

Docket: 2024-1960(GST)I

BETWEEN:

HERITAGE SQUARE RETIREMENT LIVING INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on October 20, 2025, at St. John's, Newfoundland and
Labrador (post-hearing submissions received on October 28, 2025,
November 28, 2025, and January 29, 2026)

Before: The Honourable Justice David E. Spiro

Appearances:

For the Appellant: Jacqui Morgan

Counsel for the Respondent: Chelsea Barkhouse

JUDGMENT

The appeal of an assessment under subsection 261(3) of the *Excise Tax Act* made on May 24, 2023, is dismissed, without costs.

Signed this 3rd day of March 2026.

“David E. Spiro”

Spiro J.

Citation: 2026 TCC 39
Date: 20260303
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HERITAGE SQUARE RETIREMENT LIVING INC.,

Appellant,

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Respondent.

REASONS FOR JUDGMENT

Spiro J.

[1] The Appellant challenges an assessment issued under the *Excise Tax Act* (the “Act”). Although the assessment allowed a rebate of GST/HST paid in error of \$240,000 under subsection 261(1) of the Act, it denied a rebate of GST/HST paid in error of \$83,850 under subsection 261(3) of the Act. The Appellant appeals the denial of that portion of its rebate application.

[2] The Act provides for a rebate of GST/HST paid in error by way of application to the Minister of National Revenue (the “Minister”). However, the Act also includes a limitation period on such applications which must be made within two years of the date on which the GST/HST was paid in error:

261(1) Where a person has paid an amount

- (a) as or on account of, or
- (b) that was taken into account as,

tax, net tax, penalty, interest or other obligation under this Part in circumstances where the amount was not payable or remittable by the person, whether the amount was paid by mistake or otherwise, the Minister shall, subject to subsections (2) and (3), pay a rebate of that amount to the person.

...

261(3) A rebate in respect of an amount shall not be paid under subsection (1) to a person unless the person files an application for the rebate within two years after the day the amount was paid or remitted by the person.

[3] Subsection 261(3) is the Appellant's first problem. It failed to file a rebate application within the required two-year period with respect to \$83,850 of its GST/HST payments.

[4] The Act also includes a relieving provision in subsection 296(2.1). That provision allows a person to set off an allowable GST/HST rebate against any net tax, or overdue amount, payable by that person even where no rebate application has been made:

296(2.1) Where, in assessing the net tax of a person for a reporting period of the person or an amount (in this subsection referred to as the "overdue amount") that became payable by a person under this Part, the Minister determines that

(a) an amount (in this subsection referred to as the "allowable rebate") would have been payable to the person as a rebate if it had been claimed in an application under this Part filed on the particular day that is

(i) if the assessment is in respect of net tax for the reporting period, the day on or before which the return under Division V for the period was required to be filed, or

(ii) if the assessment is in respect of an overdue amount, the day on which the overdue amount became payable by the person,

and, where the rebate is in respect of an amount that is being assessed, if the person had paid or remitted that amount,

(b) the allowable rebate was not claimed by the person in an application filed before the day notice of the assessment is sent to the person, and

(c) the allowable rebate would be payable to the person if it were claimed in an application under this Part filed on the day notice of the assessment is sent to the person or would be disallowed if it were claimed in that application only because the period for claiming the allowable rebate expired before that day,

the Minister shall apply all or part of the allowable rebate against that net tax or overdue amount as if the person had, on the particular day, paid or remitted the amount so applied on account of that net tax or overdue amount.

[5] That provision is the Appellant's second problem. The Appellant has no net tax, or overdue amounts, against which the allowable GST/HST rebate of \$83,850 may be set off by the Minister on reassessment.

[6] By way of background, the Appellant operates a personal care home in Conception Bay South, Newfoundland and Labrador (the "building"). It leases the building from an affiliated company, 60697 Newfoundland and Labrador Ltd. (the "numbered company").

[7] Ms. Jacqui Morgan, the Appellant's chief executive officer, testified that beginning in March 2019, the Appellant paid rent to the numbered company and paid GST/HST to the Canada Revenue Agency (the "CRA") on its rental payments. It did so in good faith, but under the mistaken belief that it was required to do so under the Act.

[8] In February 2020, Ms. Morgan received a call from a CRA auditor, Mr. Mohammed. Mr. Mohammed told her that the CRA was undertaking a GST/HST audit to determine whether the building was a residential property. Starting in mid-April 2020, Canada was paralyzed by the COVID-19 pandemic. In January 2021, Mr. Hamm, the second auditor, was assigned to the file. By April 2022, the third and final auditor, Ms. Murphy, had been assigned to the file. Once assigned to the file, Ms. Murphy acted quickly to conclude the audit. Unfortunately for the Appellant, this relatively simple and straightforward audit took over two years to complete.

[9] On May 5, 2022, Ms. Murphy informed Ms. Morgan that the building was residential rather than commercial.¹ On that basis, the CRA proposed to assess the numbered company \$1,875,000 in GST/HST. But, as the audit had taken over two years to complete, Ms. Murphy assured Ms. Morgan that no interest or penalties would be assessed against the numbered company from March 2020 to the date of the assessment.

[10] Ms. Murphy also mentioned that because the supply of residential rental units is an exempt supply, the Appellant was paying GST/HST of \$323,850 in error on its rent payments to the numbered company starting in March 2019. She suggested that the Appellant file a rebate application under subsection 261(1) of the Act. But by the time the Appellant filed its GST/HST rebate application on July

¹ No GST/HST is payable on exempt supplies, including the supply of residential rental units.

27, 2022, more than two years had passed since the following amounts of GST/HST were paid in error:

March 31, 2019	\$975.00
April 30, 2019	\$2,925.00
May 31, 2019	\$3,150.00
June 30, 2019	\$3,675.00
July 31, 2019	\$4,425.00
August 31, 2019	\$4,650.00
September 30, 2019	\$4,875.00
October 31, 2019	\$5,025.00
November 30, 2019	\$5,250.00
December 31, 2019	\$5,550.00
January 31, 2020	\$6,150.00
February 29, 2020	\$7,200.00
March 31, 2020	\$12,000.00
April 30, 2020	\$6,000.00
May 31, 2020	\$6,000.00
June 30, 2020	\$6,000.00
Total:	\$83,850.00

[11] Ms. Morgan testified as to her conversation with Ms. Murphy on May 5, 2022:

But she [Ms. Murphy] said, “you can file a HST form 189 and get that back, but” she said, “it’s too bad you missed out on \$83,850 of it”. And I said, “well, how did I miss out?” She said, “there’s a two-year limit”. And I said, “well, how did I know there was a two-year limit or that we were paying HST in error until I received this call from you today?” And she said, “well, you’d have no way to know that and I know it” – in her words, she said, “I know it’s super frustrating but that’s the way it is”. And I said, “well, what do I do now?” She said, “well, you have to file that form before July 31st or you’re going to lose more”. So, we did. We filed the form July 27th I believe of 2022, requested the full amount back,

but in May of 2023, we heard back that we had been denied the \$83,850. We appealed that and again were denied.²

[12] On July 27, 2022, the Appellant applied to the Minister for a rebate of \$323,850, representing all the GST/HST it had paid in error with respect to the lease.

[13] On May 24, 2023, the Minister assessed the Appellant to allow \$240,000 as a GST/HST rebate under subsection 261(1) of the Act. As the rebate application had been filed more than two years after \$83,850 of the total GST/HST of \$323,850 was paid, that portion of the GST/HST rebate application was denied under subsection 261(3) of the Act.

[14] In assessing the Appellant to deny the GST/HST rebate of \$83,850, the Minister assumed that:

- the Appellant paid GST/HST on rent to the numbered company which was an associated company;
- the Appellant provided a supply of residential rental units;
- residential rental units are exempt supplies;
- the Appellant filed its rebate application on July 27, 2022, claiming the GST/HST paid for exempt supplies beginning as of March 31, 2019; and
- the Appellant filed the rebate application more than two years after the day it paid the GST/HST at issue.

[15] The Appellant takes no issue with any of those assumptions.

[16] Crown counsel, Ms. Barkhouse, conceded that if the GST/HST rebate application had been filed on time, the Minister would have issued a rebate of the \$83,850 of GST/HST paid in error:

² Transcript of Proceedings, 10, lines 6-20. I find it more likely than not that on May 5, 2022, Ms. Murphy was referring to an amount of \$71,850 rather than \$83,850 (see paragraph 22 and footnote 4 below). I find it difficult to understand why Ms. Murphy, on May 5, 2022, would have urged the Appellant to file a rebate application by the end of July rather than by the end of May. Ms. Murphy did not testify at the hearing.

JUSTICE: And I just want to clarify. There's nothing in the assumptions saying that the \$83,850 was ... tax paid in error, is there? But I think we discussed this earlier that had the rebate application been filed in a timely way, the Minister would not have had a problem issuing the rebate cheque, right?

MS. BARKHOUSE: That's correct, Justice.³

[17] At the conclusion of the hearing, Crown counsel expressed the hope that the parties would consent to judgment to be issued by the Court under which the Minister, using subsection 296(2.1) of the Act, would reassess to set off the allowable GST/HST rebate of \$83,850 against any net tax, or overdue amount, payable by the Appellant.

[18] One week later, Crown counsel wrote to the Court saying that the Crown was unable to consent to such a judgment as the Appellant had no net tax, or overdue amount, payable against which the allowable GST/HST rebate of \$83,850 could be set off under subsection 296(2.1) of the Act. An exchange of written submissions ensued.

[19] Applying the law to the facts, the Appellant's appeal must be dismissed. The Appellant failed to file a rebate application within two years of having paid GST/HST of \$83,850 in error and it has no net tax, or overdue amount, payable against which the allowable GST/HST rebate of \$83,850 may be set off. I have no choice but to conclude that the assessment denying the GST/HST rebate of \$83,850 was correct. I must, therefore, dismiss the appeal.

[20] It would not be wrong to conclude that an unreasonable and unjust result flows from the application of the law to the facts.

Afterword

[21] Subsection 23(2) of the *Financial Administration Act* allows Cabinet, on recommendation of the Minister, to issue an order remitting tax where it considers that collection of the tax is "unreasonable or unjust or that it is otherwise in the public interest" to do so:

23(2) The Governor in Council may, on the recommendation of the appropriate Minister, remit any tax or penalty, including any interest paid or payable thereon, where the Governor in Council considers that the collection of the tax or the

³ Transcript of Proceedings, 19, lines 14-21.

enforcement of the penalty is unreasonable or unjust or that it is otherwise in the public interest to remit the tax or penalty.

[22] Within a reasonable time after commencing its audit of the numbered company in February 2020, the CRA could have informed the Appellant that – starting in March 2019 – it had been making monthly payments of GST/HST in error. But, due to the effect of the pandemic, and the assignment of three different auditors to the file, the CRA did not share that information with the Appellant until more than two years after this relatively simple and straightforward audit began. The delay caused the Appellant to file its rebate application too late to recover \$71,850 of the GST/HST paid in error.⁴ As it is not for this Court to order the Minister to make any such recommendation,⁵ I can only raise the possibility of the Appellant applying for remission of \$71,850 of the GST/HST paid in error.

Signed this 3rd day of March 2026.

“David E. Spiro”

Spiro J.

⁴ Had the Appellant filed its rebate application one, two, or even three weeks after the conversation of May 5, 2022, it would have recovered \$12,000 of the \$83,850. Why? Because the GST/HST of \$6,000 paid on each of May 31, 2020, and June 30, 2020, would have been paid within two years of the date of its rebate application.

⁵ See *Almadhoun v Canada*, 2018 FCA 112, at para 36.

CITATION: 2026 TCC 39

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REASONS FOR JUDGMENT BY: The Honourable Justice David E. Spiro

DATE OF JUDGMENT: March 3, 2026

APPEARANCES:

For the Appellant: Jacqui Morgan

Counsel for the Respondent: Chelsea Barkhouse

COUNSEL OF RECORD:

For the Appellant:

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