Docket: 2007-4067(GST)I

BETWEEN:

JOHN W. HARRISON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 1, 2008, at Fredericton, New Brunswick.

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Martin Hickey and Kendrick Douglas

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JUDGMENT

The appeal from the assessment made under the *Excise Tax Act*, notice of which is dated March 5, 2007 and bears number 0704650161237 is dismissed, without costs.

Signed at Halifax, Nova Scotia, this 11th day of April 2008.

"Wyman W. Webb"

Webb J.

Citation: 2008TCC206
Date: 20080411
Docket: 2007-4067(GST)I

BETWEEN:

JOHN W. HARRISON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb J.

[1] The issue in this case is whether the Appellant is entitled to a new housing rebate under section 256 of the *Excise Tax Act* ("*Act*") as a result of the construction of a major addition to his home.

[2] Section 256 of the *Act* contemplates a new housing rebate in one of two situations -- either a new residential complex is constructed or an existing residential complex is substantially renovated. However, the rebate form printed by the Canada Revenue Agency ("CRA") contemplates a third possibility -- a major addition. While the *Act* itself does not contemplate a rebate for a major addition, the concept of a major addition qualifying for a new housing rebate is based on the decision of Justice Hershfield in *Erickson v. The Queen*, [2001] G.S.T.C. 19, 2001 G.T.C. 309.

[3] The Appellant's house was constructed in three phases. When the Appellant acquired the property in 2001, phase 1 and phase 2 had been completed. Although the exact dimensions of phase 1 and phase 2 were not provided, it would appear from the plans that were submitted that phase 1 is a little larger than phase 2. Both phases 1 and 2 consist of a main floor area and a finished lower floor. The issue in this case relates to phase 3.

[4] There is no dispute in this case that a significant amount of work was done to the property and that the addition is significant. With respect to the kitchen area of the existing property some of the walls were removed, the windows were replaced, the kitchen cabinetry and countertops were replaced, the floor was replaced, the stairs were relocated, and a coat closet was removed. Most of the renovations completed on the existing property were done in the kitchen area. With respect to the remaining parts of the existing structure, the foundation wall was cut to allow passage from the older part to the new addition, duct work was installed throughout, baseboard and wood heat was replaced by a heat pump, the wood stove was removed, the bathroom fixtures were replaced (which included the toilet, faucet, tub and shower), the floor in the bedroom located in the basement of phase 2 was replaced, a new laundry area was created, and the electrical entrance and panel were relocated to the new section. The flooring in the hallway of the lower level of phase 1 was also replaced.

[5] When the new part was added to the house the main entrance to the house was relocated to the new part. In the new part a master bedroom, with a walk-in closet, a second bedroom, a bathroom, and a living room were added on one floor, and a garage, workshop, storage area and utility room were added at the lower level.

[6] The total area added by the new addition is 1,724 square feet (excluding the garage). The area of the pre-existing structure was 1,250 square feet. The total cost of the renovations to the existing part and the new addition was $123,722. The Appellant paid $80,000 for the house, land and a pottery studio when the property was acquired in 2001.

[7] It is acknowledged by the Appellant that the work completed on the existing house would not qualify as a substantial renovation of the existing structure. Substantial renovation is defined in section 123 of the *Act* as follows:

> "substantial renovation" of a residential complex means the renovation or alteration of a building to such an extent that all or substantially all of the building that existed immediately before the renovation or alteration was begun, other than the foundation, external walls, interior supporting walls, floors, roof and staircases, has been removed or replaced where, after completion of the renovation or alteration, the building is, or forms part of, a residential complex;

[8] It is clear that the renovations completed in relation to the existing part (phases 1 and 2) do not meet the definition of substantial renovations as the only work done on the recreation room in phase 2 (which is approximately 285 square feet) was the removal of the wood stove and no work was done on one of the two bedrooms

located below the recreation room in phase 2. Also the only work done in relation to the bedroom that is below the kitchen in phase 1 is that duct work was installed. The Appellant's estimate was that approximately 40% of the existing structure (phases 1 and 2) had been renovated.

[9] Therefore the argument in this case is related to whether or not the addition has resulted in a new residential complex. In *Erickson* Justice Hershfield made the following comments:

> 14 In supporting its submission that the Appellant did not construct a residential complex (a new residential complex), the Respondent argues that an addition can only be a newly constructed residential complex if the pre-existing unit is incorporated into an addition that is of such size and proportion that negates its being seen as merely an addition to the existing house. The addition should be of such proportion that would make the pre-existing unit, in effect, the "add on". I agree with this position. The test then, as I would put it, is whether the pre-existing residence has been incorporated into a new residence or whether an addition has been incorporated into a pre-existing residence. The former (but not the latter) may qualify as the construction of a (new) residential complex. I believe this expression of the test, of when a housing construction project can properly be viewed as one that constructs a new complex versus one that renovates an existing complex by adding to it, is in line with the requirements of the Act in respect of identifying construction that is eligible for the new housing rebate. To this point there is no difference between the Respondent's argument and her client's stated administrative practise. That is, where the original residence is incorporated into the addition as an "annex", a wing or relatively minor part of the newly constructed residence, the Respondent would treat the addition and renovations to the original residence together as a construction of a new residential complex. However, the Policy Paper also suggests by specific example that by adding a second floor to a bungalow where the second floor at least doubles the square footage of the original residence, the character of the residence may have sufficiently changed to regard the construction as the construction of a new residential complex. The Appellant argues that his lateral addition has similarly changed the character of his original residence, and I would agree. I do not agree, however, that an addition, whether one constructs upward or sideways, that simply doubles the square footage of a home, constitutes construction that is sufficient to create a new residential complex even if the character of the home is thereby changed. Changing the character of a home is not only an imprecise and subjective criterion, it is one that the Act does not invite as a factor in permitting a rebate. To say that changing a bungalow to a two-storey home may change the character of the former residence is not sufficient. The character of a home can be easily changed by a variety of renovations. Changing roof lines, enlarging and adding windows or redoing the exterior finishing of a home from, say, stucco to brick and stone could well change the character of a home. However, such changes would not justify a finding that a new residential complex has come into being. Similarly living space modifications can change the character of a home in terms of the way it functions but again such change in character may not be sufficient to support a finding that such modifications have

transformed a pre-existing structure into a new residential complex.

15 Consider that paragraph 256(2)(a) makes no reference to additions. From this it has been found that "additions" per se do not qualify for rebates.* Consider also that the Federal Court of Appeal in Sneyd has said that the GST rebate provisions for new housing are a limited and carefully tailored exception to the application of GST to taxable services in relation to house building and house renovations. Since additions are not mentioned in the rebate provisions and since we are to regard the rebate provisions as being carefully crafted exceptions in the application of GST, **I must conclude that an addition will not give rise to rebates unless it incorporates (consumes) a pre-existing premises to the point where the addition is essentially the new residential premises and the pre-existing premises, having ceased to exist as a residential unit is essentially reduced to a relatively minor aspect of that new premises.** If renovations which are expressly provided for under the Act must be so substantial as to require virtually gutting all of a pre-existing premises to qualify for a rebate, additions, for which there are no express provisions in the Act, should (if they are to be considered at all) presumably be more substantial yet. An addition that doubles square footage by adding a few rooms in any direction will not qualify for a rebate applying these criterion, even if the character of the residence has been modified in the process*.

16 The Appellant I think rightfully feels that his addition is indistinguishable from the bungalow being converted to a two-story home example given in the Policy Paper and asks me to enforce the Policy Paper or the spirit of it so as to allow his appeal. This I cannot do. Adding a double garage and doubling your living space in a home does not constitute anything more than a significant renovation. The Act does not permit a rebate on a renovation, significant or otherwise, unless virtually all of the existing premises is gutted. Making a home bigger, even significantly bigger, is simply not contemplated by the legislation as qualifying for a refund, in my view. As stated above there might be cases where an addition is of such proportion in relation to the existing premises that it can fairly be said that the existing premises has been incorporated into the addition in a manner that makes it appropriate to regard the original premises as effectively having ceased to exist as a residential unit. In such case, a new premises has been constructed and the rebate provision will apply. That is not the case here. The original premises is largely intact and constitutes a significant part of the post construction premises. It continues to have all the components of a residential unit. The addition just enhances that unit.

(emphasis added)

[10] As noted by Justice Hershfield in order for the new addition to qualify the resulting structure would have to become a new residential complex. As he noted:

> I must conclude that an addition will not give rise to rebates unless it incorporates (consumes) a pre-existing premises to the point where the addition is essentially the new residential premises and the pre-existing premises, having ceased to exist as a residential unit is essentially reduced to a relatively minor aspect of that new premises.

[11] In this particular case, the pre-existing part of the property (phases 1 and 2) still plays an important role in the use of the property as a residential complex. The kitchen area is still in the old part, as well as one bathroom and three bedrooms. The recreation room is also still in the old part. Changing the use of this room from one used to watch television to one used to play table tennis is not, in my opinion, a significant change since both uses are for recreational purposes. Therefore it cannot be said that the old premises have ceased to exist as a residential unit.

[12] The Appellant in his submission noted that this case is very similar to *Erickson*. I agree with this conclusion. Unfortunately for the Appellant, the individual in *Erickson* was not successful in substantiating that he was entitled to the rebate. The Appellant however also noted that the decision of Justice Hershfield predates the GST publication B-092 dated January 2005 and speculates whether the outcome in *Erickson* would have been different if this publication would have been available when *Erickson* was decided. However CRA's GST publication is not law. CRA's publication should be based on the *Act* and the case law. Clearly Justice Hershfield reviewed the policy paper that was available in 2000 and notes where he disagrees with the position as set out in that policy paper in relation to the conversion of a bungalow into a two story house. It is the *Act* and case law that will determine whether the rebate is available not the CRA publication.

[13] If the rebate is to be extended to include a major addition as a separate category (i.e. to include a major addition that will qualify for the rebate even though the major addition does not result in the addition being essentially the new residential complex), then Parliament, and not the CRA or the Court, must extend the rebate and define the criteria that must be met for such a major addition to qualify for the rebate. Otherwise the major addition will have to satisfy the existing requirements of new construction of a residential complex or substantial renovation of an existing residential complex.

[14] The appeal is dismissed, without costs.

Signed at Halifax, Nova Scotia, this 11th day of April 2008.

"Wyman W. Webb"

Webb J.

CITATION:	2008TCC206
COURT FILE NO.:	2007-4067(GST)I
STYLE OF CAUSE:	JOHN W. HARRISON AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Fredericton, New Brunswick
DATE OF HEARING:	April 1, 2008
REASONS FOR JUDGMENT BY:	The Honourable Justice Wyman W. Webb
DATE OF JUDGMENT:	April 11, 2008

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Martin Hickey and Kendrick Douglas

COUNSEL OF RECORD:

For the Appellant:

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Firm:	

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