

Docket: 2010-261(GST)I

BETWEEN:

RAYMOND F. WISEMAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on October 27, 2010, at Vancouver, British Columbia

Before: The Honourable Justice L.M. Little

Appearances:

For the Appellant:	The Appellant Himself
Counsel for the Respondent:	Matthew W. Turnell

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**JUDGMENT**

The appeal from the assessment made under the *Excise Tax Act* with respect to the Notice of Assessment numbered 695689, dated October 24, 2008 is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 18th day of April 2011.

“L.M. Little”

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Little J.

Citation: 2011 TCC 215  
Date: April 18, 2011  
Docket: 2010-261(GST)I

BETWEEN:

RAYMOND F. WISEMAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Little J.

#### A. FACTS

[1] Microtax Consultants Limited (“Microtax”) was incorporated under the laws of the Province of British Columbia on March 3, 1981.

[2] The business of Microtax was to provide bookkeeping and financial consulting services.

[3] On January 30, 2006, Microtax was dissolved from the B.C. Register of Companies.

[4] On May 15, 2007, Microtax was restored to the B.C. Register of Companies.

[5] The Appellant is the President and the sole Director of Microtax.

[6] Microtax was registered under Part IX of the *Excise Tax Act* (the “*ET Act*”) effective January 1, 1991.

[7] At all material times, Microtax was required to file quarterly GST returns.

[8] The supplies and services of Micotax were taxable at the rate of 7 percent.

[9] The period in issue is the period from May 1, 1997 to July 31, 2003 (the “Period”).

[10] On December 5, 2001, Microtax filed a “batch” of returns for the following periods, as set out in Schedule “A” to the Reply. Schedule “A” reads as follows:

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## Schedule "A"

## Microtax Consultants Limited GST Reporting History as of October 24, 2008

Reporting Periods		Received					
From	To	Due Date	Date	Supplies	GST	ITC	Net Tax
1996-02-01	1996-04-30				1,317.45	(\$687.70)	\$629.75
1997-05-01	1997-07-31	1997-09-02	2001-12-05	17,473	1,223.14	(\$646.17)	\$576.97
1997-08-01	1997-10-31	2001-12-01	2001-12-05	11,110	777.73	(\$627.36)	\$150.37
1997-11-01	1998-01-31	1998-03-02	2001-12-05	14,395	1,007.62	(\$738.57)	\$269.05
1998-02-01	1998-04-30	1998-06-01	2001-12-05	7,826	547.82	(\$611.01)	(\$63.19)
1998-05-01	1998-07-31	1998-08-31	2001-12-05	14,218	995.25	(\$676.24)	\$319.01
1998-08-01	1998-10-31	1998-11-30	2001-12-05	15,394	1,077.57	(\$698.31)	\$379.26
1998-11-01	1999-01-31	1999-03-01	2001-12-05	14,860	1,040.19	(\$544.14)	\$496.05
1999-02-01	1999-04-30	1999-05-31	2001-12-05	20,838	1,458.64	(\$706.63)	\$752.01
1999-05-01	1999-07-31	1999-08-31	2001-12-05	11,828	827.96	(\$575.53)	\$252.43
1999-08-01	1999-10-31	1999-11-30	2001-12-05	8,735	611.44	(\$584.80)	\$26.64
1999-11-01	2000-01-31	2000-02-29	2001-12-05	17,266	1,208.61	(\$600.38)	\$608.23
2000-02-01	2000-04-30	2000-05-31	2001-12-05	8,670	606.88	(\$619.21)	(\$12.33)
2000-05-01	2000-07-31	2000-08-31	2001-12-05	15,441	1,080.90	(\$613.88)	\$467.02
2000-08-01	2000-10-31	2000-11-30	2001-12-05	9,653	675.72	(\$546.10)	\$129.62
2000-11-01	2001-01-31	2001-02-28	2001-12-05	6,874	481.17	(\$535.06)	(\$53.89)
2001-02-01	2001-04-30	2001-05-31	2001-12-05	6,664	466.49	(\$588.94)	(\$122.45)
2001-05-01	2001-07-31	2001-08-31	2001-12-05	19,234	1,346.37	(\$631.16)	\$715.21
2001-08-01	2001-10-31	2001-11-30	2004-03-12	7,989	559.23	(\$136.50)	\$422.73
2001-11-01	2002-01-31	2002-02-28	2004-03-12	11,194	783.31	(\$157.50)	\$625.81
2002-02-01	2002-04-30	2002-05-31	2004-03-12	10,895	762.65	(\$178.50)	\$584.15
2002-05-01	2002-07-31	2002-09-03	2004-03-12	2,740	191.80	(\$105.00)	\$86.80
2002-08-01	2002-10-31	2002-12-02	2004-03-12	600	42.00	(\$94.50)	(\$52.50)
2002-11-01	2003-01-31	2003-02-28	2004-03-12	0	0.00	(\$110.25)	(\$110.25)
2003-02-01	2003-04-30	2003-06-02	2004-03-12	13,647	955.29	(\$189.00)	\$766.29
2003-05-01	2003-07-31	2003-09-02	2004-03-12	8,182	572.75	(\$147.00)	\$425.75
				<u>\$275,726</u>	<u>\$20,617.98</u>	<u>(\$12,349.44)</u>	<u>\$8,268.54</u>

[11] In filing its tax returns for the Period, Microtax reported GST collectible in the amount of \$20,617.98 and claimed input tax credits (“ITCs”) of \$12,349.44 for a total net tax amount of \$8,268.54.

[12] For the Period, Microtax failed to remit net tax (\$8,268.54 - \$792.11) or \$7,476.43.

[13] For the Period, Microtax was liable for unremitted net tax as well as related penalties and interest of \$15,943.72 (the “Debt”).

[14] The debt of \$14,739.68 (the total as of October 26, 2007) was certified in the Federal Court on November 9, 2007.

[15] The Minister attempted to collect the Debt and was unable to realize any amount of the Debt.

[16] By Notice of Assessment issued on October 24, 2008, the Minister assessed the Appellant for a net tax of \$7,476.43, a penalty of \$4,328.87 and interest of \$4,138.42 in respect of a failure by Microtax to remit GST for the period from May 1, 1997 to July 31, 2003.

[17] The Appellant filed an appeal to the Tax Court.

## B. ISSUES

[18] Did the Minister properly assess the Appellant as a Director of Microtax for the failure by Microtax to remit GST?

[19] Did the Appellant exercise due diligence as a Director to prevent the failure by Microtax to remit the net GST?

## C. ANALYSIS AND DECISION

[20] Subsection 323(3) of the *ET Act* provides as follows:

**(3) Diligence** - A director of a corporation is not liable for a failure under subsection (1) where the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

[21] During the hearing, the Appellant said that he and his wife, Ellen Troobitscoff (the “wife”), were the only two principals of Microtax. The Appellant said that there were no other employees. He also said that his wife handled the administration of Microtax and carried out all of the bookkeeping and reporting requirements. He said that the last GST filing that she prepared for Microtax was for the period ending July 31, 2001.

[22] The Appellant stated that, shortly thereafter, his wife became very ill with brain cancer which resulted in the GST reporting requirements for Microtax becoming overlooked.

[23] The Appellant said that, during his wife’s illness and since her death on October 29, 2002, he has suffered from depression and anxiety which made it very difficult for him to take over the tasks and procedures formerly handled by his wife.

[24] The Appellant also said that Microtax has suffered severe financial setbacks due to his wife’s illness and due to the fact that he had to restrict his work because he had to maintain his home and also provide care-giving services to his wife while she was ill. (See Exhibit A-1.)

[25] Counsel for the Respondent said:

... the power to tax means very little without the power to collect that tax. Because of this, Parliament has chosen to make directors liable for the net tax owed by their corporation in certain situations. Parliament did so to encourage directors to actively ensure the corporation's timely collection and remittance of GST, and where the directors fail in that responsibility, to aid in the collection of those amounts.

Section 3.3 [*sic*, read section 323] of the *Excise Tax Act* establishes that liability. It makes directors jointly and severally liable to pay amounts of unremitted GST payable by their corporation. This amount is determined by the corporate assessment.

In this case, the appellant was a director of Microtax Consultants Limited, a business that provided accounting services, and a business which in fact specialized in providing tax advice.

...

For the GST reporting periods between May 1<sup>st</sup>, 1997 and July 31<sup>st</sup>, 2003, Microtax failed to remit its quarterly GST returns as required under the *Act*.

These returns were eventually filed but in two batches, and sometimes up to four years late.

Microtax did not include payment of the positive amount of GST that was owed. The Minister assessed the GST returns by Microtax, again in two batches, the first being ... March 21<sup>st</sup>, 2002 and April 15<sup>th</sup>, 2005. The net tax included in those assessments was \$7,476.43. It is noteworthy that this amount of net tax is the amount that was reported and calculated by the corporation itself in filing its own returns. [Emphasis added]

Despite these assessments for the amount of net tax and interest and penalties, because they were late-filed, Microtax did not pay the assessments when they were issued in 2002 and 2005, nor did Microtax object to the assessments and dispute them. Indeed, there would be no basis, because they were on their own figures.

After a number of years, the delinquent account finally found its way to the collections officer, who pursued various remedies for collection against the corporation without success. The collections officer then registered certificates, certified the amount of the debt, and obtained the services of court-appointed bailiffs to execute a writ of seizure and sale, which came back unsatisfied. As a consequence of all these actions, the Minister had no choice but to pursue the collection of the appellant personally as a director.

Now, essentially there are two issues, as I understand, that have been raised by the appellant in this appeal. And the first is whether the appellant is liable as a director for the unremitted net tax of the corporation. Second is whether the appellant exercised the degree of care, diligence and skill to prevent the failure to remit the GST that a reasonably prudent person would have exercised in comparable circumstances.

(Transcript, page 15, line 16 to page 17, line 22)

[26] I have reviewed the situation in some detail and I have reached the following conclusions:

1. The Appellant is liable under subsection 323(2) of the *ET Act* as the sole Director of Microtax for the unremitted net GST of Microtax.
2. I do not believe that the Appellant exercised the degree of care, diligence and skill to prevent the failure to remit the GST that a reasonably prudent person would have exercised in comparable circumstances. From my analysis of the evidence I have concluded that the Appellant did nothing to prevent the failure by Microtax to remit the GST.

[27] The appeal is dismissed, without costs.

[28] In Exhibit A-1, the Appellant referred to his wife's illness and subsequent death and his personal health problems of depression and anxiety and said:

As a result of these issues I am requesting a waiver of the application of penalties and interest due to the unintentional late filing of these returns.

[29] As a Judge of the Tax Court of Canada, I do not have the authority to waive the penalties and interest.

[30] Subsection 281.1(1) of the *Income Tax Act* (the "*IT Act*") provides as follows:

**281.1(1) Waiving or cancelling interest** - The Minister may, on or before the day that is 10 calendar years after the end of a reporting period of a person, or on application by the person on or before that day, waive or cancel interest payable by the person under section 280 on an amount that is required to be remitted or paid by the person under this Part in respect of the reporting period.

[31] Subsection 281.1(2) of the *Act* provides as follows:

**281.1(2) Waiving or cancelling penalties** - The Minister may, on or before the day that is 10 calendar years after the end of a reporting period of a person, or on application by the person on or before that day, waive or cancel all or any portion of any

(a) penalty that became payable by the person under section 280 before April 1, 2007, in respect of the reporting period; and

(b) penalty payable by the person under section 280.1 in respect of a return for the reporting period.

[32] It will be noted that the Minister of National Revenue has the authority to waive penalties and interest. It appears that the extreme health problems suffered by the Appellant and his wife may be sufficient to convince the Minister to waive the

penalties and interest. I strongly recommend that the Appellant discuss this waiver of penalties and interest with officials of the CRA.

Signed at Vancouver, British Columbia, this 18th day of April 2011.

“L.M. Little”

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Little J.



CITATION: 2011 TCC 215

COURT FILE NO.: 2010-261(GST)I

STYLE OF CAUSE: RAYMOND F. WISEMAN AND HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: October 27, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little

DATE OF JUDGMENT: April 18, 2011

APPEARANCES:

For the Appellant:	The Appellant Himself
Counsel for the Respondent:	Matthew W. Turnell

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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