

Docket: 2006-3333(GST)I

BETWEEN:

RÉGINALD BOURGET,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on May 15, 2007, at Percé, Quebec.

Before: The Honourable Justice Gaston Jorré

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Louis Cliche

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**JUDGMENT**

The appeal from the assessment made under the *Excise Tax Act*, notice of which is dated January 25, 2006, and bears number 255698, for the period from August 4, 2003, to December 31, 2004, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 31st day of August 2007.

“Gaston Jorré”

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Jorré J.

Translation certified true

on this 26th day of September 2007.

Daniela Possamai, Translator

Citation: 2007TCC486  
Date: 20070831  
Docket: 2006-3333(GST)I

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and

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### **REASONS FOR JUDGMENT**

Jorré J.

#### Issue

[1] The Appellant is appealing a goods and services tax (GST) assessment for the period from August 4, 2003, to December 31, 2004.

[2] During the period in question, the Appellant operated a campground in Percé, Quebec, known as “Camping du Phare.”

[3] The assessment in question involves the amount of \$5,234.60, plus penalties in \$532 and interest in \$212.64. In making the assessment, the Minister concluded that

1. the Appellant made supplies in the amount of \$44,170.31 in 2003 and \$15,441.10 in 2004 which he did not report;
2. the Appellant had to be a registrant as of August 4, 2003, since he had already exceeded the threshold of \$30,000, and that accordingly the GST was payable as of August 4, 2003; and

3. the Appellant was not entitled to input tax credits (ITCs) for the use of his vehicle.

[4] The Notice of Appeal is very short and states as follows:

[TRANSLATION]

“The Notice of Assessment does not correspond to the amount owed as certain amounts are derived from a gift or inheritance.”

[5] The Appellant did not follow up on the issue of ITCs for vehicle use.

[6] As for the issue of registration as of August 4, 2003, Sylvie Bouffard, the auditor, testified that the Appellant was a registrant as of November 1, 2003, but that she noticed that the Appellant’s sales were enough to require him to be a registrant as of August 4, 2003. During the cross-examination, she explained that she made that determination by simply adding up a list of sales invoices provided by the Appellant.

[7] There was no other evidence in that respect and I have no reason to conclude that the Minister was wrong to register the Appellant as of August 4, 2003, and to impose the supplies as of August 4, 2003.

[8] The sole issue remaining is whether the Minister was right to add \$44,170.31 in 2003 and \$15,441.10 in 2004 to the campground supplies and to assess the GST on those amounts.

#### Auditor’s testimony

[9] The auditor explained that she compared the accounting documents to the campground sales invoices. Then, she visited the premises and saw a panel indicating that laundry services were provided and that he sold cod, ice and firewood. She also noticed that there were six permanent trailers. She did not see any sales from those sources in the invoices. During discussions with the Appellant, he said that the income from those sources totalled \$4,600 per year.<sup>1</sup>

[10] Owing to the fact that those amounts did not appear in the accounting documents, the auditor obtained the Appellant’s bank statements and, after taking

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<sup>1</sup> Although he stated that the income from those sources was minimal, the Appellant did not seriously contest the fact that he did not report small amounts from some of those sources.

into account the reported income and the amount of a loan from the Caisse populaire, she noticed significant discrepancies.

[11] The auditor concluded that those discrepancies—of \$44,170.31 in 2003 and \$15,441.10 in 2004—were income derived from the campground and that the GST had to be paid on those amounts.

Appellant's testimony

[12] According to the Appellant, those discrepancies are amounts that his mother and aunt gave him.

[13] The Appellant testified that he operated a campground business and that he was a skilled worker in the construction industry.

[14] The Appellant stated that he received between \$100,000 and \$105,000 in cash from his mother.

[15] His father passed away in 1982.

[16] According to his testimony, his parents accumulated and received that amount from various sources over the years. Both parents—and, after the father's death, the mother—kept that amount of cash in the house. None of the seven children knew that that cash existed.

[17] From 1990 to 1993, the mother gave various land to various children. One of the children got a lobster fishing licence.

[18] In 1993, the Appellant received the camping business and the land. His mother was proud of the business and at the time, she told him that she would help him build a new comfort station and put in a sewer system.

[19] It was in 1998 that his mother gave him the \$100,000 in a small cotton bag to help him build the comfort station. The Appellant kept all that money in the house. For a long time, the Appellant did not seem to be concerned about the risks of keeping so much money in the house.

[20] The other children did not receive cash.

[21] In 1998 and in 1999, the Appellant went to borrow money from the Caisse populaire. The loan was denied; he was told that the income from the campground was not high enough. It was then that the Appellant had the idea that he should perhaps deposit the cash at the Caisse populaire to convince it to grant him a loan.

[22] However, several years went by before he acted. In October 2004, he borrowed \$138,000 from the Caisse populaire to fund the construction of the new comfort station. The construction began in December 2004 and ended in spring 2005. The building cost about \$140,000.

[23] The Appellant also testified that a deceased aunt gave him “\$7,000” to help him build a new office. He did not say when.

[24] The Appellant’s mother and aunt are deceased.

[25] At one point—although it is not clear when—the Appellant became concerned that if his house were to be destroyed by fire, he could lose the \$100,000 and decided to deposit that amount at the Caisse populaire.<sup>2</sup>

[26] However, the Appellant did not explain

- (i) why he did not use the \$100,000 for the construction. Not only was that the reason for the gift from his mother but it would have also allowed him to reduce the amount of the loan from the Caisse populaire to about \$40,000 or less;
- (ii) why, if he had the \$100,000 on hand, he did not deposit it in 1998 or 1999 when he was denied the loan. He may have been able to convince the Caisse at the time that he had sufficient holdings and could have avoided waiting five years for the loan;
- (iii) why, once he decided to deposit the \$100,000, either to convince the Caisse or to avoid the risk incurred by keeping such an amount in the house, he stretched out the deposits over two years; and

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<sup>2</sup> [TRANSLATION] “So, the money too, I said: if the house catches fire, that money will burn; therefore, I deposited it. At the same time, it gave me a chance to allow the amount to grow.”

- (iv) why, despite the fact that he concluded that he should not keep large sums of money in the house, he did not deposit the balance of the original gift from his mother—about \$40,000.<sup>3</sup>

### Testimony of Mr. Martel

[27] The Appellant had Réjean Martel testify. Mr. Martel prepared the income tax returns of the Appellant and the Appellant's mother. According to Mr. Martel, the Appellant's mother told him that there was some money [TRANSLATION] "for the person who would get the campground." She did not say what amount.

[28] That conversation took place in spring 1995, during the preparation of the mother's income tax return. At the time, Mr. Martel had only known the mother for three or four years.

[29] Considering that the Appellant received the campground in 1993, it is surprising that his mother stated in 1995 that there was some money [TRANSLATION] "for the person who would get the campground." [Emphasis added.]

### Conclusion

[30] I do not accept the Appellant's evidence. His testimony was often vague and the series of events he described is highly unlikely.

[31] The conclusion is that the amounts of \$44,170.31 in 2003 and \$15,441.10 in 2004 are not derived from gifts or inheritances. Accordingly, the appeal must be dismissed.

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<sup>3</sup> The auditor identified a little less than \$60,000 in deposits besides the income reported and the loan from the Caisse.

Signed at Ottawa, Canada, this 31st day of August 2007.

“Gaston Jorré”

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Jorré J.

Translation certified true

on this 26th day of September 2007.

Daniela Possamai, Translator

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COURT FILE NO.: 2006-3333(GST)I

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REASONS FOR JUDGMENT BY: The Honourable Justice Gaston Jorré

DATE OF JUDGMENT: August 31, 2007

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Louis Cliche

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.  
Deputy Attorney General of Canada  
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