

Court File No.:

FEDERAL COURT OF APPEAL

BETWEEN:

NORTHBRIDGE COMMERCIAL INSURANCE CORPORATION,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Appellant. The relief claimed by the Appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the Appellant. The Appellant requests that this appeal be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the Federal Courts Rules and serve it on the Appellant's solicitor, or where the Appellant is self-represented, on the Appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: February 15, 2024

Issued by:

(Registry Officer)

Address of local office:

180 Queen Street West, Suite 200
Toronto, ON M5V 3L6

TO: HIS MAJESTY THE KING
Department of Justice (Canada)
Tax Law Services Section
99 Bank Street, Suite 1100
Ottawa, ON K1A 0H8

Nathalie G. Drouin
Deputy Attorney General of Canada

Attention: Dan Daniels and Tanis Halpape
Counsel for the Respondent

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the judgment of the Honourable Justice David E. Graham of the Tax Court of Canada (the “**Tax Court**”) dated January 18, 2024 and filed with the Tax Court Registry on January 23, 2024 (the “TCC Judgment”) by which the appeals of the reassessments of the Appellant’s reporting periods from January 1, 2007, to December 31, 2016 (Tax Court of Canada Docket No. 2017-1289(GST)G) were dismissed. The Appellant hereby appeals the Tax Court’s decision.

THE APPELLANT ASKS this Honourable Court to:

1. allow this appeal, with costs and give the decision that should have been given by the Tax Court which should have been to:
 - a. allow the Appellant’s appeal of the reassessments;
 - b. refer each of the reassessments back to the Minister for reconsideration and reassessment on the basis that the Appellant was entitled to the input tax credits (“ITCs”) at issue as claimed;
 - c. order the Respondent to pay forthwith the Appellant all amounts owed to the Appellant pursuant to the vacating or reassessment of all assessments under appeal with interest;
2. order that the Respondent pay the Appellant its costs for this appeal; and
3. make such further and other orders as this Honourable Court concludes are just in the circumstance.

THE GROUNDS OF APPEAL are as follows:

1. Section 2 of Schedule VI, Part IX of the Excise Tax Act (“ETA”) provides that “A supply made by a financial institution of a financial service that relates to an insurance policy issued by the institution” is a zero-rated supply for GST/HST purposes “to the extent that ... it relates to risks that are ordinarily situated outside Canada.” After noting at paragraphs 7 and 8 of its Reasons for Judgment (FCA

File No. A-2-21 – 2023 FCA 211) that the Appellant insures fleets of trucking companies in respect of the operation of their vehicles in both Canada and the lower 48 states of the United States and that the premiums charged by the Appellant are based on the “actuarial best estimate of the potential loss applicable to each Policy”, this Honourable Court concluded in paragraph 45 that the term “risks” in section 2 of Part IX of Schedule VI to the ETA means “the risk of a claim arising from an accident or other insurable event”, and that, “to the extent that any insurance policy issued by [the Appellant] covered such risks that were ordinarily situated in the United States, the supply of such a policy would be a zero-rated supply.”

2. Having reached this conclusion, this Honourable Court referred the matter back to the Tax Court to determine the amount of ITCs that the Appellant is entitled to claim for the reporting periods under appeal. To do so, this Honourable Court specified in paragraph 50 of its Reasons for Judgment that “it would be necessary to examine the evidence that the Tax Court Judge did not consider. This evidence and the potential application of 141.02 of the ETA should be addressed by the Tax Court Judge.”
3. The Tax Court in rendering the TCC Judgment failed to do so.
4. The Tax Court erred in law by failing to refer to or consider the relevant law including, in particular, section 141.02 of the ETA.
5. Further, the Tax Court made a palpable and overruling error in finding, and erred in law in concluding, that there was insufficient evidence and by failing to consider the evidence before it that was specifically relevant to the application of the applicable law including, in particular, section 141.02 of the ETA. In paragraph 8 of its Reasons for Judgment, the Tax Court reprised the conclusions set in paragraph 73 of its first judgment to the effect that “all the evidence presented at trial was global evidence” and that it did not “have any specific evidence regarding the individual policies in issue...”.

6. With respect to the Tax Court's conclusion that it had insufficient evidence, the parties had filed with the Tax Court a detailed Partial Agreed Statement of Facts ("PASF"), along with a Joint Book of Documents which included not only three (3) complete insurance policies (including associated certificates of insurance and endorsements) issued to three separate trucking companies by the Appellant, but also the associated mileage distributions and premium calculations for each. Further, the Joint Book of Documents included the Appellant's analysis of historical average cost of claims in respect of insurable events occurring in the United States, which is at the basis of how the Appellant calculated the ITCs it was entitled to on its overhead expenses. The Tax Court also had the testimony of three (3) witnesses called by the Appellant during the hearing – each of whom the Tax Court found to be credible -- including of the Appellant's Vice President of Taxation whose testimony detailed how the Appellant determined its ITC allocation in accordance with CRA policy and section 141.02 of the ETA. The Tax Court erred in law and in fact by failing to consider the testimony and the relevant evidence before it.
7. The Appellant relies upon, *inter alia*, section 123 (including the definitions of "commercial activity", "exempt supply", "financial instrument", "financial service", "supply", and "taxable supply" in subsection 123(1)), 141.01, 141.02, 149, 169, 217, 217.1, 218, 218.01, 225, 225.2, 280.1, 296, 301, 306, 309 of the ETA, section 1 of Part VII of Schedule V to the ETA, section 2 of Part IX of Schedule VI to the ETA, paragraph 27(1.1)(a) and section 52 of the *Federal Courts Act*, RSC 1985, c F-7, and Part 6 of the *Federal Court Rules*, SOR/8/106.

The Appellant requests the Tax Court to send a certified copy of the following material that is not in the possession of the Appellant but is in the possession of the Tax Court to the Appellant and to the Registry:

- A. The Judgment of the Honourable Justice David E. Graham dated January 18, 2024;

The Appellant proposes that the hearing of this appeal take place in any of the following centres (in order of preference):

1. Toronto, Ontario;
2. Ottawa, Ontario; or
3. Montreal, Quebec.

DATED in the City of Toronto, the Province of Ontario this 15th day of February 2024.



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