

Docket: 2005-2659(GST)I

BETWEEN:

PIERRE ROY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on March 14, 2006, at Sherbrooke, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Philippe Morin

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**JUDGMENT**

The appeal from the assessment made under Part IX of the *Excise Tax Act*, notice of which is dated November 18, 2003, and bears the number PQ-2003-7322, for the period of November 1, 1996, to January 31, 2000, is allowed, and the assessment is set aside.

Signed at Ottawa, Canada, this 4th day of July 2006.

"Alain Tardif"

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Tardif J.

Translation certified true  
on this 6th day of December 2007.

Brian McCordick, Translator

Citation: 2006TCC321  
Date: 20060704  
Docket: 2005-2659(GST)I

BETWEEN:

PIERRE ROY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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### **REASONS FOR JUDGMENT**

#### **Tardif J.**

[1] This is an appeal from an assessment made under section 323 of Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15 ("the Act").

[2] The assessment that forms the basis of the assessment against the Appellant in his capacity as director of Piemar son et vision Inc. was first made and later confirmed following an objection on May 5, 2005.

[3] The facts on which the Minister of Revenue ("the Minister") relied in making the assessment are set out in paragraph 5 of the Reply to the Notice of Appeal. Those facts are as follows:

[TRANSLATION]

- (a) During the years 1996 to 2000, the Appellant was a director of Piemar son et vision Inc. (hereinafter "the company").
- (b) During the aforementioned years, the company was a GST registrant.
- (c) An audit of the company disclosed that the company had collected GST without remitting it to the Respondent during the period in issue.

- (d) In addition, the company, through its sole director Pierre Roy, filed its returns late and without remittances for the periods ending January 31, 1997, April 30, 1997, July 31, 1997, and October 31, 1997.
- (e) Moreover, the company, through its sole director Pierre Roy, ceased to file the company's returns within the time allotted by law for the periods from November 1, 1997 to January 31, 2000.
- (f) On or about January 23, 2002, the company, through its sole director Pierre Roy, filed the returns for the periods from November 1, 1997, through January 31, 2000, without tax remittances.
- (g) The Appellant was the director of the company during the periods in which it was required to pay the Respondent the net tax, and he looked after the day-to-day management of the company.
- (h) The Appellant, as director of the company, did not act with the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised under comparable circumstances.
- (i) In particular, the Appellant took no concrete and positive measures to prevent the company from failing to remit taxes.
- (j) Indeed, the Appellant wilfully refused to file the company's tax returns and [to remit] the taxes collected.
- (k) In addition, following an audit, the company was assessed in October 1996 for uncollected taxes on commissions pursuant to the *Act respecting the Québec sales tax* (R.S.Q. c. T-0.1) for the periods of August 1, 1996, to April 30, 1996.
- (l) The Appellant objected, and told the Ministère du Revenu du Québec that, in his opinion, the commissions were not taxable.
- (m) On or about January 23, 2001, the interpretation directorate of the Ministère du Revenu du Québec determined that the commissions received by the company were not taxable supplies under the *Act respecting the Québec sales tax*.
- (n) Following this decision, the amounts owed by the company under the *Act respecting the Québec sales tax* were adjusted.
- (o) An inadvertent error was made by the Ministère du Revenu du Québec in processing the company's tax return, filed on March 25, 1997, for the period ending January 31, 1997. The error was corrected in May 1997.

- (p) The interest and penalties were lawfully imposed and are essentially due to the late filing of the returns, and the late remittances, by the company and the Appellant.

[4] The Respondent has framed the issues as follows:

[TRANSLATION]

- (a) In his capacity as director of the company, is the Appellant jointly and severally liable, along with the company, to pay the net tax payable and the interest and penalties?
- (b) Did the Appellant, as director of the company, exercise as much care, diligence and skill to prevent the company's failure to remit the net tax payable as a reasonably prudent person would have exercised under the same circumstances?

[5] The Appellant argued his own case and was clearly well prepared. He prepared several documents in support of his testimony. He explained that, in 1992, he created a company whose business was to sell audio and video components.

[6] He was remunerated primarily by a commission on his sales. In May 1996, Diane Lavallé notified him that she would be visiting his business to conduct an audit in connection with the payment of the Québec Sales Tax (QST) and the Goods and Services Tax (GST).

[7] As agreed, she reported to the place of business and conducted the audit. Following the audit, she notified the Appellant that all the commissions that he received from the various companies with which he was doing business, and whose head offices are located outside Quebec, are subject to the GST and QST.

[8] The Appellant was very surprised by this decision and launched an all-out fight against it. The decision was confirmed several times, but he did not give in: he continued his efforts, and, five years later, he achieved victory.

[9] After this, the Appellant undertook numerous efforts to normalize his file. As a form of protest, he refrained from filing certain returns or filed them late, and he wrote to the Ministère du Revenu du Québec and the Minister responsible for the Capitale-Nationale region to complain, and he met with the various actors.

He feels that he continues to be the subject of unfounded and exaggerated claims, specifically with respect to interest and penalties. He regularly requests explanations and reports, but never receives satisfactory answers. Following his efforts to obtain help from the Minister, he believed, at one point, that everything would be resolved, because he noticed that certain actors were showing more interest. However, he said that he never obtained the clear and precise answers that he was demanding.

[10] The Respondent, for her part, called Richard Roy and Christian Bouchard as witnesses. Mr. Roy explained to the Court that up until recently, when he was designated the collections officer on the account, he had nothing to do with this file.

[11] Mr. Roy acknowledged that certain mistakes might have been committed, and, with the help of his records, he stated that there are 147 interventions noted on the file. He acknowledged that this number does not include certain meetings, telephone calls or correspondence with people other than the collections staff.

[12] The witness became impatient when the Appellant asked him certain questions. The Respondent's other witness, Mr. Bouchard, provided certain explanations that made it possible to draw distinctions between documents whose contents should have been the same. He acknowledged that the documents prepared by the computer system were often complex and could seem incomprehensible to some people. This is why the people responsible for the file would prepare more accessible and comprehensible reports at the request of the individual concerned.

[13] Like Mr. Roy, Mr. Bouchard became somewhat impatient under the Appellant's questioning. One of the things that he did when he had trouble providing a very specific answer was to fall back on the reliability of the computer system, adding that the process of simplifying certain documents was essentially aimed at enabling the taxpayer and the court to understand those documents.

[14] On several occasions, I have stated that our tax system is based on self-assessment, which requires taxpayers to do reasonably good bookkeeping so that an analysis and audit can be done at any time. This includes the retention of relevant vouchers and documents that will enable the data recorded in the various journals to be validated.

[15] Unless such bookkeeping is done, people who are audited face adverse consequences.

[16] As for the state, its responsibility is to give all taxpayers the explanations that they request, and to do so in accessible accounting language so that the taxpayers can understand the situation well. Certainly, every taxpayer is entitled to a report in clear accounting language. It is absolutely not sufficient to claim that the work was done using software and that the result thereby obtained is reliable, correct and incontestable, especially if the person concerned, or his agent, does not understand the information provided.

[17] In the case at bar, not only has the Appellant not been careless, reckless or irresponsible, but he has shown a constant interest in putting his file in order. His dogged determination to understand his file is irrefutable evidence that he was looking after his case and did not want to pay any more tax than he owed. This is a very legitimate demand, and he was fully entitled to clear answers to his questions.

[18] In my view, there is absolutely nothing in this matter that could lead me to conclude that the Appellant lacked vigilance and was negligent or careless; on the contrary, it has been shown, on a balance of probabilities, that he was very active and even perhaps aggressive when that was necessary to straighten out his file. The Appellant's testimony clearly establishes this, but the notes entered in his file with respect to the exceptional number of interventions by the Appellant, who wanted to know exactly how the Respondent had managed her work, are also very telling and convincing in this regard.

[19] Accordingly, the appeal is allowed and the assessment is set aside.

Signed at Ottawa, Canada, this 4th day of July 2006.

"Alain Tardif"

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Tardif J.

on this 6th day of December 2007.

Brian McCordick, Translator

CITATION: 2006TCC321  
COURT FILE NO.: 2005-2659(GST)I  
STYLE OF CAUSE: Pierre Roy and Her Majesty the Queen  
PLACE OF HEARING: Sherbrooke, Quebec  
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DATE OF JUDGMENT: July 4, 2006

APPEARANCES:

For the Appellant: The Appellant himself

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