Docket: 2016-4286(GST)G

BETWEEN:

FRANK-FORT CONSTRUCTION INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on May 23 and 24, 2019, and on September 5, 2019
at Montreal, Quebec
Before: The Honourable Justice Johanne D'Auray

Appearances on May 23 and 24, 2019:

Counsel for the appellant:	Laurent Tessier Catherine L'Espérance
Counsel for the respondent:	Jean-Philippe Verreau

Appearances on September 5, 2019:

Counsel for the appellant:	Laurent Tessier
Counsel for the respondent:	Olivier Charbonneau-Saulnier

JUDGMENT

The appeal from the assessment under the *Excise Tax Act*, notice of which is dated October 27, 2015, for the period from August 1, 2011, to May 31, 2014, is allowed, with costs to the appellant.

Signed at Ottawa, Canada, this 21st day of January 2020.

"Johanne D'Auray"

D'Auray J.

Translation certified true
on this 10th day of August 2020.

François Brunet, Revisor

Citation: 2020 TCC 6
Date: 20200121
Docket: 2016-4286(GST)G

BETWEEN:

FRANK-FORT CONSTRUCTION INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

D'Auray J.

I. Background

[1] During the periods at issue (August 1, 2011, to May 31, 2014), the principal activity carried out by Frank-Fort Construction Inc. ("Frank-Fort") was construction of new residential buildings ("buildings").

[2] In its GST return, Frank-Fort failed to report and remit GST with regard to two building sales made in November 2011.

[3] Frank-Fort does not dispute that it had to report and remit the GST with regard to the sales of these buildings in November 2011. However, it is contesting the penalty imposed under section 285 of the *Excise Tax Act* (ETA).[1]

[4] Frank-Fort submits that the requirements of section 285 of the ETA are not met, because the omissions were not made knowingly or in circumstances amounting to gross negligence. For its part, the respondent submits that the assessment was valid and that it established that there was wilful blindness or gross negligence, or both, on Frank-Fort's part.

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[1] I have attached section 285 of the ETA to these reasons.

II. Issue

[5] Was the Minister of Revenue of Quebec (the Minister), on behalf of the Minister of National Revenue, justified in imposing the penalty under section 285 of the ETA?

III. Facts

[6] Mr. Fernandes is Frank-Fort's only employee, shareholder, and director.

[7] While he was an employee of Bombardier Inc., Mr. Fernandes started buying vacant land. He also received a contractor's licence from the Régie du bâtiment du Québec.

[8] In 2006, at the age of 25, Mr. Fernandes incorporated Frank-Fort. At that time, Frank-Fort's main activity was building construction. Mr. Fernandes had never worked in the construction field.

[9] With the profits from building sales, Mr. Fernandes bought other land. During the period from May 1, 2008, to May 31, 2014, Frank-Fort sold 86 buildings. Frank-Fort has never had any employees; all of its building construction projects were subcontracted.

[10] Mr. Fernandes testified that he has a high school diploma and that he has no knowledge of and no experience in accounting or taxation. Hence, Mr. Fernandes retained the services of Centria Commerce (Centria) and a chartered professional accounting (CPA) firm.

[11] Centria manages all invoicing with regard to building construction. Funds loaned to Frank-Fort by the Laurentian Bank are deposited by the Laurentian Bank into a bank account. Only Centria has access to that account. Centria looks after paying the invoices received from subcontractors within a predetermined time frame. By using Centria, subcontractors are assured of being paid, which eliminates the possibility that buildings constructed by Frank-Fort are charged with legal hypothecs. The majority of the transactions for Frank-Fort's operations are therefore entered into the accounts by Centria.

[12] Mr. Fernandes decided to use a CPA firm. Accordingly, when Frank-Fort was incorporated in 2006, Mr. Fernandes hired the Campeau Vinet firm,[2] specifically Laurent Campeau, CPA. Mr. Campeau's mandate is to do all of Frank-Fort's accounting (bookkeeping), including bank reconciliations, entering transactions in the ledger, preparing monthly or quarterly GST returns and income tax returns, and preparing review engagement financial statements.

[13] Mr. Fernandes testified that he decided [TRANSLATION] "to give all the accounting from A to Z to CPAs". Frank-Fort could have hired an in-house bookkeeper, but Mr. Fernandes said that he preferred to hire a CPA firm to ensure that Frank-Fort's accounting and returns (GST and income tax) were done properly and in compliance with tax laws. Having no knowledge of accounting, he said that he put his full trust in the team of professionals at the Campeau Vinet CPA firm.

[14] Mr. Fernandes said that by choosing to pay Centria to manage the invoicing and to pay a CPA, he made sure that Frank-Fort's accounting complied with the law. Therefore, Mr. Fernandes could focus on his field of expertise: overseeing construction sites.

[15] Over the years, Frank-Fort has been audited many times. Audit 50 reveals that Frank-Fort failed to report two building sales during the period from August 1, 2009, to October 31, 2009. Two omissions of building sales were also noted in audit 60 in respect of the period from November 1, 2009, to July 31, 2010. The third audit, audit 80, covering the period from February 1, 2008, to July 31, 2011, reveals that Frank-Fort failed to report ten building sales. What is noteworthy is that Frank-Fort never had any penalties imposed on it under the ETA. The penalties that were imposed were those related to the QST (section 59.2 of the *Tax Administration Act* (TAA)).[3]

[16] The audit related to the appeal in this case is audit 130. This audit covers the period from August 1, 2011, to May 31, 2014. It reveals that Frank-Fort failed to report and remit GST and QST with regard to two building sales. The civic address of these buildings is 56-56A Rodrigue Street, Ste-Sophie, and 451 Montée de l'Église, Saint-Colomban. The GST that was not reported and not remitted is $9,880.90 and $11,537.89, respectively. In this respect, the notices of assessment are dated October 2015.

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2 The firm has also operated under the business name SPG-Pagett. This is irrelevant to the purposes of the appeal in this case.

3 I have attached the text of section 59.2 of the TAA to these reasons.

[17] The evidence shows that from 2006 to date, Frank-Fort hired three CPA firms. The mandate given to each CPA firm was always the same: keep the books up to date, accounting, GST and income tax returns, and preparation of review engagement financial statements.

[18] Laurent Campeau, a CPA at Campeau Vinet, was responsible for the Frank-Fort file from the company's incorporation in 2006 until about April 2011. In the light of audit 80, in which several omissions were noted, Frank-Fort hired Gilles Charest, also a CPA. However, Mr. Charest had some difficulty in obtaining the documents from Campeau Vinet. At that time, audit 80 was underway; it was certainly difficult for Mr. Charest to explain why there had been omissions on Mr. Campeau's watch.

[19] Mr. Fernandes testified that, at the time, Luc Vinet, CPA, also from Campeau Vinet, convinced him to hire the firm. Consequently, Mr. Charest's mandate was short, i.e., from about April 2011 to November 2011. Mr. Fernandes hired Mr. Vinet in November 2011.

[20] According to Mr. Fernandes, Mr. Vinet was very reassuring with regard to audit 80. Mr. Fernandes added that Mr. Vinet was committed to giving special attention to Frank-Fort's business. Although a notice of objection was submitted to the Minister with regard to audit 80 and to the QST, Frank-Fort did not appeal from the decision. Mr. Fernandes said that it was preferable to pay the penalties under section 59.2 of the TAA because they were not large amounts. This period was also a very busy one in construction; it was better to spend time on construction sites. In February 2013, Frank-Fort wanted to move in a new direction. Mr. Fernandes decided that it was in Frank-Fort's best interests to part ways with Campeau Vinet and to hire Antoine Crochetière, CPA. Ever since Mr. Crochetière began working with Frank-Fort, there have been no omissions as to building sales.

[21] The omissions related to the appeal in this case—that is, regarding the two building sales made by Frank-Fort in November 2011—occurred on Campeau Vinet's watch, Mr. Vinet being the CPA responsible for the Frank-Fort file. Frank-Fort's GST return was filed late, on June 14, 2012.

[22] Mr. Fernandes testified that he assisted Mr. Vinet by preparing a file that he would bring to the accounting firm. This file included the cheque stub for the residential building sale, the original copy of the act of sale for the building, the statement of disbursements prepared by the notary, and the bank statements (to

allow for bank reconciliation). Mr. Fernandes also testified that he prepared a document stating monthly or quarterly sales, depending on whether the GST returns had to be filed monthly or quarterly. The accounting firm also had access to data from Centria. Mr. Fernandes said that the notarial acts for the November 2011 building sales were given to the accounting firm.

[23] For his part, Mr. Vinet testified that, while he was preparing the GST returns in 2012, Frank-Fort's sales in November 2011 were not reported, because according to him, [TRANSLATION] "there were no notarial acts or I didn't see any".

[24] Ms. Bourque is the Senior Director, Real Estate Loan Administrative Management and Monitoring, at Fiera Private Debt, formerly Centria Commerce. During her testimony, she explained that Centria operated with lending institutions and subcontractors. Ms. Bourque said that the financial institution—in this case, the Laurentian Bank—entrusted Centria with all of its loan management operations. Centria paid invoices as they were received from subcontractors and providers. Only Centria had access to the bank account.

[25] Ms. Bourque also explained that Centria kept a specific, up-to-date history of each building constructed by Frank-Fort. The history displayed all advances made by the financial institution and all invoices paid to the subcontractors. The data from Centria also displayed the date when the building was sold, the name of the buyer, and the amount paid by the buyer for the building.

IV. Analysis

[26] In this case, the appellant did all it could to prevent omissions as to building sales. Knowing that it had no accounting or tax knowledge, it hired a CPA so that its accounting, financial statements, and GST, QST, and income tax returns would be done in compliance with tax laws. To that end, it gave Mr. Vinet's team a file with all the required information: the notarial act of sale, statements of disbursements prepared by the notary, the bank statements, and a summary sheet describing the sales transactions. Mr. Fernandes said that he gave the notarial acts to the accounting team. In addition, Mr. Vinet and his team had computer access to all of the data entered by Centria, including building sales. Therefore, Frank-Fort submits that it could do no more and that it should not be penalized for the negligence of its accountant.

[27] For his part, Mr. Vinet submits that if the notarial acts had been given to his bookkeeping team, the sales would have been reported.

[28] Mr. Fernandes' and Mr. Vinet's testimony regarding the submission of the notarial acts of sale is contradictory. I accept Mr. Fernandes' version. At the hearing, Mr. Fernandes' testimony was credible, and his version of the facts was consistent. As for Mr. Vinet, he avoided answering questions, was hostile, and reluctantly admitted that the accounting entries made in the Frank-Fort file were not consistent with the facts. For example, it would have been easy to note that the two buildings were sold in November 2011. These sales were easily detectable in Centria's data, if, indeed, the notarial acts were not in the file. When the GST return was filed in June 2012, Mr. Vinet and his team had access to Centria's computer data. Centria's records that were submitted into evidence show the building sales made by Frank-Fort in November 2011.

[29] The evidence shows that Frank-Fort's bookkeeping was done by Marylise Turcotte. She was responsible for entering the transactions in the accounting records. Ms. Turcotte was also responsible for bank reconciliations and for preparing GST returns. During his testimony, Mr. Vinet noted that there were deposits in Frank-Fort's Desjardins account in November 2011 with the notation ATD (ATM deposit). Despite the ATD notation, the deposits, which represented the proceeds from both buildings sold in November 2011, were entered into Frank-Fort's accounting books as mortgage advances. It is difficult to understand why. First of all, mortgage advances are not deposited by a financial institution through an automated teller machine. Moreover, in this case, the mortgage advances were managed by Centria. In addition, the mortgages are from the Laurentian Bank, not Desjardins.

[30] Because the accounting entries were erroneous, the sales of the two buildings at issue were not reported, and the GST on these buildings was not remitted. The GST returns were prepared and signed by Ms. Turcotte. The Campeau Vinet accounting firm sent the GST returns to the tax authorities.

[31] In 2013, Mr. Vinet noticed that there were errors in the accounting entries and that they had to be corrected. At that time, he could have made changes to the GST return to reflect the unreported sales, but Mr. Vinet chose to change the entry and enter zero for the work in progress and the mortgage advance. Indeed, in that regard, he also testified that the accounting entries were not done properly.

> [TRANSLATION]
> MR. VINET: The debt stays in the liabilities. The costs accumulated for the project are part of all the work in progress on the financial statements. Therefore, it's an asset. There is inventory there.

> The financial statement is issued out the following year. The work in progress is reviewed. If the director tells me, "No, no. That house there, it's settled. There shouldn't be a balance." Well, we'll remove it.
>
> I'm not saying it was done correctly. We should have accounted for the sale...
>
> MR. TESSIER: No, but...
>
> MR. VINET: ... but I don't think it was accounted for . . .
>
> MR. TESSIER: Now. So I'll ask my question again. From the moment you noticed that it should have been accounted for in 2012, why didn't you correctly adjust the 2012 fiscal year?
>
> MR. VINET: Because if we didn't see the deed of sale, we couldn't report it as a sale. I'm not saying that it's right.

[Emphasis added.]

[32] Mr. Vinet did not tell Mr. Fernandes about these accounting entries or about the correction he made in 2013. When audit 130 was completed in 2015, Mr. Fernandes learned that there were omissions regarding the two sales made in November 2011 by Frank-Fort.

[33] In this case, the respondent must establish, on a balance of probabilities, the facts that warrant the imposition of a penalty under section 285 of the ETA. Frank-Fort acknowledged the omission; the respondent must prove that Frank-Fort made this omission knowingly or in circumstances amounting to gross negligence.

[34] In *Bradshaw v The Queen*, I[4] referred to a Federal Court of Appeal case, *Wynter v The Queen*.[5] *Wynter* that propounds the correct approach of interpretation of subsection 163(2) of the *Income Tax Act* (ITA). Like section 285 of the ETA, which applies in this case, subsection 163(2) allows the Minister to impose penalties. The language used in both provisions is the same. Therefore, the interpretations given by the Federal Court of Appeal with respect to subsection 163(2) of the ITA can also be used to interpret section 285 of the ETA. In this regard, in *Bradshaw*, I stated the following:

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4 *Bradshaw v The Queen*, 2019 TCC 1.

5 *Wynter v Canada*, 2017 FCA 195.

[40] In *Wynter v The Queen*, Justice Rennie, in a unanimous decision of the Federal Court of Appeal, stated as follows with respect to the "knowingly" and "gross negligence" standards in subsection 163(2) of the *Act*:

> [11] When Parliament uses alternative terms, it is assumed that it intended them to have different meanings. Put otherwise, Parliament does not repeat itself: see Ruth Sullivan, *Statutory Interpretation*, 3rd ed. (Toronto: Irwin Law Inc., 2016) at 43. Section 163 allows the imposition of penalties where the taxpayer has knowledge or in circumstances amounting to gross negligence. The section is not conjunctive, and presumptively, these two terms differ in their meaning and content.
>
> [12] The distinction between gross negligence – determined by an objective assessment of the comportment of the taxpayer – and wilful blindness – determined by reference to the taxpayer's subjective state of mind – has a long history. Admittedly, it is, on occasion, a fine distinction and one that is not always clearly drawn. Nonetheless, Parliament is taken to have been cognizant of the distinction.

[41] In *Wynter*, Justice Rennie explained that a taxpayer will fall under the "knowingly" standard, not only when the taxpayer actually intends to make a false statement but also when the taxpayer becomes aware of the need for inquiry but declines to make the inquiry because the taxpayer does not want to know the truth or wants to studiously avoid the truth. In these circumstances, the doctrine of wilful blindness imputes knowledge to the taxpayer:

> [13] A taxpayer is wilfully blind in circumstances where the taxpayer becomes aware of the need for inquiry but declines to make the inquiry because the taxpayer does not want to know, or studiously avoids, the truth. The concept is one of deliberate ignorance: *R. v. Briscoe*, 2010 SCC 13 at paras. 23-24, [2010] 1 S.C.R. 411 (*Briscoe*); *Sansregret* at para. 24. In these circumstances, the doctrine of wilful blindness imputes knowledge to a taxpayer: *Briscoe* at para. 21. Wilful blindness is the doctrine or mechanism by which the knowledge requirement under subsection 163(2) is met.
>
> . . .
>
> [16] In sum, the law will impute knowledge to a taxpayer who, in circumstances that suggest inquiry should be made, chooses not to do so. The knowledge requirement is satisfied through the choice of the taxpayer not to inquire, not through a positive finding of an intention to cheat.

> [17] While evidence, for example, of an actual intent to make a false statement would suffice to meet the "knowingly" requirement of subsection 163(2), requiring an intention to cheat to establish wilful blindness is inconsistent with the well-established jurisprudence that wilful blindness pivots on a finding that the taxpayer deliberately chose not to make inquiries in order to avoid verifying that which might be such an inconvenient truth. The essential factual element is a finding of deliberate ignorance, as it "connotes 'an actual process of suppressing a suspicion'": *Briscoe* at para. 24. I would add that, in the context of subsection 163(2), references to "an intention to cheat" are a distraction. The gravamen of the offence under subsection 163(2) is making of a false statement, knowing (actually or constructively, i.e., through wilful blindness) that it is false.

> [42] As is stated by Justice Rennie in *Wynter*, the standard of "gross negligence" is distinct from "wilful blindness". Gross negligence arises where the taxpayer's conduct is found to fall markedly below what would be expected of a reasonable taxpayer. Simply put, if the wilfully blind taxpayer knew better, the grossly negligent taxpayer ought to have known better.

[35] The parties also cited cases where taxpayers raised the accountant's error with regard to omissions or false representations. I will not review all these cases one by one. These cases stand for the proposition that an accountant's error will not automatically clear a taxpayer of any imposition of penalties under section 285 of the ETA. Each case must be analyzed based on its own factual background. The taxpayer's behaviour must be taken into account.

[36] In my view, Frank-Fort did not know and could not have known that there were omissions in its GST return. The issue in this case is not wilful blindness. Mr. Fernandes knew his limitations. He said that he knew nothing about accounting or taxes; his expertise was in supervising construction sites. He had chosen to pay Centria. They managed the mortgage advances and made payments to the subcontractors. Therefore, Frank-Fort did not have to worry about paying the subcontractors; everything was in order. Moreover, financial institutions like this method because it prevents buildings from being charged with legal hypothecs. Mr. Fernandes consulted Centria on a regular basis. He noted from the database that Centria paid the subcontractors.

[37] Mr. Fernandes also hired the Campeau Vinet CPA firm as soon as Frank-Fort was incorporated. In this regard, Centria greatly facilitated the bookkeeping that Campeau Vinet should have done. Mr. Fernandes decided to change accounting firms in response to the omissions regarding the sale of houses in

previous GST returns, but he was convinced by Mr. Vinet to rehire Campeau Vinet. Mr. Vinet had assured him that he would do things differently and would give special attention to Frank-Fort's business.

[38] That being said, Mr. Fernandes did not stop at hiring Mr. Vinet. He did everything he could to ensure that his GST returns complied with the ETA. Mr. Vinet had computer access to all of Centria's data, including Frank-Fort's sales. Mr. Fernandes also gave Mr. Vinet or Ms. Turcotte, in a file, all the documents they needed to ensure that the bookkeeping and the GST returns were compliant with tax laws. These documents included notarial acts of sale, disbursements from the notary, bank accounts, and a document displaying the transactions. As I stated previously, I have no reason to question Mr. Fernandes' testimony.

[39] Moreover, Mr. Vinet noticed in 2013 that the accounting entries, including sales, were not consistent with the facts. He did not tell Mr. Fernandes, did not ask him any questions, and did not seem to have checked the data from Centria. Instead, he decided to set the mortgage advances and the work in progress to zero. When counsel for the respondent asked Mr. Vinet whether Mr. Fernandes could have done anything that would have allowed Frank-Fort to avoid the omissions, he said no. Moreover, the GST returns were prepared and signed by Ms. Turcotte from Campeau Vinet. The GST returns were sent directly to the tax authorities. Mr. Fernandes learned during the 2015 audit that two building sales had not been reported.

[40] In this case, the circumstances are not those described in *Wynter* or *Bradshaw*, where taxpayers claimed false business losses when they did not operate a business. Mr. Fernandes, on behalf of Frank-Fort, was not wilfully blind; he did not refuse to know the truth. In the light of his education and lack of tax knowledge, he did everything he could to make sure that his GST returns complied with the ETA.

[41] It is also my view that the circumstances in this case do not prove that there was negligence amounting to gross negligence. Whereas the test for wilful blindness is subjective, the test for gross negligence is objective. To establish whether there was gross negligence, what must be taken into account is the conduct to be expected from a reasonable person in the same circumstances. Consequently, the taxpayer's personal qualities must not be taken into account.

[42] The leading case as to what constitutes gross negligence was decided by the Federal Court, *Venne v Canada*.[6] Justice Strayer described what constitutes gross negligence in the following terms:

> . . . "Gross negligence" must be taken to involve greater neglect than simply a failure to use reasonable care. It must involve a high degree of negligence tantamount to intentional acting, an indifference as to whether the law is complied with or not. . . .

[43] What emerges from Mr. Fernandes' testimony is that he did everything he could to ensure that Frank-Fort's tax obligations would be met. In my view, this is the conduct of a reasonable person.

[44] That being said, Mr. Fernandes knew that omissions were made with respect to building sales during the previous GST filing periods. In this regard, the Minister made assessments under section 59.2 of the TAA; these assessments should have raised red flags. However, the respondent did not explain the circumstances surrounding the omissions in its previous audit files. Moreover, what emerges from the evidence is that Mr. Vinet minimized the impact of these assessments with Mr. Fernandes. The penalties under section 59.2 of the TAA are not equivalent to those under section 285 of the ETA. Moreover, Mr. Vinet reassured Mr. Fernandes that he was going to look after Frank-Fort's accounting. Mr. Fernandes not only retained Centria's and Mr. Vinet's services, but he also made sure to implement a system that kept records of Frank-Fort's sales and to provide his accountant with the required information. Mr. Fernandes had also given Mr. Vinet and his team access to Centria's computer data, which included sales. Mr. Vinet had all the information he needed to prepare the GST returns in compliance with tax laws.

[45] It is clear that the penalty under section 285 of the ETA will be upheld only in the clearest cases. In this case, the GST returns were prepared and signed by Ms. Turcotte and seem to have been sent to the tax authorities without being reviewed by Mr. Fernandes. The evidence did not reveal whether it was Mr. Vinet or Mr. Fernandes who made that decision. I can therefore not accept that Mr. Fernandes was blatantly negligent.

[46] It is also clear that Frank-Fort had no reason for not sending the information related to these two building sales. These sales are public and were duly authenticated by a notary and published in the Registre foncier du Québec.

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6 *Venne v Canada (Minister of National Revenue-MNR)*, [1984] FCJ No. 314.

[47] Consequently, in the light of the evidence, in my view, the respondent did not prove that Frank-Fort committed "a high degree of negligence tantamount to intentional acting, an indifference as to whether the law is complied with or not".

V. Disposition

[48] Frank-Fort's appeal is allowed with costs to the appellant.

Signed at Ottawa, Canada, this 21st day of January 2020.

"Johanne D'Auray"

D'Auray J.

Translation certified true
on this 10th day of August 2020.

François Brunet, Revisor

APPENDIX

Excise Tax Act

False statements or omissions

285 Every person who knowingly, or under circumstances amounting to gross negligence, makes or participates in, assents to or acquiesces in the making of a false statement or omission in a return, application, form, certificate, statement, invoice or answer (each of which is in this section referred to as a "return") made in respect of a reporting period or transaction is liable to a penalty of the greater of $250 and 25% of the total of

(a) if the false statement or omission is relevant to the determination of the net tax of the person for a reporting period, the amount determined by the formula

A - B

where

A is the net tax of the person for the period, and

B is the amount that would be the net tax of the person for the period if the net tax were determined on the basis of the information provided in the return,

(b) if the false statement or omission is relevant to the determination of an amount of tax payable by the person, the amount, if any, by which
(i) that tax payable
exceeds
(ii) the amount that would be the tax payable by the person if the tax were determined on the basis of the information provided in the return, and

(c) if the false statement or omission is relevant to the determination of a rebate under this Part, the amount, if any, by which
(i) the amount that would be the rebate payable to the person if the rebate were determined on the basis of the information provided in the return
exceeds
(ii) the amount of the rebate payable to the person.

Tax Administration Act

59.2. Every person who fails to deduct, withhold or collect an amount he was required to deduct, withhold or collect under a fiscal law incurs a penalty of 15% of that amount.

Every person who fails, within the time prescribed by law or by an order of the Minister, to pay or remit an amount he was required to pay or remit under a fiscal law incurs a penalty equal to

(*a*) 7% of that amount, where the delay does not exceed seven days;

(*b*) 11% of that amount, where the delay does not exceed 14 days;

(*c*) 15% of that amount, in other cases.

Notwithstanding the foregoing, the penalty does not apply in the case of an amount that was required to be paid under Chapter III of Title III of Book IX of Part I of the Taxation Act (chapter I-3) or under section 1185.1 of that Act.

Notwithstanding the second paragraph, every person who contravenes section 512 of the Act respecting the Québec Sales Tax (chapter T-0.1) incurs a penalty equal to twice the amount of the tax.

Notwithstanding the second paragraph, a corporation referred to in the sixth paragraph shall not incur, under this section, in respect of an amount it is required to remit in a taxation year under subparagraph *a* of the first paragraph of section 34.0.0.0.1 of the Act respecting the Régie de l'assurance maladie du Québec (chapter R-5), a penalty greater than the penalty it would incur, in respect of that amount, if it were a qualified corporation for the year, for the purposes of Title VII.2.4 of Book IV of Part I of the Taxation Act.

A corporation to which the fifth paragraph refers is a corporation that is not a qualified corporation for the year, for the purposes of Title VII.2.4 of Book IV of Part I of the Taxation Act and that

(*a*) would be such a qualified corporation for the year, but for section 737.18.23 of the Taxation Act; or

(*b*) was such a qualified corporation for the preceding taxation year and would be such a qualified corporation for the year, but for section 737.18.23 of the Taxation Act and if the definition of that expression in the first paragraph of section 737.18.18 of that Act were read without reference to paragraph *c* thereof.

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PLACE OF HEARING:	Montreal, Quebec
DATE OF HEARING:	May 23 and 24 and September 5, 2019
REASONS FOR JUDGMENT BY:	The Honourable Justice Johanne D'Auray
DATE OF JUDGMENT:	January 21, 2020

APPEARANCES:

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Counsel for the respondent:	Jean-Philippe Verreau Christian Lemay

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