

CANADA / JUDGMENT

Xu v. The King

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Docket: 2025-2156(GST)APP

BETWEEN:

HAOFENG XU,

Applicant,

and

HIS MAJESTY THE KING,

Respondent .

Application heard on May 14, 2026, at Toronto, Ontario

Before: The Honourable Justice Perry Derksen

Appearances :

For the Applicant:

The Applicant himself

Counsel for the Respondent:

Maitland Shaheen

ORDER

I n accordance with the attached reasons for order:

The application for an Order extending the time within which a Notice of Objection may be served with respect to an assessment made under the Excise Tax Act for the Applicant's annual reporting period ended December 31, 2020, is dismissed, without costs.

Signed this 22nd day of May 2026.

"Perry Derksen"

Derksen J.

Citation: 2026 TCC 102

Date: 20260522

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BETWEEN:

HAOFENG XU,

Applicant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Derksen J.

I. Overview [1] This is an application under s. 304 of the Excise Tax Act , R.S.C., 1985, c. E-15 (ETA) for an extension of time to file a notice of objection to an assessment. I am releasing written reasons because the applicant, Mr. Xu, required the assistance of an interpreter. Also, I want to draw attention to the approach taken by the Appeals Division of the Canada Revenue Agency (CRA), which may have contributed—seemingly unintentionally—to the situation here where the application must be quashed.

[2] An application is quashed when this Court cannot consider the matter and it must end. I have concluded that this Court does not have jurisdiction because Mr. Xu failed to meet a condition precedent for bringing the application.

II. Background Context [3] According to Mr. Xu, he carried on a business of buying and reselling meat products to restaurants. In his view, the sales are zero-rated supplies, and he does not collect GST/HST. Mr. Xu says he inadvertently did not classify the sales as zero-rated in filing the GST/HST return for the annual reporting period ending December 31, 2020 (the Reporting Period).

[4] By notice of assessment dated October 5, 2021, the Minister of National Revenue assessed Mr. Xu for the Reporting Period. The notice of assessment shows that the Minister assessed on the basis that \$12,223.38 was collectible for GST/HST. No input tax credits were allowed, and so the Minister assessed net tax of \$12,223.38. The notice also states that the refund claimed was denied because documents were not provided.

[5] Mr. Xu says he was unaware of a CRA review for the Reporting Period. He says that as of September 13, 2020, he was living in a unit at 117 McMahon Drive in North York (the McMahon Drive Address). Key is that he says that he did not receive the notice of assessment, which was mailed to an address on Deerford Road in North York (the Deerford Road Address).

[6] Years later, after learning of the CRA's assessment, Mr. Xu made a request to adjust his GST/HST return for the Reporting Period. The request was denied by the CRA in February 2025 for the reason that audit adjustments had already been assessed. Mr. Xu next submitted a notice of objection electronically in April 2025.

[7] The Appeals Division, on behalf of the Minister, wrote to Mr. Xu by letter dated June 10, 2025 (the Decision Letter) and stated that the notice of objection could not be accepted because it was not filed within 90 days of the October 5, 2021, notice of assessment. The Appeals Division also pre-emptively decided that an extension of time for the filing of an objection could not be granted. On this point, the Decision Letter read:

...

Furthermore, we cannot grant you an extension of time for filing your objection. Paragraph 303(7) (a) of the Excise Tax Act states that you have to request an extension within one year of the due date for filing the objection. Your request for an extension of time was due before January 4, 2023.

To learn more about your objection rights, go to Canada.ca/cra-complaints-disputes.

...

[8] Mr. Xu filed his application in this Court on October 3, 2025.

[9] Mr. Xu says that he was not living at the Deerford Road Address in October 2021. By a letter dated August 19, 2022, an examiner with the CRA's GST/HST Refund Integrity Program wrote to him about the annual reporting period ending December 31, 2021 (i.e., the subsequent reporting period) using the McMahon Drive Address. Mr. Xu believes that he had previously changed his address with the CRA and points to that letter to show that the CRA had his correct address.

[10] As for the CRA's official records for Mr. Xu's mailing address, the evidence is that the Deerford Road Address was the mailing address of record until December 6, 2022. As of that date, Mr. Xu's mailing address was changed to an address on McMahon Drive, but different from the McMahon Drive Address. (In simple terms, Mr. Xu moved to an address nearby.) The McMahon Drive Address is not in the CRA's electronic mainframe address history. Mr. Xu points to this, suggesting that there was a "gap" in the CRA's records. The application materials also acknowledge that in 2022 he had problems accessing his CRA online account.

[11] I turn next to this Court's jurisdiction to consider the application.

III. Jurisdiction under s. 304(1) of the ETA [12] Three conditions must be satisfied for this Court to have jurisdiction under s. 304(1). In *Amador v. The King*, 2025 TCC 143 (*Amador*), at para. 6, Justice Graham described these as "conditions precedent" and—with slight rephrasing for clarity—they are as follows:

the person must have first applied to the Minister under s. 303 for an extension of time to object (s. 304(1));

either,

the Minister must have refused that application (s. 304(1)(a)); or

90 days must have passed since the application was served under s. 303(1) and the Minister must not yet have notified the person of the Minister's decision (s. 304(1)(b)); and

if the Minister refused the application, the person must have made the application to the Court within 30 days of the date the Minister mailed the notification of that decision to the person under s. 303(5) (see s. 304(1)).

[13] Justice Graham noted in *Amador* that whether the Court has jurisdiction is ideally decided when an application is called for hearing and then the Court should rule on it. If it is clear the Court has no jurisdiction, the application is quashed and there is no need to proceed further: *Amador* at para. 10.

[14] The Crown argues here that this Court does not have jurisdiction to consider the application because it was made more than 30 days after the Minister's Decision Letter—dated June 10, 2025—in which the Minister refused to grant an extension of time to file an objection.

[15] Mr. Xu admitted in his notice of application that he received the Decision Letter on June 17, 2025.

[16] In the circumstances, a condition precedent for making an application to this Court under s. 304 is not satisfied since the notice of application was filed on October 3, 2025, well after the 30-day deadline. As such, this Court does not have jurisdiction to consider the application, and it must be quashed.

[17] This also means that I do not need to consider the 4-step *Mpamugo* analysis, which is undertaken when a person asserts that a notice of assessment was not properly sent: see *Mpamugo v. Canada*, 2016 TCC 215 (*Mpamugo*), *aff'd* at 2017 FCA 136 (*Mpamugo FCA*); *Siam v. Canada*, 2026 FCA 91 at para. 4; and *DaSilva v. The Queen*, 2018 TCC 74 at para. 4.

[18] I do not know why Mr. Xu waited so long to file his application in this Court. It may be that he was not aware of the 30-day time limit.

[19] In *Web Listings Inc. v. The King*, 2026 TCC 101 (*Web Listings*), I recently considered a situation where the Appeals Division also pre-emptively considered whether an extension of time could be granted under s. 303.

[20] I noted in *Web Listings* that the Appeals Division, after refusing to grant an extension, did not provide information about the 30-day time limit for making an application to this Court under s. 304(1). And I said it was not surprising then that the 30-day time limit trips people up, as Justice Graham noted in *Amador*.

[21] When I look at the Decision Letter here, once again, the Appeals Division said nothing about the 30-day time limit for an application to this Court.

[22] I took the liberty of reviewing the CRA's current information online at "canada.ca/cra-complaints-disputes" since the Decision Letter suggests more information is available there. But I saw nothing about the 30-day time limit.

[23] Earlier, I stated that the Appeals Division may have contributed—seemingly unintentionally—to the situation here where this Court does not have jurisdiction.

[24] If the Appeals Division had told Mr. Xu that there was a 30-day time limit it would have helped ensure that he was aware of it.

[25] That said, I want to make clear that I express no concern about the Appeals Division pre-emptively considering whether an extension of time can be granted under s. 303 if a person attempts to file an objection more than 90 days after the assessment date. In fact, I acknowledged in Web Listings that it is readily apparent why the Appeals Division would do so.

[26] In the circumstances, I cannot decide the application on its merits. Instead, I have no choice but to quash the application. No costs are awarded.

Signed this 22nd day of May 2026.

"Perry Derksen"

Derksen J.

CITATION:

2026 TCC 102

COURT FILE NO.:

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STYLE OF CAUSE:

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REASONS FOR ORDER BY:

The Honourable Justice Perry Derksen

DATE OF ORDER:

May 22, 2026

APPEARANCES:

For the Applicant:

The Applicant himself

Counsel for the Respondent:

Maitland Shaheen

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