Docket: 2004-600(GST)G

BETWEEN:

MUNICIPAL DISTRICT OF SPIRIT RIVER NO. 133,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
County of Two Hills No. 21, 2004-1606(GST)G and
County of Lethbridge, 2004-1974(GST)G
on December 15 and 16, 2008, at Calgary, Alberta

By: The Honourable Justice Campbell J. Miller

Appearances:

Counsel for the Appellants:	Curtis Stewart
Counsel for the Respondent:	Marta Burns and Kim Palichuk

JUDGMENT

The appeal from the assessment made under the *Excise Tax Act*, notice of which is dated September 10, 2002, for the period from July 1, 2001 to September 30, 2001, is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that:

1. For the relevant period, Spirit River is entitled to input tax credits (net of PSB rebate) for the grant programs no longer in dispute as follows:

Rural Road Study Initiative Program	$ 1,194.74
Resource Road/New Industry Program	$22,898.45
Canada-Alberta Infrastructure Program	$ 0.00
Bridge/Culverts Agreement Program	$ 0.00

2. For the relevant period, Spirit River is entitled to input tax credit (net of PSB rebate) in respect of RTG program amounts no longer in dispute in the amount of $28,003.17.

3. For the relevant period, Spirit River is not entitled to input tax credit (net of PSB rebate) in respect of RTG program amounts no longer in dispute in the amount of $3,314.89.

4. For the relevant period, Spirit River is not entitled to input tax credits in respect of the RTG program in the amount of $29,235.44 as road gravelling activities pursuant to such program are exempt supplies.

I make no award of costs at this stage, reserving the right to do so, pending submissions from counsel.

Signed at Ottawa, Canada, this 20th day of January 2009.

"Campbell J. Miller"

C. Miller J.

Docket: 2004-1606(GST)G

BETWEEN:

COUNTY OF TWO HILLS NO. 21,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Municipal District of Spirit River No. 133, 2004-600(GST)G and
County of Lethbridge, 2004-1974(GST)G
on December 15 and 16, 2008, at Calgary, Alberta

By: The Honourable Justice Campbell J. Miller

Appearances:

Counsel for the Appellants:	Curtis Stewart
Counsel for the Respondent:	Marta Burns and Kim Palichuk

JUDGMENT

The appeal from the assessment made under the *Excise Tax Act*, notice of which is dated October 7, 2003, for the period from July 1, 2001 to September 30, 2001, is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that:

1. For the relevant period, Two Hills is entitled to input tax credits (net of PSB rebate) for the grant programs no longer in dispute, as follows:

Street Improvement Program	$6,246.99
Rural Road Study Initiative Program	$1,208.12
Resource Road/New Industry Program	$7,392.29
Secondary Highways Transition Agreement	$ 0.00
Bridge/Culvert Agreements Program	$ 0.00

2. For the relevant period, Two Hills is entitled to input tax credit (net of PSB rebate) in respect of RTG program amounts no longer in dispute, in the amount of $25,298.79.

3. For the relevant period, Two Hills is not entitled to input tax credit (net of PSB rebate) in respect of RTG program amounts no longer in dispute in the amount of $20,951.12.

4. For the relevant period, Two Hills is not entitled to input tax credits in respect of the RTG program in the amount of $66,053.56 as road gravelling activities pursuant to such program are exempt supplies.

I make no award of costs at this stage, reserving the right to do so, pending submissions from counsel.

Signed at Ottawa, Canada, this 20th day of January 2009.

"Campbell J. Miller"

C. Miller J.

Docket: 2004-1974(GST)G

BETWEEN:

COUNTY OF LETHBRIDGE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Municipal District of Spirit River No. 133, 2004-600(GST)G and
County of Two Hills No. 21, 2004-1606(GST)G
on December 15 and 16, 2008, at Calgary, Alberta

By: The Honourable Justice Campbell J. Miller

Appearances:

Counsel for the Appellants:	Curtis Stewart
Counsel for the Respondent:	Marta Burns and Kim Palichuk

JUDGMENT

The appeal from the assessment made under the *Excise Tax Act*, notice of which is dated April 10, 2003, for the period from April 1, 2001 to June 30, 2001, is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that:

1. For the relevant period, Lethbridge is entitled to input tax credits (net of PSB rebate) for the grant programs no longer in dispute as follows:

Rural Road Study Initiative Program	$ 293.03
Resource Road/New Industry Program	$60,830.60
Secondary Highways Transition Agreement	$ 0.00
Bridge/Culvert Agreements Program	$ 0.00

2. For the relevant period, Lethbridge is entitled to input tax credit (net of PSB rebate) in respect of RTG program amounts no longer in dispute in the amount of $90,702.36.

3. For the relevant period, Lethbridge is not entitled to input tax credit (net of PSB rebate) in respect of RTG program amounts no longer in dispute in the amount of $28,909.77.

4. For the relevant period, Lethbridge is not entitled to input tax credits in respect of the RTG program in the amount of $68,512.52 as road gravelling activities pursuant to such program are exempt supplies.

I make no award of costs at this stage, reserving the right to do so, pending submissions from counsel.

Signed at Ottawa, Canada, this 20th day of January 2009.

"Campbell J. Miller"

C. Miller J.

Citation: 2009 TCC 42
Date: 20090120
Docket: 2004-600(GST)G
2004-1606(GST)G
2004-1974(GST)G

BETWEEN:

MUNICIPAL DISTRICT OF SPIRIT RIVER NO. 133,
COUNTY OF TWO HILLS NO. 21 and
COUNTY OF LETHBRIDGE,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Miller J.

[1] As a Tax Court Judge, I am often called upon to decide matters wholly within the domain or expertise of others. This case brought by the County of Lethbridge, Municipal District of Spirit River No. 133 and the County of Two Hills No. 21 is a classic example of what I mean. Does regravelling a gravel road constitute road maintenance? And why is this important tax-wise? Because road maintenance is an exempt supply pursuant to subsection 21.1*(d)* of Part VI of Schedule V of the *Excise Tax Act*[1] precluding the Appellants from claiming input tax credits.

[2] The parties provided an Agreed Statement of Facts. The Appellants presented the evidence of Mr. Brandon Smith, a consultant to Alberta rural municipalities and Dr. Delwyn Fredlund, an expert in unsaturated soils and the gravelling of unpaved roads. The Respondent presented the evidence of Mr. Jim Coxford, an expert on the process of gravelling roads.

[3] It is worth repeating parts of the Agreed Statement of Facts, though I will interject evidence from documents and testimony where appropriate.

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[1] R.S.C. 1985, c. E-15, as amended.

PART I: GENERAL FACTS APPLICABLE TO ALL THE APPELLANTS

1. At the relevant times the Province of Alberta ("Alberta") entered into agreements with the Appellant municipalities pursuant to the *Public Highways Development Act* ("*Highways Act*") whereby Alberta agreed to provide grants to the municipalities to carry out certain projects and activities on roads owned by Alberta. One such program was the Rural Transportation Grant ("RTG") program.

2. Pursuant to the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the "Act"), the Appellant municipalities receive a public service body rebate ("PSB").

3. During the relevant period, the Appellant municipalities claimed full input tax credits ("ITC"), less any PSB, with respect to GST paid on property or services consumed, used or supplied in the course of carrying on the eligible activities associated with the grant programs, including the RTG program.

4. The Minister denied the ITC and, upon institution of the Appeals, the following issues arose in determining whether the Appellants were entitled to the ITC claimed:

(a) Whether, in the context of each grant program, the Appellant municipalities made a supply to Alberta;

(b) Whether the grant funding was consideration for those supplies; and

(c) If (a) and (b) were answered in the affirmative, whether all or any of the supplies were exempt supplies pursuant to Section 21.1 of Part VI of Schedule V of the Act.

5. The parties proceeded before the Tax Court of Canada pursuant to section 58 of the *Tax Court of Canada Rules* (General Procedure) for the determination of questions of law in respect of the first two issues.

6. In a decision dated February 14, 2006, the Honourable Justice R.D. Bell of the Tax Court of Canada determined that with respect to each of the grant programs in issue, the Appellants did make a supply to Alberta. Further the Court held that with the exception of the Canada-Alberta Infrastructure Program and the Bridge/Culvert Agreements Program that the grant funding was consideration for that supply.

7. In light of the determinations made by the Tax Court on the issues before it and this Agreed Statement of Facts, the parties have narrowed down the remaining issue to whether ITC amounts related to gravelling costs claimed through the RTG program between the years 1997 to 2001 were exempt supplies pursuant to section 21.1 of Part VI of Schedule V of the Act.

8. Thus, the legal issue in the appeals is whether road gravelling (excepting "spot gravelling") constitutes an exempt supply pursuant to section 21.1(d) of Part VI of Schedule V of the Act.

PART II: THE RTG PROGRAM

9. The objective of the RTG program is to assist rural municipalities with local road systems.

Section 7.1 of the Administrative Guidelines for the Rural Transportation Grant[2] reads as follows:

> **7.1 Objective**
>
> To assist Alberta counties, municipal districts, Métis Settlements and the Special Areas by providing annual grants for lasting improvements to their local road system. To assist rural municipalities in the development of a network of roads to a uniform standard commensurate with demand and need; to increase safety of the travelling public through dust control; and, to ensure required engineering is undertaken for approved projects.

10. Under the RTG program, the municipalities were required to provide to Alberta, for its review and approval, a listing of proposed work for the upcoming year, generally on or before April 1 of the upcoming year.

Several letters from the municipalities were produced, setting forth the upcoming projects. It is informative to repeat part of one of those letters. The following is an excerpt from a letter from the County of Lethbridge to Alberta Transportation dated June 27, 1997,[3] which reads in part:

> We wish to thank you for the allocation of a Transportation Grant to the County of Lethbridge in the amount of $388,207.
>
> The grant funds are greatly appreciated and needed in order to assure the safety of the traveling public through proper design construction and maintenance of the road system infrastructure.
>
> [emphasis added]

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2 Joint Book of Documents, Exhibit A-2, Tab 17, Appendix "A".

3 Joint Book of Documents, Exhibit A-2, Tab 35.

> 11. Projects such as grading/re-grading, gravelling, base course, paving, seal coat, signing, pavement markings, and dust abatement were eligible activities under the RTG program.

Under 7.3.3 of the Administrative Guidelines for the Rural Transportation Grant, maintenance is listed as an activity that is not eligible for funding.

> 12. Upon review of the listing of proposed work, Alberta advised the municipality of the grant allocation. Funding was provided for 100% of approved projects up to the municipality's annual allocation.

The municipalities would file a final accounting with the province, confirming how the funds were spent.

PART III: THE AGREEMENTS

13. Section 21 of the *Highways Act* authorizes the Province to enter into an agreement with any municipality to contribute to the cost of construction or maintenance of any street or road.

14. Memorandum of Agreements ("Agreements") were entered into between the Province and each of the Appellants pursuant to section 21 of the *Highways Act* in which funds were granted to the Appellants for projects approved under the RTG program.

The preamble to the Memorandums of Agreement[4] between the Province of Alberta and the municipalities states:

> Whereas, under Section 21 of the Public Highways Development Act, the Province may enter into an agreement with any urban or rural Municipality for the construction of any street or road, that is subject to its direction, control and management; …

…

PART IV: ROAD GRAVELLING

17. In the prairie portion of Alberta, gravel roads are generally comprised of a gravel top layer and a clay sub-grade or bottom layer.

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[4] Joint Book of Documents, Exhibit A-2, Tab 4.

18. Road gravelling involves one of two processes. The first process, which forms the remaining issue in these appeals is the application of a gravel lift either: 1) on top of newly constructed clay sub-grade, or 2) on top of an existing layer of gravel and existing clay sub-grade. The second process is "spot gravelling" which involves placing gravel on a problem area of a road.

19. The Appellants had discretion to decide when and where to apply gravel lifts to the roads.

20. The method used to apply gravel lifts to an existing road is gravel-truck. The gravel-truck is loaded with gravel at a gravel pit or a gravel stockpile site. The gravel truck drives to the gravel road. The gravel truck then raises its box or opens its gates and drives slowly along the road until it's [*sic*] load is emptied. This is done repeatedly until sufficient gravel is placed on the selected section of road.

21. During the relevant period, all gravel lifts were applied to existing gravel roads. Some gravelling occurred on secondary highways.

It was Mr. Smith's evidence that 95% of the roads in question were at least 10 years old. The regravelling on mature roads was applied every three to five years.

PART V: THE APPELLANTS

(A) COUNTY OF TWO HILLS NO. 21

…

28. If the road gravelling activities undertaken by Two Hills under the RTG program are not exempt supplies pursuant to section 21.1 of Part VI of Schedule V of the Act, the parties agree that Two Hills is further entitled to input tax credits (net of PSB rebate) in respect of the RTG program in the amount of $66,053.56.

(B) MUNICIPAL DISTRICT OF SPIRIT RIVER NO. 133

…

35. If the road gravelling activities undertaken by Spirit River under the RTG program are not exempt supplies pursuant to section 21.1 of Part VI of Schedule V of the Act, the parties agree that Spirit River is entitled to further input tax credits (net of PSB rebate) in respect of the RTG program in the amount of $29,235.44.

(C) COUNTY OF LETHBRIDGE

…

43. If the road gravelling activities undertaken by Lethbridge under the RTG program are not exempt supplies pursuant to section 21.1 of Part VI of Schedule V of the Act, the parties agree that Lethbridge is further entitled to input tax credits (net of PSB rebate) in respect of the RTG program in the amount of $68,512.52.

[4] I turn now to the two experts' reports. Their evidence was an interesting study in contrast. Dr. Fredlund, an eminent academic specializing in unsaturated soils, presented a theoretical approach to gravelling, relying on his own research, study papers and theses of his graduate students over the years. Mr. Coxford presented a practical approach having driven throughout the municipalities on the roads in issue and relying on his experience in the road construction industry, including 16 years working on the Alaska highway project. With one notable exception they did not so much disagree with one another as simply approach the issue from two different planets. The notable exception was that Dr. Fredlund suggested that the gravel added to a gravel road is lost over time not just due to traffic displacing it, but also due to the coarse gravel becoming fine gravel, mixing into the clay layer beneath the surface gravel, causing a strengthening of the road generally. Mr. Coxford, upon inspecting the roads, concluded that the gravel was displaced almost entirely by traffic; he found little, if any, mixing at the interface of the gravel and clay, concluding that gravelling was to "return the granular surfacing material to its original thickness and strength".

[5] The thrust of Dr. Fredlund's opinion was best captured in his answer to the following question:[5]

> **Question 4.) Would lifts of gravel applied subsequent to the initial lift of gravel incorporated into a gravel road constitute a 'betterment' to the road?**
>
> Yes. Lifts of gravel applied subsequent to the initial lift of gravel result in a 'betterment' to the road in that the integrity of the road surface is improved. The benefits associated with gravelling a road are only partially realized through the initial gravel application. Gravelling a road should be viewed as a "process" that embraces several applications of gravel and leads towards the completed construction of the gravel road. The "betterment" of the roadway, or the benefits associated with gravelling a road, can only be realized as integrity is built into the subsurface mixture of clay and gravel. Additional lifts of gravel subsequent to the initial application of gravel result in structural improvement to the road.

[6] Dr. Fredlund included a chart to describe the process of gravel road construction, which suggested improved quality of the road with the first few applications of gravel over the first few years of the road's existence, to what he called the transition stage. After those first few years, the chart indicates "sustained quality", although in examination Dr. Fredlund suggested that even the later applications of gravel resulted in an increase in the strength or integrity of the road due to some mixing at the interface. However, he also acknowledged in cross-examination that regravelling did bring the road to the requisite design standard, or the standard reached at the transition stage.

[7] Mr. Coxford did a first hand inspection of the roads, including excavating test holes in the roads themselves. He reached two conclusions. First, that deterioration of the gravel surface layer was mainly as a result of traffic removing gravel from the road, and second, that mixing of gravel with the subgrade material was minimal to non-existent.

[8] Mr. Coxford also referred me to the "Highway Maintenance Guidelines and Level of Service Manual" provided by the Province of Alberta to highway maintenance contractors. Section 3.4 of that manual deals with surface regravelling. The first paragraph reads as follows:[6]

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5 Exhibit A-3, pages 2 and 3.

6 Exhibit R-1, Tab 3, page 19.

> The excessive loss of gravel from a roadway results in loss of traction, a reduction in strength, rutting, and deterioration of the roadway surface and side slopes. Gravelled roadways require regravelling, on average, once every three years. In the late fall of each year the department will inspect all gravel roads for the purpose of condition rating. Part of the condition rating process will be to determine which roadways will require regravelling in the following year. A roadway will be considered for regravelling when it exhibits any of the following characteristics: …

Issue

[9] Are the gravelling activities of the Appellants the supply of a service of repairing or maintaining roads? If so, the Appellants are not entitled to claim input tax credits in connection with such exempt supplies.

Analysis

[10] Section 21.1 of Part VI of Schedule V of the *Excise Tax Act*, which sets out exempt supplies, reads:

> 21.1 A supply made by a municipality or a board, commission or other body established by a municipality of a service of
>
> (*a*) installing, replacing, repairing or removing street or road signs or barriers, street or traffic lights or property similar to any of the foregoing;
>
> (*b*) removing snow, ice or water;
>
> (*c*) removing, cutting, pruning, treating or planting vegetation;
>
> (*d*) repairing or maintaining roads, streets, sidewalks or similar or adjacent property; or [emphasis added]
>
> (*e*) installing accesses or egresses.

[11] This is not complicated language, yet the Appellants suggest that if "repair or maintenance" can support more than one reasonable meaning, the ordinary meaning should play a lesser role and a textual, contextual and purposive analysis should be preferred. The law at times seems to delight in contorting itself into unimaginable and complicated positions to accommodate a result, when stepping back and adopting a simple common sense approach will lead directly to the correct answer. Is regravelling a mature gravel road every three to five years road maintenance? I certainly think so. The Government of Alberta in its own highway maintenance

guidelines obviously thinks so. The County of Lethbridge in its own letters to the Province in connection with the RTG clearly thinks so. I would even suggest the reasonable Albertan driving by the gravel truck on a balmy summer day, while the truck regravels the surface, would think so. Indeed, the answer lies in the very question: how could something to be done every three years in the long life of a road be anything other than maintenance? So, why has this become so difficult and complicated?

[12] It has become complicated for a variety of reasons: first, because the provisions of the *Excise Tax Act* that are in play (sections 21 and 21.1) were not directed at the unique position of the gravel activities of municipalities being considered a supply to the Province; second, because Mr. Smith saw an opening for counties to get more than the public service body rebate to which they were entitled; third, because language is imperfect and certainly that applies to legislative language; fourth, because experts disagree. I could go on – I will not. I will though go through a more thorough analysis called for by the very capable arguments of counsel, addressing the complicating factors, yet reaching the same common sense result.

[13] To be clear at the outset, it is not for the Province of Alberta and the municipalities to determine what is road maintenance for purposes of the *Excise Tax Act* (it is certainly up to them to determine what are eligible projects for purposes of the RTG), nor is it for experts to make that determination, nor is it to be found determinatively in dictionaries: no, it is up to this Court, taking all those factors into account. As was so well put by the Federal Court of Appeal in *Shaklee Canada Inc. v. Minister of National Revenue*:[7]

> 16 Statutes are presumed to be written for the people they affect, and Courts will strive for interpretations that respect as much as possible this presumption within the constraints of other competing, contextual factors.
>
> 17 The goal of all of these rules is to give effect to Parliament's intent. To aid this process, Courts often refer to dictionaries. They may also consider the testimony given by expert witnesses, or other relevant aids such as academic and government publications. It is important to remember, however, that none of these aids are decisive. In the final analysis, a Court must exercise its own judgment in weighing all the relevant factors in the factual and legislative context of the case.

[14] I will approach this task by first determining, without reference to any agreements between the Province of Alberta and the Appellants, whether the gravel

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7 [1996] 1 C.T.C. 180 (F.C.A.).

activities constitute road maintenance. Once determining that the activities do constitute maintenance, I will then consider whether this conclusion should be overturned by reliance on the wording of the agreements between the Province of Alberta and the Appellants. I will conclude with a brief consideration of the policy implications of sections 21 and 21.1.

[15] A good starting point is the definition section of the *Alberta Public Highway Development Act*.[8] Notwithstanding that Appellants' counsel urged me not to consider this issue in terms of road maintenance versus road construction, he did provide me with a definition of both of those terms as set out in that *Act*:

> 1*(b)* "construction" means the construction or reconstruction of a highway and the doing of whatever other work is necessary to put a highway in a condition for use by vehicles, but does not include maintenance;
>
> …
>
> 1*(k)* "maintenance" means the preservation and repair of a highway and any other work necessary to keep the highway in serviceable condition; …

[16] I agree that it is unnecessary to ask, if not road maintenance then what is it? The only question is whether it is road maintenance. Is it the preservation and repair of a road to keep the road in serviceable condition? Dictionary definitions also capture the concept of preservation. The Canadian Oxford Dictionary defines "maintain" as "preserve or provide for preservation of a road in good repair". The Respondent's Oxford Dictionary definition stated "keep in good condition by checking or repairing regularly". The Appellants argue that there is no element of improvement in these definitions and, given the evidence that suggests there was some improvement, it must be something other than maintenance. I disagree. The Appellants are implying far more in the word improvement than is justified. Putting gravel on the road is certainly not going to make the road worse: the road will be better for the gravel lift, but it will still be in substance a serviceable gravel road. The distinction comes by adding the term "lasting" to improvement, and also in considering improvement to take something beyond what it already is. I think the Appellants' argument fails on both fronts.

[17] Was the improvement lasting? No. There seems to be agreement amongst everyone involved, including the experts, that regravelling is required on a regular

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[8] R.S.A. 2000, c. P-38, as amended.

basis. One gravel lift cannot be said to be lasting; indeed, as soon as that first vehicle drives over the road, the road surface starts to deteriorate. That is not lasting.

[18] Nor does a gravel lift take the road to the state of a different road. I heard no evidence that the gravel lifts resulted in the speed limits being increased or different vehicles being allowed on the road. The road remained a gravel road servicing the same traffic in the same manner both before and after the gravel lift.

[19] The Appellants rely on Dr. Fredlund's testimony to suggest there is a level of improvement which would characterize the regravelling as something other than maintenance. Dr. Fredlund's evidence was that the first few lifts were really part of the initial road construction, strengthening the road and rendering it impermeable to a stage that he called the transition stage, or as the Respondent put it, to the required design standard level. The fact is, I am not dealing with these first few gravel lifts. I am faced with the subsequent regravelling on mature roads, which Dr. Fredlund's own chart refers to as "sustaining quality". I acknowledge that he clarified his position by testifying that even in those subsequent gravel lifts some strengthening of the road occurred by the mixing process. Certainly, that was the theory. Mr. Coxford, who actually drove over the roads and tested them, advised that the mixing was minimal to non-existent. I conclude that the regravelling had no strengthening impact and that both the purpose and result of the regravelling was to replace displaced gravel. All to say, the experts' evidence confirms my layperson's view of the regravelling. It was nothing more than preservation of the gravel road, and under any definition that is maintenance.

[20] I find further justification for this conclusion in the Province of Alberta's very own guidelines quoted earlier. The Province has included in its maintenance guidelines a whole section on surface regravelling, confirming that roadways require regravelling every three years. No mention is made of lasting improvement or that the regravelling process results in a new or reconstructed road. It is simply maintenance.

[21] The parties did refer to cases dealing with road repairs, but they do not add to my understanding of road maintenance.

[22] I turn now to whether my conclusion is impacted by the agreements between the Province of Alberta and the Appellants. To recap, section 21 of the *Public Highways Development Act* states that the Minister may agree with municipalities to "contribute to the cost of construction and maintenance of any street or road". The preambles of the agreements themselves refer only to "construction of any street or road". Further, the RTG guidelines specifically in section 7.3.3 cite "maintenance" as an activity not eligible for funding, while specifically stating "gravelling" is an eligible project. This leaves an implication that the Province did not consider "gravelling" to be maintenance for purposes of funding the municipalities. The Province, however, was not addressing the *Excise Tax Act*. Further, the agreement could possibly be interpreted that gravelling, being specifically cited as eligible, was an express exception to the ineligible maintenance projects. I heard no evidence from either officials of the Appellants or the Province of Alberta to assist in the interpretation of these provisions. I simply am not swayed by the language.

[23] The Appellants relied on the following comment from *Hidden Valley Golf Resort Association v. R.*,[9] citing the case of *Dyrham Park Country Club v. Customs and Excise Commissioners*, [1978] V.A.T.T.R. 244 (U.K.) at 252:

> In our opinion, where the parties enter into a transaction involving a supply by one to another, the tax (if any) chargeable thereon falls to be determined by reference to the substance of the transaction, but the substance of the transaction is to be determined by reference to the real character of the arrangements into which the parties have entered.

[24] The real character of the arrangements I would suggest is that gravelling should receive financing. How the gravelling might have been characterized by the parties does not go to the real character of the deal. It certainly is not persuasive for purposes of the *Excise Tax Act*.

[25] I am influenced in reaching this conclusion by the letter of the County of Lethbridge to the Province, blatantly referring to the gravelling as maintenance. This supports my view that the gravelling is to be read as maintenance, even in the context of the RTG guidelines, as an exception to the category of ineligible projects.

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9 [2000] F.C.J. No. 869.

[26] I am further confirmed in this view by Alberta's highway maintenance guidelines alluded to earlier, which recognize regravelling as maintenance. The RTG guidelines and the agreements between the Province of Alberta and the Appellants are not sufficient to satisfy me that the gravelling activity is anything other than maintenance for purposes of the *Excise Tax Act*.

[27] Finally, I wish to address the policy implications in sections 21 and 21.1 of the *Excise Tax Act*. It is clear from the Government's technical notes[10] in July 1997 that section 21 exempts road maintenance provided to property owners as a standard municipal service, though did not cover the situation of supplying such services to individual households on a fee for service basis. So, a new section 21.1 was introduced making all supplies of such services exempt when provided by a municipality. The Government notes state:

> New section 21.1 of Part VI of Schedule V exempts the supply of a number of services when made by a municipality or by a board, commission or other body established by a municipality. Services currently exempt under section 21 of this Part include road repair and maintenance, snow removal and tree pruning where they are provided to property owners as a standard municipal service. However, section 21 does not exempt these services where they are supplied to individual households on a fee-for-service basis. New section 21.1 makes all supplies of these services exempt when provided by a municipality or by a body established by a municipality. [emphasis added]
>
> Section 21 of Part VI of Schedule V contains a general exemption for standard municipal services provided to property owners in a particular locale. This includes such services as road building and street lighting. In most municipalities, these services are financed from general revenues. In some cases, the municipality may identify the cost of the service separately to the resident. This provision is intended to ensure that such charges are not taxable.
>
> [emphasis added]

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[10] Amendments to the *Excise Tax Act*, the *Federal-Provincial Fiscal Arrangements Act*, the *Income Tax Act*, the *Debt Servicing and Reduction Accounts Act* and Related Acts, Explanatory Notes, published by the Honourable Paul Martin, P.C., MP, Minister of Finance, July 1997.

[28] Clearly, these provisions simply do not contemplate a supply by a municipality to the Provincial Government. Section 259 rebates are to address such services by a municipality, but this Court has ruled that the gravelling is a supply, and I must therefore apply these provisions in a manner no one contemplated. As a supply, there is no question it is a supply of a service. It is only then to be determined if the nature of the supply is road maintenance. I have concluded it is, and, therefore, the conditions of subsection 21.1*(d)* are met and the supply is exempt. I am satisfied the result is the result that is within the spirit and object of the *Excise Tax Act* vis-à-vis public sector bodies. We in the tax community – judges, tax lawyers, tax accountants, tax consultants, tax legislators and taxpayers deal with the most complicated and complex legislation in the statutes. We should perhaps resist the urge to dipsy doodle through the legislation seeking imaginative means to use legislative complexities in an unintended manner to achieve a desired result, further complicating these already complex laws.

Conclusion

[29] The parties have agreed:

> 25. For the relevant period the parties agree that Two Hill's [*sic*] is entitled to input tax credits (net of PSB rebate) for the grant programs no longer in dispute, as follows:
>
> | | |
> |---|---|
> | Street Improvement Program | $6,246.99 |
> | Rural Road Study Initiative Program | $1,208.12 |
> | Resource Road/New Industry Program | $7,392.29 |
> | Secondary Highways Transition Agreement | $ 0.00 |
> | Bridge/Culvert Agreements Program | $ 0.00 |
>
> 26. For the relevant period the parties agree that Two Hills is entitled to input tax credit (net of PSB rebate) in respect of RTG program amounts no longer in dispute, in the amount of $25,298.79.
>
> 27. For the relevant period the parties agree that Two Hills is not entitled to input tax credit (net of PSB rebate) in respect of RTG program amounts no longer in dispute in the amount of $20,951.12. …
>
> 32. For the relevant period the parties agree that Spirit River is entitled to input tax credits (net of PSB rebate) for the grant programs no longer in dispute as follows:
>
> | | |
> |---|---|
> | Rural Road Study Initiative Program | $ 1,194.74 |

Resource Road/New Industry Program	$22,898.45
Canada-Alberta Infrastructure Program	$ 0.00
Bridge/Culverts Agreement Program	$ 0.00

33. For the relevant period the parties agree that Spirit River is entitled to input tax credit (net of PSB rebate) in respect of RTG program amounts no longer in dispute in the amount of $28,003.17.

34. For the relevant period the parties agree that Spirit River is not entitled to input tax credit (net of PSB rebate) in respect of RTG program amounts no longer in dispute in the amount of $3,314.89. …

40. For the relevant period the parties agree that Lethbridge is entitled to input tax credits (net of PSB rebate) for the grant programs no longer in dispute as follows:

Rural Road Study Initiative Program	$ 293.03
Resource Road/New Industry Program	$60,830.60
Secondary Highways Transition Agreement	$ 0.00
Bridge/Culvert Agreements Program	$ 0.00

41. For the relevant period the parties agree that Lethbridge is entitled to input tax credit (net of PSB rebate) in respect of RTG program amounts no longer in dispute in the amount of $90,702.36.

42. For the relevant period the parties agree that Lethbridge is not entitled to input tax credit (net of PSB rebate) in respect of RTG program amounts no longer in dispute in the amount of $28,909.77.[11]

[30] With respect to the gravelling activities at issue before me, I have concluded such activities are exempt supplies and therefore:

(i) Two Hills is not entitled to further input tax credits in the amount of $66,053.56.

(ii) Spirit River is not entitled to further input tax credits in the amount of $29,235.44.

(iii) Lethbridge is not entitled to further input tax credits in the amount of $68,512.52.

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[11] Agreed Statement of Facts dated December 15, 2008, Exhibit A-1.

[31] The parties indicated at the conclusion of the trial that they may wish to make representations as to costs depending on the outcome. I therefore make no award of costs at this stage, reserving the right to do so, pending submissions from counsel.

Signed at Ottawa, Canada, this 20th day of January 2009.

"Campbell J. Miller"

C. Miller J.

CITATION:	2009 TCC 42
COURT FILE NOS.:	2004-600(GST)G, 2004-1606(GST)G and 2004-1974(GST)G
STYLE OF CAUSE:	MUNICIPAL DISTRICT OF SPIRIT RIVER NO. 133, COUNTY OF TWO HILLS NO. 21 AND COUNTY OF LETHBRIDGE AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Calgary, Alberta
DATE OF HEARING:	December 15 and 16, 2008
REASONS FOR JUDGMENT BY:	The Honourable Justice Campbell J. Miller
DATE OF JUDGMENT:	January 20, 2009

APPEARANCES:

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Counsel for the Respondent:	Marta Burns and Kim Palichuk

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