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HST rebate rules don't include all your relatives

Third parties named on title could disqualify your tax break

Many buyers of new homes and condominiums may be surprised to receive a demand from Canada Revenue Agency (CRA) to repay as much as \$24,000 in HST new-home rebates that they received on closing their purchases.

The CRA claim arises when a third party, who is not a close relation, has been placed on title at the insistence of a mortgage lender. This often occurs when the buyers themselves do not qualify for a mortgage.

Noah Okell is a real estate lawyer in the city of Vaughan. He told me last week that two of his clients were recently dinged for more than \$26,000, including interest, because an uncle was registered as a one per cent owner for mortgage purposes.

According to CRA, this disentitles all the buyers to the entire HST rebate. The Excise Tax Act says that if even one buyer registered on title fails to qualify for the rebate because the home is not his or her primary residence and the person is not a close relation, then all the buyers are disentitled to the rebate.

Here's how it works. The purchase price of a newly constructed home is subject to HST. Typically, the price in a builder offer assumes that the purchaser is eligible for a rebate of part of the HST, and assigns it back to the builder as required by the purchase agreement.

In order to qualify for the HST rebate, the house or condominium must be acquired for use as the primary place of residence of the titled purchaser or his or her relation.

The tax law defines a relation to mean a blood relationship, including a child and grandchild, a brother or sister, and relationships by marriage or common-law partnerships. Cousins, aunts, uncles, nephews or nieces, friends and business associates are excluded from eligibility.

As a result, if just one of the buyers does not qualify, even as the owner of a one per cent interest in the property, none of the buyers can get the rebate. If they received it on closing, and assigned it back to the builder as is typical, CRA will ask for it to be paid back, with interest. In other words, all of the buyers must qualify, not just most of them. There is no percentage allocation.

The amount of the lost rebate can be substantial. The federal portion of the rebate is calculated at 36 per cent rebate of five per cent of the price, up to a maximum of \$6,300 for homes or condos costing \$350,000 or less. The rebate gradually drops to zero on homes priced between \$350,000 and \$450,000.

In addition, there is a rebate of 75 per cent of the eight per cent provincial portion of the HST on the purchase price up to a maximum of \$24,000.

Philip Davidson, of Calgary, got caught in this rebate trap back in 1999 when he bought a new duplex from a builder. The price of the unit he occupied was \$131,841.50. In order for Davidson to qualify for a mortgage, the lender required that title be taken in his own name along with Carol Waterhouse, who was named as owner for mortgage purposes only.

Since Waterhouse was not a relative of Davidson, and wasn't using the duplex as her primary residence, Davidson did not qualify for the rebate. The Tax Court of Canada ruled that he had to pay the government back the entire tax rebate.

Buyers who take title along with spouses, parents, grandparents or siblings for mortgage purposes are not disqualified from receiving the HST rebate. But aunts, uncles, cousins, nephews or nieces, friends and business associates who sign on — even for a small percentage — just to satisfy the lender's requirements, will disqualify the buyer from receiving the entire HST rebate.

In these situations, buyers who have received past rebates but failed to qualify for them should not be surprised to receive a very unwelcome letter from the CRA audit team.

This situation is unfair and illogical. It's time for the federal government to change the rules.

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Davidson v. The Queen, 2002 CanLII 872 (TCC)

Date:	2002-02-28
Docket:	2001-985(GST)I
URL:	http://canlii.ca/t/1c2tr
Citation:	Davidson v. The Queen, 2002 CanLII 872 (TCC), < http://canlii.ca/t/1c2tr > retrieved on 2013-12-16
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Reflex Record	Related decisions, legislation cited and decisions cited

Date: 20020228

Docket: 2001-985-GST-I

BETWEEN:

PHILIP DAVIDSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Reasons for Judgment

McArthur J.

[1] The broad issue is whether the Appellant is entitled to a Goods and Services Tax/House Sales Tax (GST/HST) - New Housing Rebate pursuant to [section 254](#) of the *Excise Tax Act* (the *Act*).

[2] For the most part, the facts are not in dispute. By Purchase Agreement dated October 28, 1999 and transfer of land dated June 13, 2000, the Appellant purchased a new duplex with two residential units. The purchase price of the unit that he occupied was \$131,841.50. Goods and services tax in the amount of \$9,228 was payable.

[3] Although title was taken in the name of the Appellant and Carol Waterhouse (Ms. Waterhouse), the Minister of National Revenue (the Minister) concedes that Ms. Waterhouse was not a beneficial owner and was joined as an owner for mortgage purposes only.

[4] The Reply to the Notice of Appeal predominately deals with the non-issue of whether Ms. Waterhouse was a beneficial owner. It is unclear why this preoccupied the Minister given the overwhelming evidence to the contrary.

[5] In any event, Respondent's counsel, quite rightly, narrowed the issue to an application of [sections 254](#) and [262](#) of the *Act*. The Appellant submits that he purchased a new residential unit, which he occupied as his principal place of residence and he is entitled to a GST/HST rebate. Respondent's counsel does not take issue with the facts. He contends that upon interpreting [sections 254](#) and [262](#) of the *Act*, the Appellant is not entitled to a rebate.

[6] I agree with the conclusions of Respondent's counsel. Unfortunately, the Appellant is caught by the legislation resulting in what he describes as unfair. It is up to the legislature and not the Court to patch the holes.

[7] Paragraph 254(2)(b) states that at the time a person becomes liable or assumes liability under an agreement of purchase and sale of the complex, he or she must be acquiring the complex for use as a primary place of residence personally or for a relative. Subsection 262(3) adds that where a supply of a single-unit residential complex is made to two or more individuals, the references in [section 254](#) to a particular individual shall be read as references to all of those individuals as a group.

[8] The purchase and sale agreement lists both the Appellant and Ms. Waterhouse as purchasers. The Certificate of Title and the mortgage sets out both individuals, as joint tenants. Pursuant to subsection 262(3), therefore, the references to a "particular individual" in [section 254](#) necessarily refer to both the Appellant and to Ms. Waterhouse. This requires that Ms. Waterhouse also satisfy the conditions of [section 254](#) before the Appellant may claim the GST/HST rebate. As Ms. Waterhouse did not enter into liability with the intention of acquiring the complex for use as her primary place of residence, and is not a relative of the Appellant, the conditions of [section 254](#) have not been met. The Appellant is therefore not eligible to claim the new housing rebate.

[9] The appeal is dismissed.

Signed at Ottawa, Canada, this 28th day of February, 2002.

"C.H. McArthur"

J.T.C.C.

COURT FILE NO.:	2001-985(GST)I
STYLE OF CAUSE:	Philip Davidson and Her Majesty the Queen
PLACE OF HEARING:	Calgary, Alberta
DATE OF HEARING:	November 9, 2001
REASONS FOR JUDGMENT BY:	The Honourable Judge C.H. McArthur
DATE OF JUDGMENT:	February 28, 2002
APPEARANCES:	
For the Appellant:	The Appellant himself
Counsel for the Respondent:	R. Scott McDougall
COUNSEL OF RECORD:	
For the Appellant:	
Name:	--

Firm: --

For the Respondent: Morris Rosenberg
Deputy Attorney General of Canada
Ottawa, Canada

2001-985(GST)I

BETWEEN:

PHILIP DAVIDSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 9, 2001, at Calgary, Alberta, by
the Honourable Judge C.H. McArthur

Appearances

For the Appellant: The Appellant himself

Counsel for the Respondent: R. Scott McDougall

JUDGMENT

The appeal from the assessment made under the *Excise Tax Act*, notice of which is dated September 20, 2000, and bears number 10CT0100322 is dismissed.

Signed at Ottawa, Canada, this 28th day of February, 2002.

"C.H. McArthur"

J.T.C.C

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