

Docket: 2005-1573(GST)G

BETWEEN:

CORPORATION DES LOISIRS DE NEUFCHÂTEL,
SECTEUR OUEST,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeal of
Loisirs Lebourgneuf Inc. (2005-1584(GST)G)
on April 6, 2006, at Quebec City, Quebec.

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Counsel for the Appellant:	Patrick Poulin
Counsel for the Respondent:	Michel Morel

JUDGMENT

The appeal from the assessment under the *Excise Tax Act* for the period from January 1, 2000, to December 31, 2003, the notice of which bears the number 231416 and is dated June 4, 2004, is allowed, with 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 at Ottawa, Canada, this 14th day of June 2006.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 27th day of June 2008.

Erich Klein, Revisor

Docket: 2005-1584(GST)G

BETWEEN:

LOISIRS LEBOURGNEUF INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeal of
Corporation des Loisirs de Neufchâtel, Secteur Ouest
(2005-1573(GST)G) on April 6, 2006, at Quebec City, Quebec.

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Counsel for the Appellant:	Patrick Poulin
Counsel for the Respondent:	Michel Morel

JUDGMENT

The appeal from the assessment under the *Excise Tax Act* for the period from January 1, 2000, to December 31, 2003, the notice of which bears the number 231406 and is dated June 4, 2004, is allowed, with 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 at Ottawa, Canada, this 14th day of June 2006.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
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Erich Klein, Revisor

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BETWEEN:

CORPORATION DES LOISIRS DE NEUFCHÂTEL, SECTEUR OUEST and
LOISIRS LEBOURGNEUF INC.,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Lamarre Proulx J.

[1] These appeals were heard on common evidence. Both cases involve an assessment under the *Excise Tax Act* ("the Act") for the period from January 1, 2000, to December 31, 2003.

[2] The issue is whether the sums of money that the Ville de Québec ("the City") paid to the appellants in connection with the "Programme Vacances Été Terrains de Jeux" ("summer vacation playgrounds program") ("PVE") were paid in consideration of a taxable supply.

[3] The following is the appellants' position as set out in paragraph 24 of the Notice of Appeal:

[TRANSLATION]

24. The appellant submits that it did not make any "supply" to the City. In other words, the Grant paid by the City is not consideration paid under a management services contract with respect to the PVE.

[4] The respondent's position as stated in paragraphs 34 to 36 of the Reply to the Notice of Appeal is as follows:

[TRANSLATION]

- 34 - He submits that the amounts that the City paid to the appellant constituted consideration for the supply of a service, namely, organizing and implementing PVEs for the City.
- 35 - He submits that there is a direct link between the payments to the appellant and the supply of services to the City, and consequently the payments are the consideration for the supply.
- 36 - He submits that the supply was for the benefit of the City and that the payments were related exclusively to the supply and had no public purpose.

[5] The penalties assessed were not debated in court and are not mentioned in the Notice of Appeal.

[6] Sylvie Alhot, president of Loisirs Neufchâtel ("LN"), explained that her organization worked with neighbourhood residents, offering courses as well as recreational and community activities.

[7] LN, which has been operating under its current name since April 1990, was created under a different name in April 1975. Its purposes are as follows:

[TRANSLATION]

1. To bring interested persons, especially parents, together to promote healthy use of leisure time.
2. To organize a variety of leisure activities for children, teens and adults.
3. To promote healthy use of leisure time by all useful and appropriate means.

[8] The agreements in question between the City and LN were produced at Tab 12 of Exhibit A-1 and Tab 2 of Exhibit I-1.

[9] Article 1 pertains to the purpose of the agreement. It states that the organization undertakes to provide programming and activity leadership to the City's complete satisfaction at the places and times set out in the agreement.

[10] Article 2 is headed [TRANSLATION] "General obligations". It provides that, each week, the organization shall offer no less than the minimum number of hours of operation set out in the various operation and intervention specifications. It specifies that the sums allocated to programming are estimates and may be increased or decreased depending on the actual number of City residents who participate.

[11] Article 3 sets out the [TRANSLATION] "Specific obligations". It describes the clientele, specifies the duration of the program, and deals with registration, staff recruitment, enrolment fees, and the reports to be submitted to the City's recreation department.

[12] Article 3 states the following with respect to enrolment fees:

[TRANSLATION]

□ *Enrolment fees*

To make up for the gap between the CITY's contribution and the level of services delivered, the ORGANIZATION may charge a fee for enrolling in a program.

This fee shall take account of the CITY's contribution for its residents. The enrolment fee for non-residents shall reflect a significant difference in order that it can cover the full cost of the services that such non-residents receive. At the CITY's request, the ORGANIZATION shall provide proof that the CITY's contribution is being used exclusively for the benefit of its residents.

[13] Article 5 deals with the [TRANSLATION] "Consideration". The last part of the article states: [TRANSLATION] "the final payment shall be made when the organization has met all the requirements of this contract and has submitted all the required reports."

[14] Article 6 has to do with what can happen if the organization fails to deliver the program in accordance with the contract's specifications.

[15] Appendices A and B to the agreement (Tab 15 of Exhibit A-1 and Tab 3 of Exhibit I-1) are dated February 2003 and are the operation specifications and the support program for the participation of children with disabilities in regular activities.

[16] The specifications prepared by the Service des loisirs et de la vie communautaire ("Recreation and Community Life Department") ("SLVC") were produced at Tab 13 of Exhibit A-1 and Tab 4 of Exhibit I-1. Article 4.3.3 is the description of the PVE. The PVE's clients are, in particular, community-based recreational organizations recognized by the City. The PVE's objectives are to enable children to participate in a variety of recreational activities in a safe and enriching environment, to help program-delivering organizations plan, deliver and evaluate their programming, and to keep enrolment costs as affordable as possible. The terms and conditions part states that direct financial assistance will be granted to program-delivering organizations and that these are responsible for program development, for enrolment, and for program delivery and evaluation.

[17] Ms. Alhot, LN's president, explained that a summer vacation program has always been part of the activities organized by LN. LN has offered such programs since its inception because that is in keeping with its actual mission. Ms. Alhot noted that LN creates its own program for the purposes of the City's PVE, and is responsible for delivering that program.

[18] In her view, the City's role is to support the LN's mission through a subsidy. The City also provides logistical support in the form of access to City-owned swimming pools and playgrounds. Nonetheless, the LN provides its own equipment. For example, it provides the tents for any camping trips that it organizes as part of the PVE.

[19] The receipt of a subsidy is conditional upon compliance with the agreements. Ms. Alhot does not know why the term [TRANSLATION] "contract for services" was used. She considers the agreement as a commitment to comply with the conditions for obtaining a subsidy. The organization charges parents a reasonable fee, the amount of which it itself determines.

[20] Ginette Bouchard, the executive director of the appellant Loisirs Lebourgneuf ("LL"), testified that this appellant, which has been operating under its current name since 1994, was created under a different name in January 1977. Its purposes are:

[TRANSLATION]

1. To coordinate and hold socio-cultural, artistic, sporting, social, outdoor or any other activities directly or indirectly related to recreation.
2. To inform, interest and involve all residents of Charlesbourg-Ouest in recreation.
3. To promote and organize educational and recreational leisure-time activities in Charlesbourg-Ouest.
4. To promote sports and physical education in general.
5. To establish and maintain recreation centres for activities that provide healthy and smart diversions to the residents of Charlesbourg-Ouest and to do so for purely charitable and philanthropic purposes.
6. To acquire, hold, administer and alienate any movable or immovable property, by any lawful means and on any basis, for the above purposes.
7. To accept any gifts, bequests or other acts of liberality.

[21] Ms. Bouchard explained that LL is a non-profit organization whose mission is to organize socio-cultural, sporting and community activities for residents of the Lebourgneuf neighbourhood. The PVE is part of its mission to help children have a healthy summer.

[22] LL recruits its activity leaders, develops its activity program, plans its trips and determines its budget. The City makes the park, the lodge and the community centre available to LL for the PVE.

[23] The agreement, drafted by the City, establishes the requirements that must be met in order to receive subsidies. The City grants a subsidy to help keep the costs affordable for the residents of the neighbourhood. Parents pay roughly 60% of the cost per child. The City's subsidy makes up the difference.

[24] Nicole Belleau is a recreational technician with the Arrondissement des Rivières of Quebec City. She provides technical and professional support to a group of organizations, primarily in the city's Lebourgneuf and Neufchâtel neighbourhoods.

[25] She said that she works daily with partner organizations that offer recreational activities to residents. She is responsible for roughly 20 organizations,

such as the Scouts, the Fermières, and seniors' clubs. These are volunteer associations. The role of the SLVC is to support them.

[26] Ms. Belleau also plays a support role with respect to the PVE, specifically with regard to premises and equipment, and sometimes applications for subsidies. In addition, she checks whether the terms and conditions of the PVE are being complied with.

[27] Tab 17 of Exhibit A-1 contains a memo to city council written by Ms. Belleau. The subject of the memo is [TRANSLATION] "Implementation of summer vacation, playground and outdoor pool program — Summer 2003." The memo briefly describes the situation and requests that the council authorize the granting of subsidies to the listed community recreational organizations for the implementation of the PVEs.

[28] The resolution of the council of Arrondissement 2, Les Rivières, is at Tab 19 of Exhibit A-1. It provides for the granting of a subsidy to the community recreational organizations named therein for the purpose of implementation of the PVEs for the 2003 season, on the conditions set out in the memorandum, and authorizes the council chairman and the secretary and assistant clerk to sign the requisite contracts for these purposes.

[29] Alain Cantin is a programs section head with the City. He confirmed that the organizations in question do indeed organize the activities and trips, recruit their activity leaders, do their own advertising and basically decide what services to provide and who is responsible for them. Any complaints are directed to the organization.

[30] It is true that in order to receive subsidies, one must meet the requirements set out in the agreements. With regard to advertising, it is possible that it is included in the City's advertising. According to Mr. Cantin, the PVE program sets the parameters within which the organization must deliver its services if it is to receive the subsidies. The rules or requirements must be known and complied with.

[31] Isabelle Tremblay, an auditor with Revenu Québec, began her audit in January 2004. She assessed the appellants on the basis of the agreements. The operation specifications set out in Appendix A to these agreements describe them as contracts for services, and she sees no reason to regard them as anything else.

[32] On cross-examination, she stated that the amounts paid by the parents were not taxable because they constituted exempt income under section 12 of Part VI of Schedule V of the Act. The program is an educational and instructional program provided primarily to children 14 years of age or under.

Arguments

[33] Counsel for the appellants submits that the historical context of the organizations' work must be taken into account. In his submission, the City's grants are financial assistance given to the organizations in order to enable them to fulfil their mission. He argues that the organizations supplied services not to the City, but to children or their parents.

[34] According to counsel, the testimony shows that the PVE service is provided to the parents. And, as the Minister's auditor stated, the service provided to the parents was exempt. There is no tax on the portion paid by the parents. Counsel referred to section 12 of Part VI of Schedule V, which reads as follows:

- 12. [Recreational services for children, disabled or underprivileged] –**
A supply made by a public sector body of a membership in, or services supplied as part of, a program established and operated by the body that consists of a series of supervised instructional classes or activities involving athletics, outdoor recreation, music, dance, arts, crafts or other hobbies or recreational pursuits where
- (a) it may reasonably be expected, given the nature of the classes or activities or the degree of relevant skill or ability required for participation in them, that the program will be provided primarily to children 14 years of age or under, except where the program involves overnight supervision throughout a substantial portion of the program; or
 - (b) the program is provided primarily for underprivileged individuals or individuals with a disability.

[35] A subsidy can, as the Federal Court of Appeal held in *Commission Scolaire Des Chênes v. The Queen*, [2002] G.S.T.C. 11, constitute consideration for the supply of a service to parents.

[36] According to counsel for the appellants, the respondent is arguing that there are two supplies here: one made to the City, and the other to the parents. He finds this reasoning difficult to reconcile with GST/HST Technical Information Bulletin B-067, entitled "Goods and Services Tax Treatment of Grants and Subsidies".

[37] In particular, counsel for the appellants refers to the following passage, at pages 2 and 3:

In general, transfer payments made in the public interest or for charitable purposes will not be regarded as consideration for a supply.

However, if there is a direct link between a transfer payment received by a person and a supply provided by that person, either to the grantor of the transfer payment or to third parties, the transfer payment will be regarded as consideration for the supply. If a transfer payment is consideration for a supply, then it must be determined whether or not the supply is taxable.

...

A recipient may use a transfer payment to provide a supply of goods or services to one or more third parties rather than to the grantor of the payment. In this case, if it is established that a direct link exists between the transfer payment and the supplies provided to the third parties, the transfer payment will be regarded as consideration for those supplies. If the recipient of the transfer payment is a registrant and the supplies are taxable, the recipient of the transfer payment must charge and collect tax from the grantor of the transfer payment.

...

A direct link may not always be apparent and therefore it will be necessary to consider the circumstances surrounding each case. For example, it is necessary to examine the agreement between the parties, the conduct of the parties and the objectives or policy statements of the grantor. In addition, the legislation, by-laws and any applicable regulation under which the payment is made should be examined, along with payment documents, reports and any applicable documentation. . . .

[38] With respect to the nature of a subsidy, counsel for the appellants refers to paragraph 33 of the decision of the Federal Court of Appeal in *Ghali v. The Queen*, 2005 DTC 5472.

The word "grant" is not defined. Since it is not a term of art, it must be given its ordinary meaning. The dictionary *Le Petit Robert* defines "*subvention*" ("grant") as follows: "[TRANSLATION] A subsidy asked for or required by the government to meet an unexpected expense (loan, tax). Assistance granted to a group, a person, by the government or an association (public or private)." The dictionary *Le Petit Larousse* defines "*subvention*" as follows: "[TRANSLATION] Financial aid paid by the government or a public entity to a private person with the aim of promoting an activity of general interest in which that person is engaged." Finally, the

Termium Plus electronic terminology bank cites the following definition of "*subvention*": "[TRANSLATION] An amount paid occasionally or regularly to an individual or a group as assistance, aid or a subvention in payment for certain services, etc."

[39] In conclusion, the appellants' position is that there is only one supply: the exempt supply of a PVE service to the parents.

[40] Counsel for the respondent states that the assessment was based on the agreements between the City and the appellants. He argues that even the City called the agreement a [TRANSLATION] "contract for services." The City, he says, hired the services of non-profit corporations for the purposes of the PVEs.

[41] It is submitted that what we have here is a contract for services in which the obligations, and the price for the service, are stipulated. The organization must perform its obligations in order to receive the subsidy amount. The City exercises control to ensure that the organization does so. Further, counsel does not believe that specifications are drafted where a subsidy is involved. In his view, the payments in issue are not in the nature of a subsidy. Counsel for the respondent considers the appellants' activity as consisting of two supplies. These two supplies, he submits, are made at two different levels, and do not have the same purpose.

[42] Even though he is not certain that the payments are in the nature of subsidies, counsel for the respondent also referred to GST/HST Technical Information Bulletin B-067:

Under a capital expenditure program, a municipality makes a grant to a registered charity which is an animal protection organization. In addition to its other activities, the charity provides pound-keeping services such as euthanasia, adoption and stray animal services.

While the residents of the municipality benefit from the provision of service, the charity is providing services which the municipality itself would have otherwise been required to provide. In other words, the municipality used a grant to purchase services. In this example, the payment is consideration for a supply. . . .

[43] Counsel submits that the link is a direct one. The City has recreational obligations to its community, and purchases services from organizations so that it can supply its recreational services.

Analysis and conclusion

[44] In my opinion, the evidence clearly discloses that this is not an instance in which the City is delivering recreational services to children in its own name. Rather, the appellants are delivering the services in their own name. The City is contributing to the price of the summer recreational service that the appellants are supplying to the parents.

[45] Although the operation specifications characterize the agreements between the City and the appellants as "contracts for services", and some clauses may be suggestive of contracts for services, other clauses, and important ones, state the actual nature of these agreements, namely, subsidy agreements to complement the price of a service to be provided to third parties. In particular, I refer to the clause headed "enrolment fees", reproduced at paragraph 12 of these Reasons for Judgment.

[46] It is quite clear from a reading of this clause that what the City is paying is in the nature of a subsidy in respect of the amount of the consideration paid for the appellants' supply of services to third parties. This is also shown by the specifications, the memo of recommendation to city council and council's resolution granting the subsidy (referred to in paragraphs 16, 27 and 28 of these Reasons for Judgment).

[47] Some subsidies may be granted with no or very few conditions, whereas others are granted within a stricter framework. A subsidy may be granted for the operation of an organization, for the purchase of equipment or with respect to the price of a service delivered to third parties. The subsidy can fully or partially cover the cost of the property or service. In the instant case the latter is true.

[48] The agreements in issue are subsidy agreements respecting services to be delivered to third parties within a clearly-defined framework and, thanks to the subsidy, at a reduced cost. Since there is a direct link between the subsidy and the cost of the supply, it must be regarded as having been paid in consideration of the service supplied to the third parties.

[49] Subsection 165(1) of the Act read as follows:

165(1) Imposition of goods and services tax -- Subject to this Part, every recipient of a taxable supply made in Canada shall pay to Her Majesty in right of Canada tax in respect of the supply calculated at the rate of 7% on the value of the consideration for the supply.

[50] The term "recipient" is defined as follows in subsection 123(1) of the Act:

"recipient" of a supply of property or a service means

(a) where consideration for the supply is payable under an agreement for the supply, the person who is liable under the agreement to pay that consideration,

(b) where paragraph (a) does not apply and consideration is payable for the supply, the person who is liable to pay that consideration, and

(c) where no consideration is payable for the supply,

(i) in the case of a supply of property by way of sale, the person to whom the property is delivered or made available,

(ii) in the case of a supply of property otherwise than by way of sale, the person to whom possession or use of the property is given or made available, and

(iii) in the case of a supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be read as a reference to the recipient of the supply.

[51] A recipient is the person liable under an agreement for a supply to pay the consideration for that supply. The recipient of a taxable supply is liable to pay the tax on the value of the consideration for the supply.

[52] Under the subsidy agreement, the City is liable to pay a part of the consideration for the service delivered by the appellants. In this sense, it is, in part, the recipient of the service delivered to the third parties. The third party is also a recipient of the service, whether he has to pay part of the price or nothing at all. If the service delivered to the children is a taxable supply, the recipients are liable to pay the tax on the value of the consideration.

[53] In fact, GST/HST Technical Information Bulletin B-067 is consistent with this in stating as follows:

However, if there is a direct link between a transfer payment received by a person and a supply provided by that person, either to the grantor of the transfer payment or to third parties, the transfer payment will be regarded as consideration for the supply. If a transfer payment is consideration for a supply, then it must be determined whether or not the supply is taxable.

[54] Where there is a direct link between the subsidy and the price of the service, the subsidy must be regarded as the consideration, or part of the consideration, for the service, and it is taxable if the service is taxable.

[55] Here, the Minister determined that the supply of the services to the children was an exempt supply within the meaning of section 12 of Part VI of Schedule V. (In fact, the exempt nature of the supply of this service was not debated in court, and I am of the opinion that I must accept this determination, despite the doubts expressed *in limine litis* by counsel for the respondent). Consequently, the subsidy, which constituted part of the consideration for the supply of the service, is not taxable.

[56] The appeals are accordingly allowed, with costs.

Signed at Ottawa, Canada, this 14th day of June 2006.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 27th day of June 2008.

Erich Klein, Revisor

CITATION: 2006TCC339

COURT FILE NOS.: 2005-1573(GST)G and 2005-1584(GST)G

STYLE OF CAUSE: CORPORATION DES LOISIRS DE NEUFCHÂTEL, SECTEUR OUEST ET LOISIRS LEBOURGNEUF INC. v. THE QUEEN

PLACE OF HEARING: Quebec City, Quebec

DATE OF HEARING: April 6, 2006

REASONS FOR JUDGMENT BY: The Honourable Justice Louise Lamarre Proulx

DATE OF JUDGMENT: June 14, 2006

APPEARANCES:

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Counsel for the Respondent: Michel Morel

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