

TAX COURT OF CANADA
RE: EXCISE TAX ACT

2009-223(GST)I

BETWEEN: **LOUIS-ROCK LANGLOIS**
 Appellant

-and-

HER MAJESTY THE QUEEN
Respondent

[OFFICIAL ENGLISH TRANSLATION]

Held before the Honourable Justice **PIERRE ARCHAMBAULT**,
Tax Court of Canada, Trois-Rivières, Quebec, on
June 30, 2009.

REASONS FOR JUDGMENT

APPEARANCES:

LOUIS-ROCK LANGLOIS
for himself.

Philippe Morin
Counsel for the respondent.

Registrar/Tenchnician: Nicole Champagne

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GST-5287

per: **JEAN LAROSE**

1 START OF REASONS FOR JUDGMENT: 11:55 a.m.

2 HIS HONOUR: Listen, I have listened to
3 you attentively. Unfortunately, the situation seems very
4 clear to me, and I am even ready to render my decision.
5 Mr. Langlois, your story is sad; it is similar to the
6 stories of many taxpayers who have appeared before me and
7 who acted in good faith, who weren't, in your case, it is
8 not everyone's case, but in your case it's clear that you
9 did not profit at all from participating in the
10 activities of what we called the operating company and of
11 the limited partnership, but the day that you accepted to
12 become director for that partnership, there are
13 responsibilities attached to that position, and directors
14 are there to manage the company. They are a type of
15 trustee. They have to ensure that the company is managed
16 soundly, and unless the directors... unless the directors
17 are stripped of their power, and it's transferred to the
18 shareholders, the directors are the ones who control the
19 company's operations, and, as such, the tax legislation
20 prescribes that the directors, as the people in a
21 position of control, take the measures necessary for the
22 money received from a sale or from providing a service,
23 that the money, which... paid by customers is remitted,
24 as an agent, by the company in question, which provided
25 the service, and that that money is remitted to its

1 actual owner, the tax authorities.

2 And the goal of the section of the Act
3 that renders directors liable is to make sure that
4 directors don't favour one supplier over another. In
5 other words, what happened was that the operating company
6 in fact borrowed money from the government to finance its
7 operations. And certainly, if a new purchaser had been
8 found, the money would have been reimbursed, and no one
9 would have complained. Interest and penalties would have
10 been due because the payments would have been late, but
11 once the government has been paid once, it doesn't run
12 after the directors to get paid. It's when the company
13 goes bankrupt and the government can't recover the money
14 it's owed, at that moment, the government turns to the
15 directors. And that's not an administrative issue; it's a
16 legal issue. The law sets out a clear provision - it's in
17 the *Income Tax Act* - regarding employee salaries, among
18 other things, and those are sums that do not belong to
19 the companies that have to collect, those are sums that
20 are due, that belong from the very start to the
21 government, to tax authorities.

22 So, I repeat, this is a very sad story
23 as far as... And you, you are somewhat the victim in this
24 situation, but unfortunately, the role of the Court is to
25 apply the letter of the law, and in my opinion, all the

1 conditions were present to justify the assessment that
2 was issued concerning the two periods, effectively for
3 the reasons stated by counsel for the respondent.

4 There was a failure. What the Act says
5 is that you cannot be found liable if you had taken the
6 measures necessary to prevent the failure. If you had
7 given instructions to the Executive Director; if you had
8 given instructions to Ms. Jacob: "I'm giving you clear
9 instructions: you must take the money that you have
10 collected as GST and ensure that that money is put aside
11 and that it will be remitted at the right time, on April
12 30, 2006, and on... the 31st, that's June, it's July
13 31..."

14 PHILIPPE MORIN: Actually, it's
15 June 30, Your Honour.

16 HIS HONOUR: June 30.

17 LOUIS-ROCK LANGLOIS: No, no, the
18 tax was due on July 31.

19 PHILIPPE MORIN: Okay, sorry,
20 sorry, I'm sorry, yes.

21 HIS HONOUR: July 31. If you had
22 said: "Here, these are your instructions," but the staff
23 didn't follow your instructions, in a case like that,
24 it's clear that you would not be held liable. You had put
25 in place... You would have established a mechanism; you

1 would have given instructions to ensure that the tax is
2 paid. Saying to the shareholders: "Listen, the taxes are
3 due," then, in one of the e-mails, you say: "My
4 director's liability is at stake; please send me the
5 money." To me, that's not enough because you had
6 accepted, admittedly, in good faith, and you are not
7 penalized in any other way than being held liable, which
8 is already a huge penalty, but you are not penalized for
9 defrauding the government. We're not in that kind of
10 situation: not only did you not profit, but you also did
11 not do it with the intent to defraud the government.
12 That's clear. You did it for the good cause of keeping a
13 business going, of possibly keeping the jobs of those...
14 Well, it wasn't proven. I note that the number of
15 employees was not put in evidence, but that...

16 LOUIS-ROCK LANGLOIS: No.

17 HIS HONOUR: ...But that, just for
18 future reference, that's the kind of fact that should
19 have been accepted; counsel should have maybe put in
20 evidence that the money had not been paid, but those are
21 technicalities. What I mean to say is that it's certain
22 that, and you acted in good faith and with the best of
23 intentions, but money was borrowed that belonged to the
24 government, then you let that money be used for other
25 needs that were more urgent, and that's the case in

1 right.

2 PHILIPPE MORIN: Yes.

3 HIS HONOUR: So dated October 16,
4 2008, which reduced the taxes on the ground that the
5 period after June 30, 2006, was excluded from that
6 assessment, because at that time, at the time of the
7 payment for the subsequent period, you would not have
8 been a director since you had stepped down.

9 And at the beginning of the hearing
10 you admitted all the facts that the Minister relied on,
11 except paragraph (c), 21(c), for the period following
12 March 2006. As for (f) (g) and (h), as far as I'm
13 concerned, you were a director for all the periods in
14 question: you were informed about operations; you were
15 involved in the process of filing tax returns, and you
16 knew your legal duty with respect to directors'
17 liability.

18 So unfortunately, as far as this
19 appeal goes, I have no doubt in finding that the
20 conditions of the Act were all present for all the
21 reasons I already stated.

22 Therefore, your appeal is
23 unfortunately, and I am not happy about it in the
24 circumstances, is dismissed. I hope that your brother
25 will have the decency to reimburse you for the taxes that

1 weren't yours, more his than yours in any case.
2 Evidently, it's just wishful thinking on my part, since I
3 obviously have absolutely no power over this, but....

4 END OF REASONS FOR JUDGMENT

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7 Translation certified true
8 on this 30th day of September 2009
9 Margarita Gorbounova, Translator

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