Federal Court of Appeal  Cour d'appel fédérale

Date: 20130605

Docket: A-389-12

Citation: 2013 FCA 149

CORAM: **TRUDEL J.A.**
STRATAS J.A.
MAINVILLE J.A.

BETWEEN:

TELE-MOBILE COMPANY PARTNERSHIP

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on May 16, 2013.

Judgment delivered at Ottawa, Ontario, on June 5, 2013.

REASONS FOR JUDGMENT BY: MAINVILLE J.A.

CONCURRED IN BY: TRUDEL J.A.
STRATAS J.A.

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REASONS FOR JUDGMENT

MAINVILLE J.A.

[1] This concerns an appeal from a judgment of Campbell J. Miller J. of the Tax Court of Canada ("Tax Court Judge") dated July 17, 2012, the amended reasons for which are dated August 13, 2012 and cited as 2012 TCC 256 ("Reasons"). The Tax Court Judge dismissed the appeal of Tele-Mobile Company Partnership ("TELUS") from the assessment made by the Minister of National Revenue denying input tax credits to TELUS under sections 181 and 181.1 of the *Excise Tax Act*, R.S.C. 1985, c. E-15, for the reporting periods between January 2, 2001 and December 31, 2002.

BACKGROUND AND CONTEXT

[2] For the purpose of attracting subscribers to its long-term wireless phone service contracts, TELUS offered various promotional programs which were principally tied to the purchase of a cellular phone. Pursuant to one aspect of these promotional programs, TELUS provided billing credits to certain subscribers who agreed to enter into long-term service contracts. The billing credit varied for each customer depending on the length of the service contract entered into, but was typically $50 for a one-year term contract, $100 for a two-year term contract, and $150 for a three-year term contract.

[3] The billing credit would be applied on the customer's wireless phone service invoice where (a) the customer purchased a phone at a retail store which could not sign the customer up to the TELUS service and could not therefore give the customer a point of sale discount; (b) the customer renewed a contract with TELUS without purchasing a new phone; (c) the customer switched from a month-to-month plan to a contract term; or (d) the customer was a corporate client which received additional acquisition credits as part of a corporate agreement involving the purchase of handsets for corporate use.

[4] TELUS applied the billing credits to its customers' invoices after all the charges were totalled, which included the applicable Goods and Services tax ("GST") calculated on all those charges. Thus, customers paid the GST (then applied at the rate of 7%) on the full consideration charged by TELUS for its service, and before the billing credits were applied.

[5] The Tax Court Judge reproduced in his Reasons an illustrative invoice from TELUS, and that invoice is attached as Appendix "A" to these reasons. The handwritten calculations at the bottom of this invoice were added for the purposes of the proceedings in the Tax Court of Canada, and consequently did not appear on the original invoice sent to the customer.

[6] TELUS did not immediately claim input tax credits (also referred to herein as "ITCs") in relation to the billing credits it had provided to its customers in 2001 and 2002. For reasons which are not disclosed by the record, TELUS did not claim these ITCs until 2005 and 2006. Then, to justify its entitlement to the ITCs, TELUS took the position that each billing credit was a "coupon" as defined in subsection 181(1) of the *Excise Tax Act* allowing it to claim an ITC pursuant to paragraph 181(3)(*b*) of the *Excise Tax Act*. As an alternative argument, TELUS took the position that each billing credit was a rebate entitling it to claim an ITC pursuant to section 181.1 of the *Excise Tax Act*.

[7] The Tax Court Judge found that the billing credits were not "coupons" for the purposes of section 181 of the *Excise Tax Act*. However, he did find that the billing credits were rebates. Nevertheless, he was of the view that these rebates could not give rise to ITCs under section 181.1 of the *Excise Tax Act* since TELUS, by failing to provide a sufficiently clear written indication that portions of the rebates were on account of the GST, had not met the requirements of that section. TELUS now appeals to this Court.

BILLING CREDITS AS "COUPONS"

[8] The Tax Court Judge found that the billing credits did not fall under the definition of "coupon" found in subsection 181(1) of the *Excise Tax Act*. Sections 181 and 181.1 of that Act are reproduced as a schedule to these reasons. However, for ease of reference, I will also reproduce here the definition of "coupon" found in subsection 181(1):

"coupon" includes a voucher, receipt, ticket or other device but does not include a gift certificate or a barter unit (within the meaning of section 181.3).	« bon » Sont compris parmi les bons les pièces justificatives, reçus, billets et autres pièces. En sont exclus les certificats-cadeaux et les unités de troc au sens de l'article 181.3.

[9] TELUS recognized that the billing credits were not vouchers, receipts or tickets. However. it submitted that they were electronic credits in its computer system which its customers held intangibly in their accounts and that, as a result, they were "other device[s]" contemplated by the definition of "coupon".

[10] The Tax Court Judge did not accept this submission. He found that a billing credit was "not some thing entitling the customer to the reduction – it is the reduction itself" (Reasons at para. 26), and that "the purpose of s[ection] 181 relates to the treatment of a coupon not a straightforward discount" (Reasons at para. 29). He further found that in order to fall under the definition of a "coupon", a device must be something which the customer can present for acceptance (Reasons at paras. 39-40). He recognized that "a customer's entitlement to a reduction in price can be effected electronically" (Reasons at para. 27). He was also of the view "that where the fixed amount is clearly known to both sides, and is evidenced in writing, as hard copy or electronically, that can be

offered by a customer as partial consideration, the requirement [of section 181] has been met" (Reasons at para. 35). However, he further found that TELUS had simply advertised its discount, and not set up a coupon system (Reasons at para. 35). He concluded his analysis as follows:

> [42] In summary, TELUS offered a discount. You buy a three-year term contract, you get $150 off your charges. That is it. That is the promotion. There was no coupon or device or anything like airline points, for example. It was just a discount on the price of the charges: nothing was presented by the customer and accepted by TELUS in anything that could under even the broadest definition of coupon or device be viewed as such. I agree with the Respondent that if I found this discount offered by TELUS was a coupon, I am in effect writing the word coupon out of the provision. I cannot do that.

[11] I agree with the Tax Court Judge. The position advanced by TELUS would allow just about any advertised discount to be considered as a "coupon" for the purposes of section 181 of the *Excise Tax Act*. In order to fall under section 181, a "coupon" must be a physical or electronic device which the purchaser can submit for acceptance as full or partial consideration for a taxable supply of property or a service, and which entitles the purchaser to a reduction of the price of the property or service equal to a fixed dollar amount specified in the physical or electronic device: subsections 181(2) and (3) of the *Excise Tax Act*. An advertised discount, without more, does not meet these statutory requirements.

REBATES

[12] Turning to TELUS's alternative submission, the Tax Court Judge found that the billing credits were indeed rebates. The conditions that allow a registrant to claim an ITC on a rebate are set out in the introductory provisions of section 181.1 of the *Excise Tax Act*. One of those conditions

is that the registrant "provides written indication that a portion of the rebate is an amount on account of tax" (paragraph 181.1(*c*)). The debate before the Tax Court Judge turned on whether the TELUS invoices met that requirement.

[13] TELUS took the position that by adding up all the charges set out in its invoice, and by multiplying that sum by the then applicable GST rate of 7%, any customer would readily understand that the GST had been applied to the entire charges prior to the rebate. In the view of TELUS, this was sufficient written indication that the rebate itself must have included a GST component giving rise to an ITC claim for TELUS under section 181.1.

[14] The Tax Court Judge agreed that had the recipient of the invoice carried out these calculations, he or she would have concluded that the GST had been applied to the entire charges prior to the rebate. The Tax Court Judge, however, was of the view that, in order to meet the requirements of section 181.1, the "written indication" must be "sufficiently clear" (Reasons at para. 50). Applying that standard to the TELUS invoice, the Tax Court Judge found that it did not provide a sufficiently clear indication that a portion of the rebate was an amount on account of tax. Rather, he concluded that the invoice was confusing, noting the following at para. 51 of his Reasons:

> The TELUS invoice is confusing. A "written indication" should be clear. It is not – to anyone. It invites the recipient to assume the credit has been offset against the price, yet then goes on to calculate the GST as though the credit was applied after the GST attached to the price. It takes too much sorting out to figure this out and falls well short, I find, of "written indication".

[15] Though I conclude that the Tax Court Judge reached the right result, I do so for different reasons. I agree with the respondent that, in addition to a literal interpretation, it is necessary to apply a contextual and purposive interpretation to section 181.1 of the *Excise Tax Act* in order to understand the type of written indication called for under that section. Following the contextual and purposive interpretation further set out below, I conclude that the required written indication serves two purposes: (a) to allow a customer who is a registrant to determine if the GST component of a rebate should be treated in accordance with paragraph 181.1(*f*) of the *Excise Tax Act*; and (b) to inform the customer that the rebate is reduced by its GST component. In the light of these purposes, an opportunity for a customer to calculate the GST does not met the requirements of section 181.1.

The Modern Approach to Statutory Interpretation

[16] Today, there is just one approach to statutory interpretation. That approach was described as follows by McLachlin C.J. and Major J. in *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at paragraph 10:

> It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words plays a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

[17] Under the modern contextual approach to statutory interpretation, regard must be had not only to the ordinary and natural meaning of the words, but also to the context in which they are used and the purpose of the provision considered as a whole within the legislative scheme in which it is found: *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, 2002 SCC 42 at para. 27. The most significant element of this analysis is the determination of legislative intent: *R. v. Monney*, [1999] 1 S.C.R. 652 at para. 26.

The General Scheme of the GST

[18] The legislation enacting the GST was passed by Parliament in December 1990 as part of the *Excise Tax Act*. It received Royal Assent on December 17, 1990. It was then calculated at a rate of 7% and applies to most sales of taxable supplies, including most goods and services. The GST is designed as a value added tax. It is therefore collected and reimbursed at every stage along the production and marketing chain, with the final consumer ultimately being the one to pay the tax on the entire accumulated value of the good or service: *Reference re Quebec Sales Tax*, [1994] 2 S.C.R. 715 at p. 720.

[19] For this purpose, those who form part of the production chain must register under the *Excise Tax Act*. Each registrant who sells a taxable supply down the production and distribution chain must collect and remit the tax on that supply. However, each registrant is also entitled to input tax credits which are normally equal to the tax paid by the registrant on the products and services it acquires upstream of the production and distribution chain. As a result of this system of tax collections and of input tax credits, each registrant pays the tax on the value it added to the product or service, and

passes on that tax downstream the production and distribution chain. The tax is ultimately assumed by the consumer.

[20] The GST replaced the federal sales tax. The old federal sales tax was applied on sales by manufacturers to wholesalers and retailers. These would, in turn, pass the tax on to consumers in the form of higher prices. The federal sales tax was thus not apparent to the consumers. The "hidden" nature of the federal sales tax, the fact that it applied at different rates, and the fact that wholesale and retail mark-ups varied considerably from product to product, made it almost impossible for the consumer to know just how much federal tax was being assumed in the sale price of the product.

[21] One of the fundamental purposes of introducing the GST was to provide transparency in the tax system. Under the general scheme of the GST, each participant is now able to clearly understand the amount of tax it is actually paying. The visibility and transparency of the GST was, and still is, one of the key aspects of the GST.

Rebates and the GST

[22] Within the overall scheme of the GST, coupons and price rebates pose particularly difficult issues. The first legislation introducing the GST (S.C. 1990, c. 45, s.12) set out special rules for coupons and rebates in then section 181 of the *Excise Tax Act*. Under these rules, a registrant which paid a rebate was also deemed to have received the rebate as a taxable supply and to have paid tax in respect of the tax fraction of the rebate. Under the general scheme of the GST, this entitled the registrant to claim an ITC on the GST portion of the rebate. Conversely, the customer who was also

a registrant was deemed to have made a taxable supply equal to the rebate and to have collected a corresponding tax. The treatment of the GST component of the rebate was automatic, compulsory and inflexible.

[23] However, rebates are often complex transactions which do not easily fit into a single category for the purposes of GST treatment. As an example, if a registrant sells a product at a discount by providing a rebate at point of sale, the customer should not normally be required to pay the GST calculated as if the item was sold at the full price. Yet the original legislative rules dealing with the GST treatment of rebates were ambiguous about such business practices.

[24] Conversely, many rebates are provided after the original sale transactions have occurred and after the GST has been collected on these transactions. As an example, a rebate may be provided on past sales after a certain volume of sales has been achieved. In this last example, many questions arise: Should the GST component of the rebate be reimbursed? And if so, who should benefit from such reimbursement? Considerations of administrative ease and efficiency in the management of the GST must also be considered in such cases.

[25] In light of these complexities, it was not long after the introduction of the GST that legislative amendments were adopted and made to apply to rebates paid after 1992 (S.C. 1993, c. 27, ss. 46(2) and (4)). These amendments introduced a new requirement: in order to claim an ITC related to a rebate the registrant must provide the customer with written indication that a portion of the rebate is an amount on account of tax. This had the effect of making the requirements of section

181.1 optional at the discretion of the registrant providing the rebate. This allowed considerable flexibility in the treatment of the GST component of rebates to better accommodate the practical operations of the marketplace.

[26] Thus, the amendments removed any uncertainty about those point of sale rebates which were applied to the sale price before the GST was calculated. In those cases, the registrant simply deducts the GST from the original sale price, and charges GST on the discounted price. Since, in such circumstances, the rebate does not contain a GST component, the registrant does not provide the written indication called for under section 181.1, and avoids altogether the application of the section.

[27] The requirement of a written indication for section 181.1 to come into play also served two other purposes. First, it enabled the customer who is a registrant to determine whether it would be required to account for the GST portion of the rebate in accordance with section 181.1: Information Release 92-064 of the Department of Finance, September, 1992, at p. 4. Second, it served to draw to the customer's attention the treatment of the GST component of the rebate "and thus increase the prospect that the marketplace will demand that the rebate be adjusted to reflect the input tax credit received by the manufacturer": D.M. Sherman, *Canada GST Service*, Binder C4, Carswell, Toronto at p. 181-207.

[28] To better understand the purposes for which a written indication is required under section 181.1, it is useful to consider some of the options available to a registrant that provides a rebate.

[29] The registrant may apply the rebate to the price prior to the calculation of the GST. Subject to certain statutory restrictions, this option may be available for rebates provided at point of sale. This was in fact the option used by TELUS for many of its promotional programs offering a rebate on the purchase of a phone, where the rebate would be applied to the price of the phone prior to GST being applied: Reasons at paras. 4 and 6; Appeal Book ("AB") Vol. 2 p. 321 lines 23 to 28. If this option is pursued, the customer receives the full credit for the GST portion of the rebate. As an example:

Original price	$100.00
Less Discount (or rebate)	$50.00
Total Sale Price	$50.00
GST (at the then rate of 7%)	$3.50
Customer's disbursement	$53.50

In this example, the registrant has obviously excluded the GST portion of the rebate from the transaction. It therefore need not (and cannot) provide the written indication required by section 181.1. The registrant has, in this case, effectively opted out of section 181.1 by ensuring that the customer does not incur GST in regard to the rebated portion of the sale price.

[30] However, the registrant may also choose to apply the rebate after the GST has been itself applied to the full price. This was the option which TELUS used for the billing credits: Reasons at para. 6; AB Vol. 2 p. 322 lines 8 to 16. In such circumstances, the registrant has options.

[31] As a first option, the registrant remits the full GST charged for the supply, including the GST related to the rebate. It can proceed to claim an ITC pursuant to section 181.1 of the *Excise Tax Act*. But in order to do so, the registrant must provide written indication to the customer that a portion of the rebate is on account of tax. One reason for this is that, under this option, the customer is at a loss. Indeed, the actual rebate provided to the customer is less than its nominal value, *i.e.* the value of rebate is reduced by its GST component. The customer must be made aware of this. As an example:

Original price	$100.00
GST (at the then rate of 7%)	$7.00
Total Price	$107.00
Less Discount (or rebate)	$50.00
Customer's disbursement	$57.00

[32] As a second option, the registrant can compensate the customer by providing an enhanced rebate which takes into account the GST component of the rebate. By so enhancing the rebate, the registrant places the customer in essentially the same position as if the rebate had been applied to the original price prior to the calculation of the GST. The registrant thus "passes on" to the customer the input tax credit related to the rebate. The registrant can here also claim the ITC under section 181.1 of the *Excise Tax Act*, but in this case it is doing so not as a benefit to itself, but as part of a flow-though to the customer. The following example illustrates the matter:

Original price	$100.00
GST (at the then rate of 7%)	$7.00
Total Price	$107.00
Less enhanced rebate	$53.50
Customer's disbursement	$53.50

[33] The net effect of all this is to allow the registrant (in this case TELUS) the option of either passing on to the customer the GST related portion of the rebate, or of holding on and thus benefiting from this GST related portion.

[34] TELUS essentially submits that by providing the customer with an opportunity to calculate how the GST was determined, it met the requirements of section 181.1 and was thus entitled to claim an ITC on the rebate portion of the GST. TELUS states that an opportunity to calculate is sufficient since "GST registrants often face challenges in determining the GST impact of transactions" but "are nonetheless required to correctly account for the GST"(TELUS memorandum at paras. 78-79). It adds that when Parliament requires information to be in a specific and detailed form, it provides for this. Thus, in the view of TELUS, "[i]f Parliament had intended to require more than a mere indication, or that an invoice (or discount device) be formatted in a specific manner as held by the lower Court, words similar to the [Credit Note and Debit Note Information (GST/HST)] Regulations would be present in section 181.1"(TELUS memorandum at para. 86).

[35] I disagree with the position advanced by TELUS. In my view, a mere opportunity to calculate is insufficient in light of the above-described purposes of the written indication. The legislation requires more than an opportunity to calculate. It requires an actual written indication.

[36] To put it simply, the written indication is required from TELUS under section 181.1 to allow its customer which is a registrant (the "particular person who is a registrant" referred to in section 181.1) to determine whether a GST component is included or not in the rebate, and if so, to treat that GST component in accordance with paragraph 181.1(*f*) of the *Excise Tax Act*. The written indication also serves the purpose of ensuring transparency in the GST aspects of the transaction by informing the customer that the rebate provided by TELUS is less than the nominal value of the rebate itself.

[37] In light of its purposes, the written indication called for under section 181.1 of the *Excise Tax Act* must be more than a simple opportunity for the customer to calculate and figure out how the registrant (here TELUS) treated the GST aspects of the rebate.

[38] To sustain a claim to an input tax credit under section 181.1 of the *Excise Tax Act*, a registrant (here TELUS) must either break down the GST component of the rebate and indicate in writing the resulting amount to the customer, or alternatively, indicate in writing to the customer that a portion of the rebate is an amount on account of tax using the words of paragraph 181.1(*c*) of the *Excise Tax Act* or similar words. TELUS did not do so in this case.

CONCLUSION

[39] I would dismiss this appeal, with costs in favour of the respondent.

"Robert M. Mainville"

J.A.

"I agree
Johanne Trudel J.A."

"I agree
David Stratas J.A."

SCHEDULE

181. (1) The definitions in this subsection apply in this section.

181. (1) Les définitions qui suivent s'appliquent au présent article.

"coupon"

« *bon* »

"coupon" includes a voucher, receipt, ticket or other device but does not include a gift certificate or a barter unit (within the meaning of section 181.3).

« bon »

"*coupon*"

« bon » Sont compris parmi les bons les pièces justificatives, reçus, billets et autres pièces. En sont exclus les certificats-cadeaux et les unités de troc au sens de l'article 181.3.

"tax fraction"

« *fraction de taxe* »

"tax fraction" of a coupon value or of the discount or exchange value of a coupon means

« fraction de taxe »

"*tax fraction*"

« fraction de taxe » Quant à la valeur ou la valeur de rabais ou d'échange d'un bon :

(a) where the coupon is accepted in full or partial consideration for a supply made in a participating province, the fraction

a) dans le cas où le bon est accepté en contrepartie, même partielle, d'une fourniture effectuée dans une province participante, le résultat du calcul suivant :

A/B

where

où :

A

is the total of the rate set out in subsection 165(1) and the tax rate for that participating province, and

A

représente la somme du taux fixé au paragraphe 165(1) et du taux de taxe applicable à la province,

B

is the total of 100% and the percentage determined for A; and

B

la somme de 100 % et du pourcentage déterminé selon l'élément A;

(b) in any other case, the fraction

C/D

where

C
is the rate set out in subsection 165(1), and

D
is the total of 100% and the percentage determined for C.

b) dans les autres cas, le résultat du calcul suivant :

C/D

où :

C
représente le taux fixé au paragraphe 165(1),

D
la somme de 100 % et du pourcentage déterminé selon l'élément C.

(2) For the purposes of this Part, other than subsection 223(1), where at any time a registrant accepts, in full or partial consideration for a taxable supply of property or a service (other than a zero-rated supply), a coupon that entitles the recipient of the supply to a reduction of the price of the property or service equal to a fixed dollar amount specified in the coupon (in this subsection referred to as the "coupon value") and the registrant can reasonably expect to be paid an amount for the redemption of the coupon by another person, the following rules apply:

(a) the tax collectible by the registrant in respect of the supply shall be deemed to be the tax that would be collectible if the coupon were not accepted;

(b) the registrant shall be deemed to have collected, at that time, a portion of the tax collectible equal to the tax fraction of the coupon value; and

(2) Pour l'application de la présente partie, sauf le paragraphe 223(1), lorsqu'un inscrit accepte, en contrepartie, même partielle, de la fourniture taxable d'un bien ou d'un service, sauf une fourniture détaxée, un bon qui permet à l'acquéreur de bénéficier d'une réduction du prix du bien ou du service égale au montant fixe indiqué sur le bon (appelé « valeur du bon » au présent paragraphe) et que l'inscrit peut raisonnablement s'attendre à recevoir un montant pour le rachat du bon, les présomptions suivantes s'appliquent :

a) la taxe percevable par l'inscrit relativement à la fourniture est réputée égale à celle qui serait percevable s'il n'acceptait pas le bon;

b) l'inscrit est réputé avoir perçu, au moment de l'acceptation du bon, la partie de la taxe percevable qui correspond à la fraction de taxe de la valeur du bon;

(c) the tax payable by the recipient in respect of the supply shall be deemed to be the amount determined by the formula

A - B

where

A
is the tax collectible by the registrant in respect of the supply, and

B
is the tax fraction of the coupon value.

(3) Where at any time a registrant accepts, in full or partial consideration for a taxable supply of property or a service (other than a zero-rated supply), a coupon that entitles the recipient of the supply to a reduction of the price of the property or service equal to a fixed dollar amount specified in the coupon or a fixed percentage, specified in the coupon, of the price (the amount of which reduction is, in each case, referred to in this subsection as the "coupon value") and the registrant can reasonably expect not to be paid an amount for the redemption of the coupon by another person,

(a) the registrant shall, for the purposes of this Part, treat the coupon as

(i) reducing the value of the consideration for the supply as provided for in subsection (4), or

(ii) a partial cash payment that

c) la taxe payable par l'acquéreur relativement à la fourniture est réputée égale au montant calculé selon la formule suivante :

A - B

où :

A
représente la taxe percevable par l'inscrit relativement à la fourniture,

B
la fraction de taxe de la valeur du bon.

(3) Lorsqu'un inscrit accepte, en contrepartie, même partielle, de la fourniture taxable (sauf une fourniture détaxée) d'un bien ou d'un service un bon qui permet à l'acquéreur de bénéficier d'une réduction sur le prix du bien ou du service égale au montant fixe indiqué sur le bon ou à un pourcentage fixe, indiqué sur le bon, du prix (le montant de la réduction étant, dans chaque cas, appelé « valeur du bon » au présent paragraphe) et que l'inscrit peut raisonnablement s'attendre à ne pas recevoir de montant pour le rachat du bon, les règles suivantes s'appliquent :

a) pour l'application de la présente partie, l'inscrit doit considérer que le bon :

(i) soit réduit la valeur de la contrepartie de la fourniture en conformité avec le paragraphe (4),

(ii) soit représente un paiement

does not reduce the value of the consideration for the supply; and

(b) where the registrant treats the coupon as a partial cash payment that does not reduce the value of the consideration for the supply, paragraphs (2)(a) to (c) apply in respect of the supply and the coupon and the registrant may claim an input tax credit for the registrant's reporting period that includes that time equal to the tax fraction of the coupon value.

(4) For the purposes of this Part, if a registrant accepts, in full or partial consideration for a supply of property or a service, a coupon that may be exchanged for the property or service or that entitles the recipient of the supply to a reduction of, or a discount on, the price of the property or service and paragraphs (2)(a) to (c) do not apply in respect of the coupon, the value of the consideration for the supply is deemed to be the amount, if any, by which the value of the consideration for the supply as otherwise determined for the purposes of this Part exceeds the discount or exchange value of the coupon.

(5) For the purposes of this Part, where, in full or partial consideration for a taxable supply of property or a service, a supplier who is a registrant accepts a coupon that may be exchanged for the property or service or that entitles the recipient of the supply to a reduction of, or a discount on, the price of the property or service

au comptant partiel qui ne réduit pas la valeur de la contrepartie de la fourniture;

b) si l'inscrit considère que le bon est un paiement au comptant partiel qui ne réduit pas la valeur de la contrepartie de la fourniture, les alinéas (2)a) à c) s'appliquent à la fourniture et au bon, et l'inscrit peut demander, pour sa période de déclaration qui comprend le moment de l'acceptation du bon, un crédit de taxe sur les intrants égal à la fraction de taxe de la valeur du bon.

(4) Pour l'application de la présente partie, lorsqu'un inscrit accepte, en contrepartie, même partielle, de la fourniture d'un bien ou d'un service, un bon auquel les alinéas (2)a) à c) ne s'appliquent pas et qui est échangeable contre le bien ou le service ou qui permet à l'acquéreur de bénéficier d'une réduction ou d'un rabais sur le prix du bien ou du service, la valeur de la contrepartie de la fourniture est réputée égale à l'excédent éventuel de cette valeur, déterminée par ailleurs pour l'application de la présente partie, sur la valeur de rabais ou d'échange du bon.

(5) Pour l'application de la présente partie, lorsqu'un fournisseur qui est un inscrit accepte, en contrepartie, même partielle, de la fourniture taxable d'un bien ou d'un service, un bon qui est échangeable contre le bien ou le service ou qui permet à l'acquéreur de bénéficier d'une réduction ou d'un rabais sur le

and a particular person at any time pays, in the course of a commercial activity of the particular person, an amount to the supplier for the redemption of the coupon, the following rules apply:

prix du bien ou du service, et qu'une autre personne verse dans le cadre de ses activités commerciales un montant au fournisseur pour racheter le bon, les règles suivantes s'appliquent :

(a) the amount shall be deemed not to be consideration for a supply;

a) le montant est réputé ne pas être la contrepartie d'une fourniture;

(b) the payment and receipt of the amount shall be deemed not to be a financial service; and

b) le versement et la réception du montant sont réputés ne pas être des services financiers;

(c) if the supply is not a zero-rated supply and the coupon entitled the recipient to a reduction of the price of the property or service equal to a fixed dollar amount specified in the coupon (in this paragraph referred to as the "coupon value"), the particular person, if a registrant (other than a registrant who is a prescribed registrant for the purposes of subsection 188(5)) at that time, may claim an input tax credit for the reporting period of the particular person that includes that time equal to the tax fraction of the coupon value, unless all or part of that coupon value is an amount of an adjustment, refund or credit to which subsection 232(3) applies.

c) lorsque la fourniture n'est pas une fourniture détaxée et que le bon permet à l'acquéreur de bénéficier d'une réduction sur le prix du bien ou du service égale au montant fixe indiqué sur le bon (appelé « valeur du bon » au présent alinéa), l'autre personne, si elle est un inscrit (sauf un inscrit visé par règlement pour l'application du paragraphe 188(5)) au moment du versement, peut demander, pour sa période de déclaration qui comprend ce moment, un crédit de taxe sur les intrants égal à la fraction de taxe de la valeur du bon, sauf si tout ou partie de cette valeur représente le montant d'un redressement, d'un remboursement ou d'un crédit auquel s'applique le paragraphe 232(3).

181.1 Where

181.1 Lorsqu'un inscrit effectue au Canada la fourniture taxable, sauf une fourniture détaxée, d'un bien ou d'un service qu'une personne acquiert de l'inscrit ou de quelqu'un d'autre et verse à la personne, relativement au bien ou au service, une remise, à laquelle le paragraphe 232(3) ne

s'applique pas, accompagnée d'un écrit portant qu'une partie de la remise représente un montant de taxe, les règles suivantes s'appliquent :

(a) a registrant makes a taxable supply in Canada of property or a service (other than a zero-rated supply),

(b) a particular person acquires the property or service, either from the registrant or from another person,

(c) the registrant pays, at any time, a rebate in respect of the property or service to the particular person and therewith provides written indication that a portion of the rebate is an amount on account of tax, and

(d) subsection 232(3) does not apply to the rebate,

the following rules apply:

(e) the registrant may claim an input tax credit for the reporting period of the registrant that includes that time equal to the product obtained when the amount of the rebate is multiplied by the fraction (in this section referred to as the "tax fraction in respect of the rebate")

a) l'inscrit peut demander, pour sa période de déclaration qui comprend le moment du versement de la remise, un crédit de taxe sur les intrants égal au produit du montant de la remise par la fraction (appelée « fraction de taxe relative à la remise » au présent article) déterminée selon le calcul suivant :

A/B

where

A
is

(i) if tax under subsection

A/B

où :

A
représente :

(i) si la taxe prévue au

165(2) was payable in respect of the supply of the property or service to the particular person, the total of the rate set out in subsection 165(1) and the tax rate of the participating province in which that supply was made, and

(ii) in any other case, the rate set out in subsection 165(1), and

B

is the total of 100% and the percentage determined for A, and

(f) where the particular person is a registrant who was entitled to claim an input tax credit, or a rebate under Division VI, in respect of the acquisition of the property or service, the particular person shall be deemed, for the purposes of this Part, to have made a taxable supply and to have collected, at that time, tax in respect of the supply equal to the amount determined by the formula

A × (B/C) × D

where

A

is the tax fraction in respect of the rebate,

B

is the input tax credit or rebate under Division VI that the particular person was entitled to claim in respect of the acquisition of the property or service,

C

is the tax payable by the particular person in respect of the acquisition of

paragraphe 165(2) était payable relativement à la fourniture du bien ou du service au profit de la personne, la somme du taux fixé au paragraphe 165(1) et du taux de taxe applicable à la province participante dans laquelle cette fourniture a été effectuée,

(ii) dans les autres cas, le taux fixé au paragraphe 165(1),

B

la somme de 100 % et du pourcentage déterminé selon l'élément A;

b) pour l'application de la présente partie, la personne est réputée, si elle est un inscrit qui peut demander un crédit de taxe sur les intrants, ou un remboursement en vertu de la section VI, relativement à l'acquisition, avoir effectué une fourniture taxable et avoir perçu, au moment du versement de la remise, la taxe relative à la fourniture, calculée selon la formule suivante :

A × (B/C) × D

où :

A

représente la fraction de taxe relative à la remise,

B

le crédit de taxe sur les intrants ou le remboursement visé à la section VI que la personne pouvait demander relativement à l'acquisition,

C

la taxe payable par elle relativement à l'acquisition,

D

the property or service, and

D is the amount of the rebate paid to the particular person by the registrant.

la remise que l'inscrit lui a versée.

APPENDIX A

[redacted]

INVOICE DATE: 01-Feb-02 CLIENT N°.: 01463052
PAGE 2 of ?page?

ACCOUNT DETAIL

Current Charges - Detail
250-215-1985

Monthly Service Plans

Service Plan Name	Total
Talk $20/150 3Yr (Feb 2 to Mar 1)	20.00
Talk $20/150 (Jan 23 to Feb 1)	-6.00
Talk $20/150 3Yr (Jan 23 to Feb 1)	6.00
Talk $20/150 (Jan 12 to Feb 1)	13.33
Total	$ 33.33

Additional Local Airtime

Service	Total Minutes Used	Included Minutes Used	Chargeable Minutes Used	Total	
Phone (minutes)	223:52	129:51	94:01	19.76	
Total					$ 19.76

Long Distance, Roaming and Other Call Charges

Service	LD Minutes Used	LD Charges	Roaming Minutes Used	Roaming Charges	Other Charges	Total	
Phone (minutes)	134:18	32.26	0:00	0.00	0.00	32.26	
Total							$ 32.26

Value-added Services

Service	Total
Caller ID	3.00
Caller ID	2.00
Unlimited Local Calling	0.00
Wireless Web - Surf Sampler	0.00
Total	$ 5.00

Other Charges and Credits

Charge or Credit	Total
Account Set-Up Fee	25.00
Contract Handset Cred 3Yr	-125.00
Total	$ -100.00

Network and Licensing Charges

Charge	Total
911 Emergency Access Charge	0.25
911 Emergency Access Charge	0.00
911 Emergency Access Charge	0.17
System Licensing Charge	6.95
System Licensing Charge	0.00
System Licensing Charge	4.83
Total	$ 12.00

Taxes

G.S.T.	6.91
P.S.T. British Columbia	8.91
Total Taxes	$ 17.82

Total Current Charges: $ 20.17

$33.33 + $19.76 + $32.26 + $5.00 + $25.00 + $12.00
= $127.35 x .07
= $8.91

8.91 145.17 - 125.00 B12-2

?wwwwwwwwwwconsec nowwwwwwwwwww?

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-389-12
APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE CAMPBELL J MILLER DATED JULY 17, 2012, DOCKET NUMBER 2009-2959(GST)G	
STYLE OF CAUSE:	**TELE-MOBILE COMPANY PARTNERSHIP v. HER MAJESTY THE QUEEN**
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	May 16, 2013
REASONS FOR JUDGMENT BY:	MAINVILLE J.A.
CONCURRED IN BY:	TRUDEL J.A STRATAS J.A.
DATED:	June 5, 2013

APPEARANCES:

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