

Docket: 2013-1929(GST)I

BETWEEN:

LIPING LIU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on October 31, 2014, at Hamilton, Ontario

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant:                      The Appellant herself  
Counsel for the Respondent:        Devon Peavoy

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**JUDGMENT**

The appeal from the assessment under the *Excise Tax Act*, confirmation of which is dated February 5, 2013, is dismissed and the decision of the Minister of National Revenue is confirmed.

Signed at Ottawa, Canada, this 13<sup>th</sup> day of November 2014.

“V.A. Miller”

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V.A. Miller J.

Citation: 2014TCC335  
Date: 20141113  
Docket: 2013-1929(GST)I

BETWEEN:

LIPING LIU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

V.A. Miller J.

[1] The issue in this appeal is whether the Appellant is entitled to the Goods and Services Tax/Harmonized Sales Tax (“GST/HST”) New Housing Rebate in respect of tax paid for the construction of a house in 2010.

[2] On March 28, 2010, the Appellant and her spouse purchased lot 25 on River Valley Drive in Kitchener, Ontario from Hidden Valley Kitchener Ltd. for the amount of \$295,000. On the same day, they agreed to have Adelaide Custom Homes Ltd. construct a home for them on lot 25 for the amount of \$626,344.15.

[3] According to the Appellant, she and her spouse purchased the land and engaged the builder to construct the house in two separate transactions because they were advised by a financial officer with East Forest Homes that it would result in a savings to them of \$24,600.

[4] On June 15, 2011, the Appellant filed an application for the GST/HST New Housing Rebate. She used the form which specified that it was to be used only for houses purchased from a builder. She was informed, by letter dated November 3, 2011 from the Canada Revenue Agency (“CRA”), that in order to qualify for the GST/HST New Housing Rebate for houses purchased from a builder, section 254 of the *Excise Tax Act* (“ETA”) required that both the land and the house must be purchased from the builder. The letter also informed the Appellant that her application for a rebate would be disallowed and a notice of assessment would

follow. In addition, she was advised that perhaps she qualified for a new housing rebate under section 256 of the *ETA* and she would have to submit a “GST 191 – GST/HST New Housing Rebate Application for Owner-Built Houses” (“Owner-Built application”).

[5] The notice of assessment was issued to the Appellant on November 4, 2011 and the Appellant filed a notice of objection on February 3, 2012. She didn't file the Owner-Built application. The assessment was confirmed on February 5, 2013.

### Appellant's Position

[6] It was the Appellant's position that she is entitled to the GST/HST new housing rebate as she signed the documents with respect to the purchase of land and construction of her house at the same time, March 28, 2010. She stated that she signed both agreements at the same time with the same person. The house should not be considered “Owner-Built” as she did not buy construction materials. She took possession of the house on October 29, 2010 and she filed her application for the rebate on June 15, 2011 which was within two years of taking possession of the house.

[7] The Appellant submitted that she is entitled to the new housing rebate in the amount of \$24,000 and the provincial housing rebate in the amount of \$8,000. She was advised by a person who was the Chief Financial Officer with East Forest Homes and she should be able to rely on his expertise.

[8] Further, her notice of objection was not confirmed until February 5, 2013 which was past the time she could file the Owner-Built application. The CRA should have confirmed her notice of objection prior to her two year limitation period and since they did not, she should be allowed to file the Owner-Built application.

Analysis and Decision

[9] Subsection 254(2) of the *ETA* allows for a new housing rebate for homes purchased from a builder. Paragraph 254(2)(a) provides:

254(2) Where

(a) a builder of a single unit residential complex or a residential condominium unit makes a taxable supply by way of sale of the complex or unit to a particular individual,

[10] According to the definition of “residential complex” in section 123 of the *ETA*, a “residential complex” includes the land. It reads:

“residential complex” means

(a) that part of a building in which one or more residential units are located, together with

(i) that part of any common areas and other appurtenances to the building and **the land immediately contiguous to the building** that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals (emphasis added)

[11] The Appellant’s house would have been considered as purchased from the builder if she had purchased the land and the house from the builder, which she did not. She may have signed the documents to purchase the land and have her house built at the same time. However, she contracted with two separate corporate entities. She purchased lot 25 from Hidden Valley Kitchener Ltd. and she contracted with Adelaide Custom Homes to build her house. Her house is considered owner-built as she engaged Adelaide Custom Homes to build her home on land she owned. The Appellant was required to file the Owner-Built application to apply for the new housing rebate.

[12] However, the Appellant would not have been eligible for the federal portion of the HST paid for new houses regardless of which application form she filed with the Minister of National Revenue (the “Minister”). Both paragraph 254(2)(c) of the *ETA* ( which applies to a new housing rebate for houses “purchased from the builder”) and paragraph 256(2)(b) (which applies to “owner-built houses”) require that the cost of the house is less than \$450,000. In the present case, the cost of the

Appellant's house exceeds the \$450,000 limit. The relevant paragraphs of the *ETA* provide:

254(2) New housing rebate [purchased home] -- Where

(c) the total (in this subsection referred to as the "total consideration") of all amounts, each of which is the consideration payable for the supply to the particular individual of the complex or unit or for any other taxable supply to the particular individual of an interest in the complex or unit, is less than \$450,000,

256(2) Rebate for owner-built homes -- Where

(b) the fair market value of the complex, at the time the construction or substantial renovation thereof is substantially completed, is less than \$450,000,

[13] In order to receive the rebate on the provincial portion of the HST, the Appellant was required to file an Owner-Built application within the 2 year limit given in subsection 46(6) of the New Harmonized Value-Added Tax System Regulations No.2 to the *ETA*. That subsection provides:

Application for rebate

(6) For the purposes of subsection 256.21(2) of the *Act*, an application for a rebate in relation to a residential complex, the amount of which is determined under subsection (2), must be filed on or before

(a) the day (in this subsection referred to as the "due date") that is the earliest of

(i) the day that is four years after the day on which the complex is first occupied as described in subparagraph 256(2)(d)(i) of the *Act*,

(ii) the day that is two years after the day on which ownership is transferred as described in subparagraph 256(2)(d)(ii) of the *Act*, and

(iii) the day that is two years after the day on which construction or substantial renovation of the complex is substantially completed

[14] The Appellant took possession of the house on October 29, 2010. The day that was the earliest of the conditions listed in subsection 46(6) was October 29, 2012.

[15] The Appellant did not file the “Owner-Built” application even though she had been advised by the CRA to do so. Moreover, this advice was given to her in a letter dated November 3, 2011 which was well within the 2 year limit. She cannot now blame the Minister for her failure to act.

[16] The appeal is dismissed.

Signed at Ottawa, Canada, this 13<sup>th</sup> day of November 2014.

“V.A. Miller”

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V.A. Miller J.

CITATION: 2014TCC335  
COURT FILE NO.: 2013-1929(GST)I  
STYLE OF CAUSE: LIPING LIU AND HER MAJESTY THE QUEEN  
PLACE OF HEARING: Hamilton, Ontario  
DATE OF HEARING: October 31, 2014  
REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller  
DATE OF JUDGMENT: November 13, 2014

APPEARANCES:

For the Appellant: The Appellant herself  
Counsel for the Respondent: Devon Peavoy

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: William F. Pentney  
Deputy Attorney General of Canada  
Ottawa, Canada