hand and then, on the other hand, claim the ITCs if his spouse was not registered? The documented and proper calculation of the purchase price of goods acquired for business purposes is not a whim left to the good intentions of persons operating a business; it is a duty that makes it possible to have a reliable and, above all, credible accounting.

[36] Although there was no accounting, he admitted having claimed ITCs for this business activity carried out by his spouse. His logic is quite surprising for someone who teaches accounting at the college level.

[37] I find that the evidence given by the Appellant is not credible at all. He retained the services of a chartered accountant, Martin Bérard, who from the outset acknowledged the correctness of a very large number of items on which the assessment was based.

[38] The explanations, observations or comments made in support of the submission that certain expenses should have been allowed are insufficient. It is not enough to find someone with professional training in accounting who is ready to endorse certain facts and actions to submit that the auditors' findings were unfounded, inappropriate or unacceptable.

[39] Indeed, Mr. Bérard was admitted and acknowledged to be an expert. However, his testimony showed that he was ready to accept the unacceptable. I refer in particular to certain invoices which were not in compliance with accepted practice and to his quick acceptance of verbal explanations given by his client, the Appellant, particularly about the use of automobiles. He did not even know how the automobile that ran on diesel, a motor home, was used.

[40] I attach no value or credibility to the evidence adduced by the Appellant.

[41] I am of the opinion, especially considering that he had been audited in the past, that the Appellant deliberately chose confusion and disorder over clarity and consistency, in spite of his numerous business activities, believing that this would serve him well for tax purposes.

[42] If such is the case, this was a very bad decision and an unacceptable explanation, given the Appellant's training and experience. It is totally incomprehensible and unacceptable that a person as skilled as the Appellant would make do with a such an incomplete and, above all, weak system or method, which is neither credible nor reliable.

[43] True, the Appellant and his spouse were engaged in a number of business activities. However, these were activities which were relatively simple to manage and to structure in an accessible and coherent manner. It was also just as easy to obtain proper supporting documentation which was neither confusing nor equivocal.

[44] I satisfied that the Appellant believed that he could cheat the system by setting up an imprecise system. The large number of errors noted, several of which were quite flagrant, excludes any possibility of his having acted in good faith.

[45] The Appellant had the intelligence, talent and knowledge to be able to submit a file that could have been a veritable model of compliance. Instead, he chose to confuse matters, obtain incomplete supporting documentation and grossly exaggerate certain claims. The obvious lack of good faith, the equally obvious bad faith shown by certain facts and acts, the rampant abuse evident in the use of certain supporting documents and the reckless audacity with regard to the handling of some information amply warrant the imposition of penalties under the Act.

[46] As regards the arguments concerning prescription, they entirely unfounded, because the record shows the Appellant's gross negligence and utter carelessness to

such an extent that I have absolutely no hesitation whatsoever in concluding that the Appellant wilfully and deliberately chose to act in a manner obviously designed to mislead the tax authorities and allow him to evade his obligations.

[47] Considering that the respondent admitted that some of the Appellant's arguments were well founded, I must allow the appeal in respect of these admissions. Accordingly, the record is referred back to the Minister for reconsideration and reassessment taking into consideration the admissions in paragraph 13 of these Reasons for Judgment, which specify the very minor changes to be made to the assessment under appeal.

[48] The penalties are very much warranted, and I confirm that they are well founded. Costs are awarded to the respondent.

Signed at Ottawa, Canada, this 18th day of May 2007.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of February 2008.

François Brunet, Revisor

CITATION : 2007TCC86
COURT FILE NUMBER: 2006-697(GST)G
STYLE OF CAUSE: René Patoine and Her Majesty the Queen
PLACE OF HEARING: Trois-Rivières, Quebec
DATE OF HEARING: January 30 and 31, 2007
REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif
DATED: May 18, 2007

APPEARANCES:

Counsel for the Appellant: Alain Bolduc

Counsel for the Respondent: Louis Cliche

SOLICITORS OF RECORD:

For the Appellant:

Name: Alain Bolduc
Firm: Joli-Coeur, Lacasse et associés
City: Trois-Rivières, Quebec

For the Respondent:

John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada