

Docket: 2008-1207(GST)I

BETWEEN:

GERALD WEBSTER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on January 12, 2009, at Fredericton, New Brunswick

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Toks C. Omisade

JUDGMENT

The appeal from the assessment made under Part IX of the *Excise Tax Act* for the period from January 1, 2007 to December 31, 2007, dated January 18, 2008 and bearing number 08008003812340026 is dismissed, without costs.

Signed at Toronto, Ontario, this 29th day of January 2009.

“Wyman W. Webb”

Webb J.

Citation: 2009TCC62
Date: 20090128
Docket: 2008-1207(GST)I

BETWEEN:

GERALD WEBSTER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb J.

[1] The issue in this appeal is whether the Appellant was required to pay instalments pursuant to section 237 of the *Excise Tax Act* (the “*Act*”) in 2007. The Appellant was assessed interest pursuant to subsection 280(2) of the *Act* because he did not make any instalment payments in 2007.

[2] The Appellant stated that in late 2007 it was determined that he was an independent contractor and not an employee when he was providing services to his company. He also indicated that it was determined at that time that he would be registered under the *Act* as of November 1, 2006. The reporting period of the Appellant is the calendar year and the Appellant filed his returns under the *Act* for 2006 and 2007. For the 2006 year (which commenced on November 1, 2006 and ended on December 31, 2006) the net tax of the Appellant was \$2,527.26. The net tax of the Appellant for 2007 was \$7,174.50.

[3] Section 237 of the *Act* provides as follows:

237. (1) Where the reporting period of a registrant is a fiscal year or a period determined under subsection 248(3), the registrant shall, within one month after the end of each fiscal quarter of the registrant ending in the reporting period, pay to the Receiver General an instalment equal to

(a) except where paragraph (b) applies, $\frac{1}{4}$ of the registrant's instalment base for that reporting period; or

(b) the amount determined under subsection (5).

(2) A registrant's instalment base for a particular reporting period of the registrant is the lesser of

(a) an amount equal to

...

(ii) ... the net tax for the particular reporting period, and

(b) the amount determined by the formula

$$C \times 365/D$$

where

C is the total of all amounts each of which is the net tax for a reporting period of the registrant ending in the twelve month period immediately preceding the particular reporting period, and

D is the number of days in the period commencing on the first day of the first of those preceding reporting periods and ending on the last day of the last of those preceding reporting periods.

[4] The requirement to pay instalments is based on the determination of whether a person is a registrant. "Registrant" is defined in section 123 as follows:

"registrant" means a person who is registered, or who is required to be registered, under Subdivision d of Division V;

[5] A person will become a registrant when that person is required to be registered under the *Act* (if they have not already registered). The Appellant acknowledged that he was registered under the *Act* as of November 1, 2006. His registration was backdated approximately one year as it was in the fall of 2007 that it was determined

that he was an independent contractor. It would seem that this was presumably based on the date that he would have ceased to have been a small supplier and would have been required to register under the *Act* and the Appellant confirmed this in his closing argument. As a result the Appellant would have been a registrant in 2006 even if he would not have been registered as of November 1, 2006 and was required to make instalments in 2007.

[6] Although the Appellant only files his returns on an annual basis, he is still required to pay quarterly instalments under the *Act*. His instalment base for 2007 will be the lesser of two amounts – his net tax for 2007 (\$7,174.50) and his net tax for 2006 adjusted for the number of days in his reporting period in 2006. Since his net tax for 2006 was \$2,527.26 and there were 61 days in his reporting period in 2006, this second amount determined for 2006 would be \$15,122.13 and his instalment base for 2007 would be \$7,174.50.

[7] Failing to pay any instalments in 2007 results in the application of subsection 280(2) of the *Act* which provides as follows:

(2) Despite subsection (1), if a person fails to pay all of an instalment payable by the person under subsection 237(1) within the time specified in that subsection, the person shall pay, on the amount of the instalment not paid, interest at the prescribed rate, computed for the period beginning on the first day following that time and ending on the earlier of

(a) the day the total of the amount and interest is paid, and

(b) the day on or before which the tax on account of which the instalment was payable is required to be remitted.

[8] Therefore since the Appellant did not pay any instalments in 2007, the Appellant is liable for interest in relation to these unpaid instalments.

[9] The Appellant had submitted that the costs of complying with the *Act* were excessive and imposed a significant financial burden on his business. He was seeking to recover these costs from the Respondent. However, the powers of this Court in relation to an appeal of an assessment under the *Act* are limited by section 309, which provides as follows:

309. (1) The Tax Court may dispose of an appeal from an assessment by

(a) dismissing it; or

(b) allowing it and

(i) vacating the assessment, or

(ii) referring the assessment back to the Minister for reconsideration and reassessment.

[10] Therefore the remedies available to this Court are limited to those listed in subsection 309(1) of the *Act* and this Court does not have any jurisdiction to award the Appellant any amount as compensation for his cost of compliance with the *Act*.

[11] As a result, the appeal is dismissed, without costs.

Signed at Toronto, Ontario, this 29th day of January 2009.

“Wyman W. Webb”

Webb J.

CITATION: 2009TCC62
COURT FILE NO.: 2008-1207(GST)I
STYLE OF CAUSE: GERALD WEBSTER AND HER
MAJESTY THE QUEEN
PLACE OF HEARING: Fredericton, New Brunswick
DATE OF HEARING: January 12, 2009
REASONS FOR JUDGMENT BY: The Honourable Justice Wyman W. Webb
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APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Toks C. Omisade

COUNSEL OF RECORD:

For the Appellant:

Name:
Firm:

For the Respondent:

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