

CANADA / JUDGMENT

Becker v. The King

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Docket: 2019-2416(GST)G

BETWEEN: ADAM BECKER,
Appellant,
and
HIS MAJESTY THE KING,
Respondent .
Appeal heard October 28 and 29, 2025 at Toronto, Ontario.
Before: The Honourable Justice Edward (Ted) Cook

Appearances :

Counsel for the Appellant: Leigh Somerville Taylor
Jennifer Dell-Aquila

Counsel for the
Respondent: Katie Beahan
Nandhini Padmanathan

JUDGMENT

In accordance with the attached reasons, the Appellant's appeal from the Minister of National Revenue's assessment under the Excise Tax Act of the reporting period ended May 31, 2013 is dismissed.

The parties have 45 days from the date of this judgment to agree on costs. If they do not, the Respondent will have a further 30 days to file a submission on costs. The Appellant will then have 15 days to file a submission in response. The Respondent will then have 15 days to file an answer. Each submission may not exceed 10 pages. If the parties do not agree on costs and neither party makes a submission, the Respondent is awarded costs in accordance with the Tariff for the appeal and the Appellant is awarded costs in accordance with the Tariff for the Respondent's motion to amend its reply, which was the subject of my order dated August 25, 2025.

Signed on this 25th day of August 2026.

"Ted Cook"

Cook J.

Citation : 2026 TCC 158

Date: 20260825

Docket: 2019-2416(GST)G

BETWEEN:

ADAM BECKER,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Cook J.

Introduction

[1] Mr. Becker bought a house on Westgate Boulevard in Toronto, Ontario (“Westgate”) in October 2010. The house was in “as-is” condition. Mr. Becker did not move into it; instead, the house was demolished and a new one built. The new house was completed in February 2013, and Westgate was listed for sale the same month.

[2] Mr. Becker bought a house on Mahogany Forest Drive in Vaughan, Ontario (“Mahogany”) while he was selling Westgate. He entered into the agreement to purchase Mahogany on February 27, 2013. On March 5, 2013, Mr. Becker entered into an agreement to sell Westgate. The Westgate sale closed on May 30, 2013.

[3] Mr. Becker applied for a GST/HST new housing rebate for Westgate as a newly constructed house on March 16, 2013. The Minister of National Revenue approved the new housing rebate by assessment dated April 12, 2013.

[4] The Minister assessed Mr. Becker in April 2018 to impose GST/HST in respect of Westgate for the May 1 to May 31, 2013 reporting period (“2018 Assessment”). At the same time, the Minister by way of separate assessment denied Mr. Becker the new housing rebate. Mr. Becker to objected to both assessments.

[5] In February 2019, the Minister reassessed Mr. Becker to allow the new housing rebate and vacate the related penalties because the rebate had been denied had been made beyond the normal limitation period. One month later, the Minister confirmed the 2018 Assessment, except that Mr. Becker was allowed a general rebate for the GST/HST he incurred on his construction costs—minus the new housing rebate he had already received. The general rebate was allowed by way of a separate reassessment.

[6] In summary, Mr. Becker was assessed GST/HST on the supply of Westgate. He received a new housing rebate for Westgate. He was also given a general rebate for the GST/HST he paid for the construction of Westgate, which itself was reduced by amount of the new housing rebate.

Issues

[7] Mr. Becker appeals the 2018 Assessment. I must decide if the 2018 Assessment properly imposed GST/HST on the supply of Westgate. To do this, I will address the following issues:

Is the testimony of the witnesses credible and reliable?

Is Mr. Becker a builder for GST/HST purposes? This in turn depends on whether Westgate was constructed in the course of “an adventure or concern in the nature of trade.”

Did Mr. Becker occupy Westgate?

Is the Minister is precluded from assessing Mr. Becker on the supply of Westgate because the Minister allowed him a new housing rebate for Westgate?

Did the Minister assess the wrong transaction, and if so, does it matter?

Is a failure-to-file penalty imposable?

Analysis

Is the testimony of the witnesses credible and reliable?

[8] Before considering the other issues, I will address the credibility and reliability of the witnesses’ testimony. Mr. Becker’s testimony was not credible. It contained contradictions and was inconsistent with previous statements he had made.

[9] Mr. Becker testified he decided to buy a house while he was in his 20s. He was living with his parents and had a girlfriend. He wanted to branch off and get a property that he loved. He knew the area well and he described it as a great area. Westgate was close to his parents (a 10-minute drive), and he wanted to live close to them. Mr. Becker has a life-long serious heart condition. His father is a doctor, and Mr. Becker relied on him for medical questions. As well, he wanted to have a house that he could customize—one that would be perfect, like his parents’ house.

[10] Mr. Becker testified he sold Westgate because he realized it was too big for what he needed. Westgate was approximately 3,500 square feet with 4 or 5 bedrooms. It had a nice yard. Big houses come with big bills and big responsibility. He felt he was too young to take on that responsibility. Even though he was concerned about the costs and responsibility associated with Westgate, he entered into the agreement to purchase Mahogany before Westgate was sold.

[11] As well, Mr. Becker’s heart condition was taking a turn for the worse and he would need heart surgery in the foreseeable future, sooner than previously anticipated. His father was getting older and was starting to defer to Mr. Becker’s sister, Ms. Lisa Becker, on medical questions. Ms. Becker is also a doctor.

[12] Mahogany was a smaller home: 2,500 square feet, 4 bedrooms, 3 bathrooms and a small backyard. Mahogany was closer to Ms. Becker (a 5-minute drive) than Westgate and it was further from his father (a 20-minute drive). There was no evidence as to what Mr. Becker paid for Mahogany.

[13] As part of the Canada Revenue Agency (“CRA”) audit, Mr. Becker completed a real estate questionnaire. In it, he stated that he sold Westgate because the construction costs were more than anticipated, his income was not as high as anticipated, and Westgate was in a problematic neighbourhood.

[14] Mr. Becker’s notice of appeal refers to his condition declining over the period of ownership of Westgate and his desire to be closer to his father. It does not mention Ms. Becker. In discovery, Mr. Becker highlighted the issues with the neighbourhood. He also said he was not married and was not where he thought he would be career-wise.

[15] There were several inconsistencies. In testimony Mr. Becker said Westgate was in a great area, while he previously said that it was a problematic neighbourhood. He testified that he was concerned about the bills associated with owning Westgate, whereas he had previously referred to construction costs.

[16] He had previously said his career progression and marital status were reasons for the sale, but he did not refer to them in his direct testimony. In 2015, Mr. Becker married the woman who was his girlfriend while he owned Westgate.

[17] As well, Mr. Becker said one of the main reasons for buying Westgate was to be able to have a custom house that was perfect like his parents’ house. Yet he also testified that his two brothers-in-law picked out the property and managed all the construction work. He had virtually no participation in that process. Mr. Becker said he trusted them implicitly and left 99% of the decisions in their hands. He saw the property only about once per month while it was being constructed, and he did not recall anything about designing the house. I find Mr. Becker’s actions inconsistent with his testimony about the desire to have a custom house.

[18] Finally, Mr. Becker testified that he wanted to move closer to Ms. Becker because of his medical issues. Mahogany was closer to Ms. Becker and farther away from his father. Although he no doubt has serious medical issues, they were not mentioned as a reason for the sale in the CRA real estate questionnaire. His father, not his sister, was referred to in his notice of appeal. Ms. Becker testified that she saw her brother closer to once per week than once per month, while Mr. Becker testified that he saw his parents multiple times per week. All the relevant properties were within a 30-minute drive of each other in any event. I do not see the distances between properties as a compelling factor.

[19] Mr. Becker’s testimony was also vague, which reduced its reliability. He did not provide relevant details regarding the events at issue. For example, he testified that he lived in Westgate but could not remember when he moved in or how long he lived there. As well, he did not remember any involvement in designing the new house.

[20] Similarly, I do not rely on the testimony of Mr. Kartaria, the CRA auditor. By the time this appeal was heard, he had been retired from the CRA for several years. He had very limited memory of Mr. Becker's audit and had made no effort to refresh himself on it.

[21] Both Mr. Becker's sisters testified. They were both credible witnesses; however, it was evident they had limited involvement with Westgate, and their evidence did not corroborate Mr. Becker's version of events in a meaningful way. The two brothers-in-law would have been more appropriate witnesses since they were the ones who picked out Westgate and managed the construction of the new house.

[22] Finally, Ms. Bains, the CRA appeals officer, testified. She was credible and reliable. She was clear in her recollection of what she did and why. She was also forthright in explaining what she thought she should have done differently.

Is Mr. Becker a builder for GST/HST purposes?

[23] Mr. Becker is a builder for GST/HST purposes unless the exclusion in paragraph (f) of the definition "builder" in subsection 123(1) of the Excise Tax Act ("ETA") applies:

- (f) an individual described by paragraph (a), (b) or (d) who
 - (i) carries on the construction or substantial renovation,
 - (ii) engages another person to carry on the construction or substantial renovation for the individual, or
 - (iii) acquires the complex or interest in it,
- otherwise than in the course of a business or an adventure or concern in the nature of trade ,
- [emphasis added]

[24] The issue is whether the new house at Westgate was constructed in the course of an adventure or concern in the nature of trade by Mr. Becker. The parties agree that the applicable factors for making this determination are set out in *Happy Valley Farms Limited v MNR* , [1986] 2 CTC 259, 86 DTC 6421 (FCTD) [*Happy Valley*] at page 263 (DTC pages 6423-6424):

The nature of the property sold.

The length of period of ownership.

The frequency or number of other similar transactions by the taxpayer.

Work expended on or in connection with the property realized.

The circumstances that were responsible for the sale of the property.

Motive.

The *Happy Valley* factors were recently applied in *Caddell v The King* , 2026 TCC 27 and *Fadali v The King* , 2026 TCC 86.

[25] Mr. Becker argues Westgate was not constructed in the course of an adventure or concern in the nature of trade. He bought, and later sold, Westgate for the reasons summarized above. As I have explained, I do not accept Mr. Becker's testimony. The Respondent argues that intention is key in this case and that the evidence shows Mr. Becker's primary motivation was to earn a profit.

[26] I find that the new house was constructed in the course of an adventure or concern in the nature of trade. Consequently, the exclusion in paragraph (f) does not apply, and Mr. Becker is a builder for GST/HST purposes. My analysis of the Happy Valley factors is set out below.

[27] The nature of the property sold – The house at Westgate was a newly-constructed single-family house. In both *Sangha v The Queen*, 2013 TCC 69 at para 19 and *Caddell* at para 28, the Court stated this type of property was not in itself indicative one way or the other.

[28] The length of period of ownership – Mr. Becker purchased Westgate in 2010. In February 2013, construction of the new house was completed, and Westgate was listed for sale. It was sold shortly thereafter, and the sale closed on May 30, 2013. Although Mr. Becker owned Westgate for approximately 3½ years, the period from the completion of construction to completed sale was less than 4 months. This factor suggests an adventure or concern in the nature of trade.

[29] The frequency or number of other similar transactions by the taxpayer – When he purchased Westgate, Mr. Becker did not have any real estate experience. After selling Westgate, Mr. Becker lived in Mahogany until 2020. He later became a real estate agent and acted as agent for 3 homes, including his parents'. Mr. Becker argues that he did not engage in any other demolish and builds, which suggests this was not an adventure or concern in the nature of trade. I see this factor as neutral.

[30] Work Expended on or in connection with the property realized – Mr. Becker's two brothers-in-law picked out the property. Westgate was bought in "as-is" condition for \$567,000. The existing house was demolished and a new 3,500 square-foot house constructed. It was a beautiful home, which sold for \$1,745,000. The brothers-in-law managed the construction and made 99% of the decisions. Mr. Becker was not actively involved in any aspect of the design or building of the new house. The extent of the work expended and the lack of any meaningful involvement by Mr. Becker favours an adventure or concern in the nature of trade.

[31] The circumstances that were responsible for the sale of the property – As explained above, the circumstances responsible for the sale put forward by Mr. Becker are not convincing. They are inconsistent and cast doubt over what were the real circumstances responsible for the sale of Westgate. My view is that Westgate was sold because construction was complete and it was ready for sale. This factor favours an adventure or concern in the nature of trade.

[32] Motive – As stated in *Happy Valley* at page 263 (DTC page 6424):

The intention at the time of acquiring an asset as inferred from surrounding circumstances and direct evidence is one of the most important elements in determining whether a gain is of a capital or income nature.

The determination of a taxpayer's motives is to be made from both the direct evidence and surrounding circumstances. A court often cannot rely on just the motives professed by a taxpayer. In this instance, I do not accept the motives offered by Mr. Becker, at least insofar as they are represented to be the main reasons for the purchase and sale of Westgate. In this regard, no corroborating evidence was provided to support Mr. Becker's stated motives.

[33] Mr. Becker had no real estate experience. He purchased a house chosen by his brothers-in-law. They managed the demolition of the existing house and the construction of the new house. Mr. Becker had no meaningful input into its design or construction. It was put up for sale as soon as it was completed and sold within a few months. The motives of Mr. Becker as demonstrated by the objective evidence favour an adventure or concern in the nature of trade.

[34] I find that Mr. Becker's primary intention was to profit from the sale of Westgate. At a minimum, Mr. Becker had a secondary intention to do so (see *Canada Safeway Limited v The Queen*, 2008 FCA 24 at para 61).

Did Mr. Becker occupy Westgate?

[35] Whether Mr. Becker occupied Westgate, and when he did so, is relevant for applying subsections 191(1) and 191(5) of the ETA. Subsection 191(1) provides rules on the self-supply of a new house. One of the conditions for the self-supply rules to apply is that the relevant individual (Mr. Becker in this case) has to have occupied the new house. GST/HST is then imposed at the later of when the construction of the new house is substantially completed and when the individual first occupies it.

[36] Subsection 191(1) is subject to subsection 191(5). Subsection 191(5) provides that subsection 191(1) does not apply if certain conditions are met. One of the conditions is that the new house "is used primarily as a place of residence for the individual."

[37] The construction of Westgate was completed in February 2013. If Mr. Becker occupied Westgate before May 2013, the Minister arguably would have assessed the wrong reporting period. I find that Mr. Becker never occupied Westgate. As a result, neither subsection 191(1) nor subsection 191(5) applies.

[38] Mr. Becker's testimony regarding occupancy was brief and vague. He said he moved into Westgate, but he could not remember when he did so or how long he lived there. He said he moved in a couch, bed, coffee maker and a couple of suitcases of clothes. He said he ate there but had no real memory of living at Westgate. There was no housewarming party.

[39] Both Mr. Becker's sisters testified and neither had any memory of him moving into Westgate or living there. The only documentary evidence in support of Mr. Becker having moved into Westgate was property insurance. Property insurance would have been reasonable to obtain regardless of whether he occupied Westgate. Similarly, the CRA documents entered into evidence do not suggest Mr. Becker ever occupied Westgate.

[40] Westgate was listed for sale the same month construction was completed, and it was sold shortly thereafter. Mr. Becker had a suite available to him at his parents' house at all relevant times. It does not make sense to briefly move into a new house while trying to sell it. As well, Mr. Becker entered into an agreement to purchase Mohogany. I find that Mr. Becker never occupied Westgate.

[41] For the same reasons, I also find that Mr. Becker never used Westgate primarily as a place of residence.

Is the Minister is precluded from assessing Mr. Becker on the supply of Westgate because the Minister allowed him a new housing rebate for Westgate?

[42] I now turn to the fourth issue—whether the Minister is bound by the fact that Mr. Becker was allowed the new housing rebate. Subsections 299(3) and (4) of the ETA deem an assessment “to be valid and binding.” In this case, the Minister initially approved the new housing rebate for Mr. Becker by way of the April 2013 assessment. After the Minister assessed in 2018 to deny the rebate and Mr. Becker's subsequent objection, the Minister reinstated the new housing rebate by way of a separate reassessment.

[43] Mr. Becker argues that the Minister determined he qualified for the new housing rebate when the April 2013 assessment was made. The new housing rebate could only be given on the basis that Mr. Becker satisfied the underlying statutory criteria. In particular, it means the Minister determined he occupied Westgate primarily as a place of residence. Mr. Becker argues that the determination made for purposes of the April 2013 assessment is valid and binds the Minister. The Minister cannot now resile from that determination and argue he never lived at Westgate.

[44] Mr. Becker relies on *Landbouwbedrijf Backx B.V. v The Queen*, 2019 FCA 310 [Backx]. In that decision, the Federal Court of Appeal stated at para 13 that “[i]t is well established law that the doctrine of estoppel cannot be invoked to preclude the exercise of a statutory duty.” In the same paragraph, the Court then went on to quote *Ludco Enterprises Ltd./Entreprises Ludco Ltée v The Queen* (1994), [1996] 3 CTC 74, 95 DTC 5311 (FCAD) (which in turn was quoting *First Torland Investment Ltd. v MNR*, [1969] CTC 134, 69 DTC 5109 (Ex. Ct.) at page 155 (DTC page 5121)):

a concession made in one year in the absence of statutory provisions to the contrary, does not preclude the Minister from taking a different view in a later year. An assessment is conclusive as between the parties only in relation to the assessment for the year [in] which it was made.

Mr. Becker argues that the determination made for the new house rebate binds the Minister in relation to any imposition of GST/HST for Westgate. I disagree.

[45] I draw a different conclusion from *Backx*. The decision refers to a concession made in one year not precluding the Minister from taking a different view in a later year. *Backx* is an income-tax decision, and taxpayers are generally assessed on an annual basis for income-tax purposes. I take the decision as holding that a determination made by the Minister for the purposes of one assessment does not, in the absence of statutory provisions to the contrary, bind the Minister in making other assessments of the same taxpayer.

[46] See also *Admiral Investments Ltd. v. MNR*, [1967] CTC 165, 67 DTC 5114 (Ex. Ct.) at para 42: the fact that a concession was made in one year does not preclude the Minister from taking a different view of the facts in a later year when the Minister has more complete information. There is nothing inconsistent with Minister altering their decision according to the facts as the Minister finds them from time to time.

[47] In this instance, the Minister initially assessed Mr. Becker in April 2013 on the basis that he was eligible for the new housing rebate. The assessment itself stated that the rebate was “provisionally approved” and that it was “subject to audit at a later date.” The CRA subsequently audited Mr. Becker and reassessed him to deny the new housing rebate; but, as Ms. Bains testified, the denial was reversed in February 2019 because the Minister had reassessed the beyond the limitation period.

[48] The 2018 Assessment imposed GST/HST on the supply of Westgate. Eligibility for the new housing rebate was dealt with by way separate assessments and is not before me. As a consequence, the grant of the new housing rebate is not determinative of this appeal. It does not bind the Minister with respect to imposition of GST/HST on the supply of Westgate.

[49] Mr. Becker also relies on *Clark v The Queen*, 2004 FCA 382 and *Samson Bélair Deloitte & Touche Inc. v The Queen*, 2004 TCC 666. Those appeals were allowed because the Minister assessed the wrong period. That is not the case here. Here the right period was assessed if GST/HST is exigible on the sale of Westgate.

[50] Finally, *Burnet v MNR*, [1999] 3 CTC 60, 98 DTC 6205 (FCAD) does not assist Mr. Becker. That case dealt with an application for an order of mandamus in the context of a loss determination.

Did the Minister assess the wrong transaction, and if so, does it matter?

[51] I have found that Mr. Becker is a builder and that he did not occupy Westgate. Westgate was sold on May 30, 2013 to a third party. The Minister assessed the May 1 to May 31, 2013 reporting period. There is no issue regarding the quantum of GST/HST.

[52] The Respondent argues the general supply rules apply to the sale of Westgate. Mr. Becker argues he was assessed under the self-supply rules—that is, the GST/HST imposed on the occupation of a new house—and not on the sale of Westgate. He submits I should allow the appeal because the Minister did not assess the right transaction.

[53] I accept that Mr. Becker was assessed, and his objection was confirmed, on the basis of the self-supply rules. This is clear from the testimony of Ms. Bains and the CRA documents. Ms. Bains said that in hindsight she should have assessed Mr. Becker under subsection 228(1) of the ETA (i.e., the general supply rules) rather than confirming under subsections 191(1) and (5).

[54] Ms. Bains testified that her analysis of Mr. Becker's objection was limited to determining if he was entitled to rely on subsection 191(5). In her mind, the question before her was whether Mr. Becker used Westgate "primarily as a place of residence." She decided he had not and confirmed the assessment.

[55] The CRA audit report states Mr. Becker is a builder and is deemed to have made a self-supply under subsection 191(1). The audit report also states that Mr. Becker did not use Westgate primarily as a place of residence. I do not know why the Minister chose to reassess the reporting period ended May 31, 2013.

[56] The Respondent's original reply relied on the self-supply rules. By order dated August 25, 2025, I allowed the Respondent's motion to amend its reply. In its amended reply, the Respondent added the general supply rules as its primary argument and used the self-supply rules as an alternative argument.

[57] Subsection 298(6.1) of the ETA allows the Minister to support an assessment using an alternative basis or argument:

The Minister may advance an alternative basis or argument in support of an assessment of a person, or in support of all or any portion of the total amount determined on assessment to be payable or remittable by a person under this Part, at any time after the period otherwise limited by subsection (1) or (2) for making the assessment unless, on an appeal under this Part,

- (a) there is relevant evidence that the person is no longer able to adduce without leave of the court; and
- (b) it is not appropriate in the circumstances for the court to order that the evidence be adduced.

[emphasis added]

[58] The preamble to subsection 298(6.1) was amended in 2016. The preamble formerly read:

The Minister may advance an alternative argument in support of an assessment of a person at any time after the period otherwise limited by subsection (1) or (2) for making the assessment unless, on an appeal under this Part,

The amendment provides, in part, that the Minister may advance an alternative basis in support of an assessment. Amended subsection 298(6.1) applies to Mr. Becker's appeal.

[59] The technical notes for the subsection state it was amended to clarify that an alternative basis or argument may be advanced in support of an assessment of a person or in support of all or any portion of the total amount determined on assessment to be payable or remittable by a person under the GST/HST. The amendment would allow, for instance, a reduced liability in relation to one item included in the computation of an assessment to be offset by an increased liability in relation to another item.

[60] The amendment addresses the income-tax decision in *Last v The Queen*, 2014 FCA 129, aff'g 2012 TCC 352. In *Last*, the Minister assessed the taxpayer on the basis that their proceeds from a sale of shares were a capital gain. The Tax Court instead decided the proceeds were on income account; but it could not increase the taxpayer's liability from that source because the Minister could not appeal from their own assessment. The Federal Court of Appeal agreed with the Tax Court's reasoning and dismissed the Crown's appeal (paras 23 to 38).

[61] Mr. Becker relies on *TPine Leasing Capital Corporation v The King*, 2024 FCA 83 [*TPine*]. In that decision, the Federal Court of Appeal considered *Pedwell v MNR*, [2000] 3 CTC 246, 2000 DTC 6405 (FCAD). In *Pedwell*, the same Court found at para 24 that "[w]here the basis of the Minister's assessment is one transaction, the Court cannot, ex post facto, broaden the scope of the assessment to include other transactions." Mr. Becker argues that the Minister is trying to use subsection 298(6.1) to support a different transaction than the one originally assessed and that this is not permitted, even with the 2016 amendments.

[62] In *TPine*, the Federal Court of Appeal found the pre-amendment version of the subsection sufficient to dispose of the matter at hand, and it was not necessary to consider the extent to which the amendment broadened subsection 152(9) of the Income Tax Act (the income-tax equivalent of subsection 298(6.1)). Webb J.A. stated at para 90 "[t]o what extent the amendments to subsection 152(9) of the Act would allow the Minister to advance an alternative basis or argument will be decided on a case-by-case basis." He went on to state "[i]n interpreting and applying the previous version of subsection 152(9) of the Act, this Court has also limited an alternative argument to the same transaction that is in dispute. It is not clear how the amendments would alter this principle."

[63] I find that an "alternative basis or argument" may be advanced in the case at hand. The two alternative taxable events—the potential self-supply of Westgate and the sale of Westgate—are inextricably linked. They are two alternatives arising out of a single series of events. Both the period assessed and the quantum of tax assessed are already correct if I find that GST/HST is imposable on the sale of Westgate.

[64] My view is that it would be inconsistent with the purpose of amended subsection 298(6.1) for this Court to be asked to decide whether Mr. Becker occupied Westgate and then to be barred from considering the logical consequence of that determination. To my mind, this is, at least in part, what the amendment seeks to address. Amended subsection 298(6.1) permits an alternative basis or argument to be advanced "in support of all or any portion of the total amount determined on assessment to be payable".

[65] Subsection 298(3) of the ETA then provides that the Minister may reassess beyond the period set out in subsection 298(1) or (2) of the ETA in order to give effect to an alternative basis or argument advanced by the Minister. The amount reassessed may not exceed the amount previously assessed however (subsection 298(6.2) of the ETA). As I have noted, the quantum assessed is not at issue in this case.

[66] In some respects, the case at hand is similar to TPine . In TPine , the Federal Court of Appeal at para 88 characterized both consequences as flowing from one “transaction” —the retention (and not sale)—of the same assets . In this case, both consequences flow from the determination of whether Mr. Becker occupied Westgate.

[67] In Oldcastle Building Products Canada Inc. v The King , 2025 TCC 107, Yuan J. considered the amendments to subsection 152(9) of the Income Tax Act . He found at para 39 that “the 2016 amendments were effective to override any prior limitation that had developed in the case law about alternative arguments being limited to the same transaction.”

[68] More recently, in Liu v The King , 2026 TCC 126, Clarke J. also considered subsection 152(9) of the Income Tax Act . She concluded at para 6 that the subsection did not allow the Minister to advance an alternative foreign accrual property income (“FAPI”) argument when the transactions giving rise to the FAPI argument did not form any part of the Minister’s initial assessment. She went on to hold at para 56 that “amended subsection 152(9) does not enable the Minister to raise new arguments and basis arising from an entirely new set of transactions.” As explained above, the sale of Westgate was not an entirely new transaction. There was one series of events giving rise to two potential tax outcomes.

[69] The decisions in Clarke and Samson Bélair Deloitte & Touche Inc. , mentioned above, do not assist Mr. Becker. They predate the amendment of subsection 298(6.1), and the appeals were allowed because the Minister assessed the wrong period.

Is a failure-to-file penalty imposable?

[70] First, I note that the 2018 Assessment was not statute-barred. The limitation period for assessing set out in subsection 298(1) did not commence because Mr. Becker never filed a return. Section 280.1 of the ETA then imposes a penalty when a person files a required return late or not at all.

[71] This issue was not canvassed in detail by the parties. I take Mr. Becker’s argument to be that he could not be expected to file a return because he had received the new housing rebate and that is inconsistent with the obligation to file a return on the supply of Westgate (i.e., his understanding was that he had no tax liability). He further argues the Minister had determined that he had not made any misrepresentation attributable to neglect, carelessness or wilful default because the new housing rebate was reinstated.

[72] I take this as a due-diligence argument. In order to avail himself of a due-diligence defence, Mr. Becker would have to show that he had either made a reasonable error of fact or he had taken all reasonable precautions to comply with the ETA (see Corp. de École Polytechnique v The

Queen , 2004 FCA 127 at paras 27 to 30). The evidence does not show that Mr. Becker made an error of fact or that he had taken all reasonable precautions to comply with the ETA. Mr. Becker's mother told him to speak to the family's accountant to file an application for the new housing rebate and he did so. The fact the Minister reinstated the new housing rebate because its reassessment was statute-barred is not sufficient to satisfy either of these requirements. Therefore, the penalty under section 280.1 is properly imposable.

Conclusion

[73] Mr. Becker's appeal is dismissed. Costs are awarded to the Respondent for the appeal. Costs were awarded to the Appellant for the Respondent's motion to amend its reply, but the Appellant asked for the opportunity to address costs after the appeal was decided.

[74] The parties have 45 days from the date of this judgment to agree on costs. If they do not, the Respondent will have a further 30 days to file a submission on costs. The Appellant will then have 15 days to file a submission in response. The Respondent will then have 15 days to file an answer. Each submission may not exceed 10 pages. If the parties do not agree on costs and neither party makes a submission, the Respondent is awarded costs in accordance with the Tariff for the appeal and the Appellant is awarded costs in accordance with the Tariff for the Respondent's motion to amend its reply, which was the subject of my order dated August 25, 2025.

Signed on this 25th day of August 2026.

"Ted Cook"

Cook J.

CITATION:

2026 TCC 158

COURT FILE NO.:

2019-2416(GST)G

STYLE OF CAUSE:

ADAM BECKER AND HIS MAJESTY THE KING

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DATE OF HEARING:

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REASONS FOR ORDER BY:

The Honourable Justice Edward (Ted) Cook

DATE OF JUDGMENT:

August 25, 2026

APPEARANCES:

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