

Docket: 2024-1825(GST)I

BETWEEN:

JOHN MOSELEY,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on January 26, 2026, at Montreal, Quebec

Before: The Honourable Justice Ryan P. Rabinovitch

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Zehra Dila Erdogan

JUDGMENT

The appeal of the assessment made under the *Excise Tax Act* of the Appellant's reporting period ended July 31, 2019, is allowed, without costs, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached reasons for judgment.

Signed this 24th day of March 2026.

“Ryan Rabinovitch”

Rabinovitch J.

Citation: 2026 TCC 59
Date: 20260324
Docket: 2024-1825(GST)I

BETWEEN:

JOHN MOSELEY,

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and

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Respondent.

REASONS FOR JUDGMENT

Rabinovitch J.

I. INTRODUCTION:

[1] On July 11, 2019, the Appellant acquired a building located at 917-919 Duluth East Avenue, Montreal, QC H2L 1B7 (the “**Building**”) for a purchase price of \$425,000 (the “**Purchase Price**”) from two individuals (the “**Vendors**”). The second floor of the Building contained a residential apartment (the “**Second Floor**”) and the first floor contained an abandoned restaurant (the “**First Floor**”). Each floor was acquired for a purchase price of \$212,500.

[2] According to the Deed of Sale relating to the above transaction, the supply of the Second Floor was exempt from GST because it was a used residential complex, but the supply of the First Floor was taxable. That being said, because the Appellant was registered for GST purposes, the Deed of Sale indicated that the Vendors were not required to collect tax in respect of the supply of the First Floor pursuant to paragraph 221(2)(b) of the *Excise Tax Act* (“**ETA**”).¹ Instead, the Appellant was required to report the transaction and remit any GST owing pursuant to paragraph 228(4) of the ETA, which applies whenever paragraph 221(2)(b) applies.²

[3] Notwithstanding this language, the Appellant ultimately concluded that the sale of the First Floor was, like the sale of the Second Floor, exempt from GST

¹ Pages 14 and 15 of Exhibit R-3.

² *Ibid.*

because he intended to, and did in fact, turn it into a residential apartment which he rented out to his son for half the market rent. He specified that he began the work of converting the First Floor into an apartment immediately after closing. For these reasons, he did not pay any tax in respect of its sale. He also did not file the return referred to in subsection 228(4).

[4] During the Appellant's testimony, which I accept in full, he indicated that the restaurant which had formerly been operated on the First Floor had been vacant for approximately 18 months at the time he purchased the Building.

[5] Furthermore, during the hearing, the Respondent submitted a letter into evidence stating that on February 11, 2020, Revenu Québec had cancelled the Appellant's GST registration with retroactive effect to September 14, 2006.³ It should be noted that this registration had not been obtained in connection with the Appellant's purchase of the Building.

[6] On December 11, 2023, Revenu Québec assessed the Appellant for \$10,625 of GST (5% of the portion of the Purchase Price attributable to the First Floor), as well as a \$425 failure to file penalty levied under subsection 280.1 of the ETA. The Appellant filed a notice of objection to this assessment, and when it was confirmed, filed a notice of appeal to this Court.

II. ANALYSIS:

1. Exempt/taxable nature of the supply of the First Floor:

a. Residential complex exemptions:

[7] As mentioned above, the Appellant takes the view that the supply of the First Floor was not subject to GST because he intended to and did in fact turn it into a residential apartment. I do not agree.

[8] Under the ETA, all taxable supplies are subject to GST.⁴ A "taxable supply" is defined as any supply that is made in the course of a commercial activity,⁵ and "commercial activity" is in turn defined as a business, adventure in the nature of trade, or supply of real property, except to the extent that they involve the making of

³ Exhibit R-8.

⁴ Section 165 of the ETA.

⁵ Section 123 of the ETA.

an exempt supply.⁶ The result is that all supplies of real property are subject to GST unless they qualify as exempt supplies.

[9] The term “exempt supply” is defined in the ETA as a supply included in Schedule V of the ETA.⁷ In addition, sections 2 to 5.2 of Part I of Schedule V covers a variety of “supplies by way of sale” of a “residential complex”. Nevertheless, not all supplies of residential complexes are exempt. Each of the above provisions requires certain conditions to be met. I have reviewed these conditions, and find it unlikely any of the exemptions in question would be applicable here even if the First Floor constituted a residential complex at the time it was sold.

[10] More fundamentally, however, it did not. This Court has held on several occasions that in order to be covered by residential complex exemptions in Part I of Schedule V, the relevant property must already be a residential complex at the time it is sold to the recipient, and that the recipient’s intended use of the property are not relevant in this regard.⁸

[11] The term “residential complex” is defined in the ETA as a property which is or contains a “residential unit”,⁹ and “residential unit” is defined as a property that is: (1) occupied by an individual as a place of residence or lodging, (2) supplied by way of lease, licence or similar arrangement for the occupancy thereof as a place of residence or lodging for individuals, (3) vacant, but was last occupied or supplied as a place of residence or lodging for individuals, or (4) has never been used or occupied for any purpose, but is intended to be used as a place of residence or lodging for individuals.¹⁰ The First Floor did not meet any of these requirements on July 11, 2019, when the Building was sold to the Appellant. Accordingly, it was not a residential complex.

b. Subsection 9(2) exemption:

[12] The above having been said, another question which arises is whether the exemption set out in subsection 9(2) of Part I of Schedule V applied to the sale of the First Floor. This exemption covers supplies of real property by way of sale by an individual, unless one of a series of exceptions apply. The exceptions are quite

⁶ *Ibid.*

⁷ *Ibid.*

⁸ See e.g., *Lessard c. R.*, [2000] G.S.T.C. 98, *Wotherspoon v. R.*, 2011 TCC 343, *aff’d* by the Federal Court of Appeal at 2012 FCA 271, and *Ko v. R.*, 2003 G.T.C. 532.

⁹ Section 123 of the ETA.

¹⁰ *Ibid.*

extensive, and for this reason, subsection 9(2) is sometimes thought of as applying only to sales of vacant land by one or more individuals. That said, the provision never says this explicitly.

[13] The relevant exception in the present case is the one set out in paragraph 9(2)(a), which excludes the following supplies from the application of subsection 9(2):

(a) a supply of real property that is, immediately before the time ownership or possession of the property is transferred to the recipient of the supply under the agreement for the supply, capital property used primarily

(i) in a business carried on by the individual or trust with a reasonable expectation of profit, or

(ii) if the individual or trust is a registrant,

(A) in making taxable supplies of the real property by way of lease, licence or similar arrangement, or

(B) in any combination of the uses described in subparagraph (i) and clause (A);

[14] It was initially not clear to me that this exception was applicable here, given the Appellant's testimony that the First Floor was vacant at the time he acquired the Building. If that was the case, could it really be said to be "used", "immediately before" ownership or possession of the Building was transferred to the Appellant, for one of these purposes?

[15] According to the Canada Revenue Agency ("CRA"), the answer is yes. It takes the view that property must always be considered to have a use. Accordingly, property which was last use for a given purpose and has not been applied to a new purpose must be considered to continue to be used for that purpose under paragraph 9(2)(a). In other words, the CRA interprets the words "used" in subsection 9(2) as "held for use"¹¹ or in essence "last used".

[16] Although the text of subsection 9(2) may suggest otherwise, I have ultimately concluded that its context and purpose support this interpretation.

¹¹ See paras. 5-7 of the main body and paragraph 1 of Appendix A of CRA Document 19-5 "Land and Associated Real Property" (October 2001).

[17] One of the policies underlying the ETA in general and subsection 9(2) in particular is that only transactions with a certain level or degree of commerciality are intended to be subject to GST. This is why GST is only payable in respect of supplies made in the course of commercial activities,¹² why the definition of commercial activity excludes adventures in the nature of trade carried on “without a reasonable expectation of profit by an individual” (e.g., garage sales),¹³ and why no GST is payable on sales made by small suppliers.¹⁴ It is also one of the reasons supplies of new housing by a builder are generally subject to GST,¹⁵ but subsequent supplies by persons who are not builders are generally not.¹⁶ The same logic extends to individuals who sell vacant land that is not held in connection with business or rental activities. A recent publication by the Department of Finance makes this clear:

Generally, the GST applies to newly constructed residential housing and residential trailer parks when they are first sold or leased for residential purposes. Subsequent sales of used residential housing or used residential trailer parks are tax-exempt. In addition, most sales of other personal-use real property, such as vacant land, are tax-exempt when sold by individuals. This exemption is consistent with the tax treatment of personal-use property and services not supplied in the course of commercial activities. The sale of farmland to a family member who is acquiring the property for personal use is also tax-exempt [emphasis added].¹⁷

[18] Property that is temporarily vacant because the business or rental activities it was formerly used for have been or are being wound down is not personal use property, and a sale of such property is not a non-commercial transaction. This appears to me to go without saying, but it is also specifically clarified by subsection 141.1(3) of the ETA, which states that anything done in connection with the disposition or termination of a commercial activity is deemed to have been done in the course of that activity.

[19] The second policy relevant to the application of subsection 9(2) is that the maker of an exempt supply is generally required to bear the burden of the GST (at least immediately – it will of course always be possible to pass that burden on to the recipients of the supplies in question by increasing their price). While such suppliers

¹² Note 5, *supra*.

¹³ Note 6, *supra*.

¹⁴ Section 166 of the ETA.

¹⁵ Although no provision of the ETA says this explicitly, it is the clear result of the principles described in the text accompanying notes 4-6, *supra*, and the conditions set out in section 2 of Part I of Schedule V.

¹⁶ Section 2 of Part I of Schedule V.

¹⁷ “Report on Federal Tax Expenditures - Concepts, Estimates and Evaluations 2025: Part 5.”

are not obligated to collect GST, they are also not permitted to claim any ITCs. Section 169 says this expressly. Element B of the formula used to compute a registrant's ITCs ensure that they may only be claimed in respect of tax paid on inputs to the extent that they have been acquired for use in the course of "commercial activities", which are in turn defined as excluding activities consisting of the making of exempt supplies.¹⁸ The above principle has also been endorsed by the Supreme Court of Canada on two occasions.¹⁹ Ironically, its effect is that exempt supplies are not really intended to be fully exempt from GST. They are subject to partial taxation, in the sense that unrecoverable tax is paid on their inputs and that the price of the supplies charged to the consumer often reflects this fact. This is to be contrasted with zero-rated supplies. These are fully exempt, since no GST is paid on their inputs or on the zero-rated supplies themselves.

[20] The technical notes to subsection 9(2) make clear that this is the reason the supply of property used in business or rental activities is excluded from the exemption it contains. When subparagraph 9(2)(a)(ii) was introduced, the Department of Finance wrote:

Existing paragraph 9(2)(a) of Part I of Schedule V specifically excludes from the exemption under subsection 9(2) of that Part the supply by an individual or personal trust of real property used as capital property primarily in a business carried on by the individual or trust with a reasonable expectation of profit.

New subparagraph 9(2)(a)(ii) also excludes from this exemption a sale of real property made by an individual or personal trust that is a registrant if the real property was last used as capital property primarily in making taxable supplies by way of lease, license or similar arrangement of that property, even if the property was not so supplied with a reasonable expectation of profit. The supply is also excluded from the exemption if the individual or trust is a registrant and the real property was last used as capital property primarily in a combined use of carrying on a business with a reasonable expectation of profit and of making taxable supplies by way of lease, license or similar arrangement of that property. In these circumstances, the seller would have been entitled to claim input tax credits in

¹⁸ Note 6, *supra*.

¹⁹ In *Reference re Excise Tax Act (Canada)*, [1992] 2 S.C.R. 445, Lamer C.J. wrote, for the majority, at para. 4:

Exempt supplies and zero-rated supplies do not attract any tax from the ultimate consumer. However, in respect of exempt supplies, the vendor, while paying the GST on purchases, is not entitled to an input tax credit. In consequence, in the case of exempt supplies GST is paid to the federal government at the penultimate stage in the production chain rather than by the ultimate consumer.

Similar statements were made by Rothstein J. in *Calgary (City) v. R.*, 2012 SCC 20 at para. 16.

respect of the property or improvements to it. Therefore, it is not appropriate that the subsequent sale of the property be exempt [emphasis added].

[21] In other words, if the supply of property last used in a business or rental activity were exempt, the above principle would not be respected. The vendor would have been in a position to claim an ITC in respect of property ultimately supplied as part of an exempt transaction. I also note that the words “last used” provide a direct nod to the CRA’s interpretation paragraph 9(2)(a).

[22] Immediately before the purchase of the First Floor by the Appellant, it was held for use or last used by the Vendors to carry on business or make taxable supplies by way of lease.²⁰ Accordingly, subsection 9(2) did not apply.

2. Impact of Revenu Québec’s cancellation of the Appellant’s registration:

[23] As mentioned above, on February 11, 2020 Revenu Québec informed the Appellant that it had cancelled his registration retroactively to September 14, 2006.

[24] If effective, this cancellation would have prevented the sale of the First Floor from meeting the conditions set out in paragraph 221(2)(b) of the ETA, since unbeknownst to the parties, the Appellant would not have been registered at the time of closing. Accordingly, it would have been the Vendors that were obligated to collect and remit the tax owing in respect of the supply of the First Floor, and not to the Appellant. The Appellant would also retroactively be relieved from the obligation to file a return under subsection 228(4), since it only applies when paragraph 221(2)(b) applies.

[25] I begin by observing that I am somewhat skeptical that Revenu Québec has the power to cancel a taxpayer’s registration retroactively.²¹ That being said, I do

²⁰ I am aware that subparagraph 9(2)(a)(i) specifies that property covered by the exception set out in the provision must be used in a business carried on with a reasonable expectation of profit. While the Reply does not contain any assumptions in this regard, it would have been for the Appellant to prove that the restaurant formerly operated in the Building had no reasonable expectation of profit (*Eisbrenner v. Canada*, 2020 FCA 93). He did not produce any evidence on this point, however.

²¹ Favreau J. held in *Ouazana v. The Queen*, [2020] G.S.T.C. 50, that a person may be registered retroactively, but that appears to me to have a smaller potential for causing turmoil, and as such, to be a very different thing. I am also aware of Paris J.’s decision in *Westborough Place Inc. v. R.*, 2007 TCC 155, which concerned an allegation by the Minister that a receipt did not contain all of the information required by subsection 169(4) because the registration of the issuer had been cancelled retroactively. Paris J. held that the Minister had failed to prove that the issuer’s

not believe that this Court has the jurisdiction to rule on the validity of its decision in this regard. The power to de-register is set out in subsection 242(1) of the ETA, which states:

The Minister may, after giving a person who is registered under this Subdivision reasonable written notice, cancel the registration of the person if the Minister is satisfied that the registration is not required for the purposes of this Part [emphasis added].

[26] Thus, the decision is discretionary. The Supreme Court of Canada made it clear in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (“**Vavilov**”)²² that except in certain circumstances, discretionary decisions are to be reviewed on a standard of reasonableness.²³ The Court specified that this includes decisions regarding the extent of the powers conferred by a statute as long as they do not concern the jurisdiction boundaries between administrative bodies.²⁴ Furthermore, the Court added in *Dow Chemical Canada ULC v. Canada* (“**Dow Chemical**”)²⁵ that this Court is ill suited to perform this type of review.²⁶ The Court also made clear that the fact that an administrative decision may “directly affect” or be “inextricably linked” with a taxpayer’s tax liability does not make it part of an assessment that may be appealed to this Court.²⁷ Finally, it indicated that section 18.5 of the *Federal Courts Act* makes clear that the exclusive jurisdiction of the Federal Court to conduct judicial review cannot be ousted “by necessary implication”.²⁸

[27] My conclusion on this subject is further reinforced by the existence of subsection 168(4) of the *Income Tax Act*, which provides a right of appeal to the Tax Court of Canada when the Minister exercises his discretion to revoke the registration of registered charity and certain other organizations. It shows that when Parliament

registration had actually been retroactively cancelled, or that there were valid grounds for cancelling it. Although this might suggest that he thought that retroactive cancellations were possible, he never said this explicitly, and the holding in the case is consistent with the opposite view. It was also decided under the Informal Procedure, and so is not binding.

²² 2019 SCC 65.

²³ *Ibid.* at paras. 23 and following.

²⁴ *Ibid.* at paras. 65-68.

²⁵ 2024 SCC 23.

²⁶ *Ibid.* at paras. 8 and 89.

²⁷ *Ibid.* at paras. 6, 59 and 70.

²⁸ *Ibid.* at para. 101.

wishes for decisions of the kind in issue to be considered by this Court, it says so explicitly.²⁹

[28] The Respondent suggested that I interpret the words “registered under Subdivision D” in paragraph 221(2)(b) to include a person whose registration is valid as a matter of fact when the relevant transaction occurs, and only ceases to be valid as a matter of law due to a decision to cancel it retroactively. This would prevent Revenu Québec’s otherwise valid decision from having any impact on the analysis in the present case.

[29] I do not believe that I can adopt such an interpretation, however. It would effectively amount to a finding that Revenu Québec’s decision does not apply for the purposes of paragraph 221(2)(b). The premise of *Vavilov* and *Dow Chemical* is that Parliament intended government agencies to make decisions such as this one under the supervision of the Federal Court. It is hard to imagine that it would at the same time have intended other Courts to be able to create exceptions to those decisions through the mechanism of statutory interpretation. I also note that the arguments supporting the Respondent’s interpretation, namely the need to protect third parties such as the Vendors who have relied in good faith on the validity of a purchaser’s registration, are essentially the same ones that would be made in an application for judicial review of the Minister’s decision to act retroactively. Fundamentally, the Respondent is asking me to do indirectly what I cannot do directly. My only concern with this conclusion is that the relevant third parties will rarely be in a position to bring such an application, since they will be unaware of the retroactive cancellation until they are assessed, and it is too late to do so. This is something Parliament may wish to address.

[30] Assuming, therefore, as I must, that the Appellant’s registration was retroactively invalidated, what practical effect does this have on this appeal?

[31] Some, but not necessarily much from a quantitative point of view.

²⁹ I note that previous decisions of the Federal Court of Appeal suggested that this Court would have jurisdiction over the type of decision in issue here (see e.g., *Brydges (N.E.) v. Canada*, [1992] 2 C.T.C. 411, in which the Minister cancelled the certification of a “certified production” for the purposes of subsection 1104(2) of the *Income Tax Regulations*, and *Devor v. Minister of National Revenue*, [1993] 1 C.T.C. 142, which concerned the validity of a waiver having regard to certain conduct of the Minister). I consider these decisions to have been overtaken by *Vavilov* and *Dow Chemical*, however.

[32] It has been clear for some time now that the Minister is entitled to assess the recipient of a supply directly for any tax owing in respect of a transaction pursuant to paragraph 296(1)(b). In *Carlson & Associates Advertising Ltd. v. Canada*,³⁰ Hamlyn J. wrote:

The Appellant contends that the Minister lacks the authority to assess it directly but with respect I conclude otherwise. Subsection 165(1) of the Act places a general obligation upon the supplier of a taxable supply to collect and remit the GST payable by the recipient of the taxable supply. The assessment provision in paragraph 296(1)(b) of the Act provides for the assessment of any tax payable by a person under Division II or IV. Thus, paragraph 296(1)(b) gives the Minister the authority to directly assess the recipient of a taxable supply in order to satisfy the debt in respect of unpaid GST. The possibility of ‘double taxation’ is reduced since the Minister is only empowered to seek payment for the amount of unpaid GST, whether from the supplier or the recipient of a taxable supply, while tax is payable.

Once the tax is paid, tax is no longer payable and this fact would be a complete defense to any other procedure for collection brought against the Appellant or any other person.³¹

[33] Accordingly, while the Appellant was not required to self-assess the tax owing in respect of his purchase of the First Floor, the assessment for that tax issued against him by the Minister is still valid.

[34] The same cannot be said, however, for the \$425 of penalties that were assessed. As a result of Revenu Québec’s retroactive cancellation of his registration, the Appellant was not required to file any return pursuant to paragraph 228(4)(b). There has not, therefore, been any failure to file.

III. CONCLUSION:

[35] The appeal is allowed and will be referred back to the Minister for reconsideration and reassessment on basis that the Appellant was liable for the tax owing in respect of the portion of the Purchase Price attributable to the First Floor but not any penalties. Given the somewhat mixed result, and that the appeal was governed by the Informal Procedure, I have decided not to award any costs to the Respondent.

³⁰ [1997] G.S.T.C. 32, *aff’d* by the Federal Court of Appeal at [1998] G.S.T.C. 25.

³¹ *Ibid.* at paras. 33 and 34.

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Signed this 24th day of March 2026.

“Ryan Rabinovitch”

Rabinovitch J.

CITATION: 2026 TCC 59

COURT FILE NO.: 2024-1825(GST)I

STYLE OF CAUSE: JOHN MOSELEY AND HIS MAJESTY
THE KING

PLACE OF HEARING: Montréal, Québec

DATE OF HEARING: January 26, 2026

REASONS FOR JUDGMENT BY: The Honourable Justice Ryan P.
Rabinovitch

DATE OF JUDGMENT: March 24, 2026

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Zehra Dila Erdogan

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm: N/A

For the Respondent: Marie-Josée Hogue
Deputy Attorney General of Canada
Ottawa, Canada