

BETWEEN:

DR. KEVIN L. DAVIS DENTISTRY PROFESSIONAL CORPORATION,
Appellant,

and

HER MAJESTY THE QUEEN,
Respondent.

Appeal heard on August 19 and 20, 2020, at Toronto, Ontario

Before: The Honourable Justice Susan Wong

Appearances:

Counsel for the Appellant: Neil E. Bass and Josh Kumar
Counsel for the Respondent: Rishma Bhimji and Priya Bains

JUDGMENT

The appeal from the assessments under the *Excise Tax Act* in respect of the periods of October 1 to December 31, 2015 and January 1 to March 31, 2016 is allowed with costs.

The parties shall have until May 31, 2021 to reach an agreement on costs, failing which the appellant shall file written submissions by June 30, 2021 and the respondent shall file a written response by July 30, 2021. Any such submissions shall not exceed five pages in length. If the parties do not advise the Court that they have reached an agreement and no submissions are received by these dates, then costs shall be awarded to the appellant in accordance with Tariff B.

Signed at Ottawa, Canada, this 25th day of March 2021.

“Susan Wong”

Wong J.

Citation: 2021 TCC 25
Date: 20210325
Docket: 2017-2086(GST)G

BETWEEN:

DR. KEVIN L. DAVIS DENTISTRY PROFESSIONAL CORPORATION,
Appellant,

and

HER MAJESTY THE QUEEN,
Respondent.

REASONS FOR JUDGMENT

Wong J.

Introduction

[1] The issue in this appeal is whether the Minister of National Revenue properly disallowed input tax credits (“ITCs”) claimed by the appellant for the two quarterly reporting periods of October 1 to December 31, 2015 and January 1 to March 31, 2016. There is a related appeal numbered 2018-1981(GST)G which is being held in abeyance pending the disposition of this matter.

[2] Specifically, the Minister disallowed the appellant’s claim for ITCs on the basis that the appellant’s patient invoices did not set out the consideration for the zero-rated supply of orthodontic appliances separately from the consideration for the exempt supply of orthodontic services. The Minister says that she was therefore unable to determine whether the appellant made multiple supplies and the extent to which the supplies were linked to a commercial activity (which in turn determines entitlement to ITCs). As a result, the Minister concluded that the appellant’s supplies were tax-exempt.¹

[3] In the respondent’s reply to the notice of appeal, the Minister uses subsection 298(6.1) of the *Excise Tax Act* to advance the additional argument that the appliances are either an integral or incidental part of a single overall supply of tax-exempt orthodontic treatment. The Minister also says that even if the appliances are a separate supply, they are still tax-exempt so the appellant cannot claim ITCs.

Issues

[4] Did the appellant make single supplies of orthodontic services to its patients, or multiple supplies consisting of both zero-rated supplies of orthodontic appliances plus tax-exempt supplies of orthodontic services?

[5] Are the appellant's supplies of orthodontic appliances tax-exempt or zero-rated?

[6] In claiming ITCs for the supply of orthodontic appliances, did the appellant comply with the documentary requirements of subsection 169(4) of the Act?

Preliminary matter

[7] A procedural matter arose following the examination-in-chief of Dr. Davis, the principal of the appellant. The appellant had served a supplementary list of documents on the respondent approximately a week before the hearing. On receiving the supplementary list, counsel for the respondent advised the appellant's counsel that she intended to object because the documents in the supplementary list were central to this appeal and not provided forthwith, as required by section 87 of the *Tax Court of Canada Rules (General Procedure)*. The parties did not canvass in advance a possible adjournment of the hearing to facilitate examinations on the supplementary list and this issue did not come to light until counsel for the appellant sought to enter documents from the supplementary list into evidence.

[8] Following a discussion with the parties on the record, counsel for the appellant withdrew his request to enter the documents in question. Any testimony given by Dr. Davis with respect to these documents has not been considered by me in making this decision.

Legislative framework

[9] ITCs may be claimed by a registrant under the Act to the extent that the supplies in question are used in a commercial activity.² "Commercial activity" is defined in the Act and for the purposes of this appeal, it is only important to know that a commercial activity specifically excludes the making of exempt supplies.³

Exempt orthodontic supplies

[10] Schedule V, Part II deals with the tax-exempt status of health care services and the relevant portions are a collection of cascading and interconnected provisions. The starting point is that only a “qualifying health care supply” will fall within Schedule V, Part II (with certain irrelevant exceptions).⁴ A qualifying health care supply is, in turn, a supply made for the purpose of maintaining health, preventing disease, and treating an injury or disorder, among other things.⁵ Purely cosmetic procedures are generally not exempt.⁶

[11] Next, there are two specific ways by which the appellant’s orthodontic practice might have tax-exempt status: (1) the supply of a consultative, diagnostic, treatment or other health care service rendered by a medical practitioner to an individual;⁷ and (2) the supply of an institutional health care service by the operator of a health care facility to a patient or resident of the facility.⁸

[12] The terms “medical practitioner”, “institutional health care service”, and “health care facility” are all defined terms which I would paraphrase as follows:

- a. a medical practitioner is a person who is provincially licensed to practise medicine or dentistry;⁹
- b. an institutional health care service must be provided in a health care facility and includes:
 - 1) laboratory, radiological or other diagnostic services;
 - 2) drugs or related preparations administered while providing an institutional health care service;
 - 3) the use of operating rooms and case rooms, including necessary equipment or supplies;
 - 4) medical or surgical equipment or supplies either used while providing an institutional health care service or supplied to a patient of the facility; and
 - 5) services rendered by persons who are remunerated by the operator of the facility;¹⁰

- c. a health care facility is (among other things) a facility operated for the purpose of providing medical care, including acute, rehabilitative or chronic care.¹¹

Zero-rated orthodontic appliances

[13] Schedule VI, Part II deals with the zero-rating of medical and assistive devices. Specifically, section 11.1 states that the supply of an orthodontic appliance is zero-rated; this provision was added in 1997 and applies from April 23, 1996 onward.¹² Section 34 of Schedule VI, Part II says that services relating to the installation, maintenance, and repair of orthodontic appliances are also zero-rated.

[14] Before section 11.1 was enacted, orthodontic appliances were zero-rated as an orthopaedic brace under section 23 of Schedule VI, Part II. The zero-rating is unconditional regardless of whether the appliances fall under section 11.1 or 23.¹³

[15] There is no zero-rating for devices related to cosmetic service supplies.¹⁴

Claiming ITCs for zero-rated orthodontic appliances

[16] Subsection 169(4) of the Act says that before filing their return claiming an ITC, a registrant must have sufficient evidence to determine the credit including the prescribed information listed in the *Input Tax Credit Information (GST/HST) Regulations*.¹⁵ Section 3 of the Regulations says that the prescribed information itself depends on the total amount paid or payable shown on the supporting documentation for the supply. In the present appeal, the most relevant category is the highest one (supplies whose cost is \$150 or more) and the following prescribed information is required:

- a. name of the supplier or the name under which it does business;¹⁶
- b. date of invoice or, where no invoice is issued, the date tax is paid or payable;¹⁷
- c. total amount paid or payable for all of the supplies;¹⁸
- d. supplier's GST/HST registration number;¹⁹

- e. the amount of tax paid or payable in respect of each supply or all the supplies – required where the amount paid or payable for the supply/supplies does not include the amount of tax [*my emphasis*];²⁰
- f. any amount of provincial sales tax charged;²¹
- g. a statement that the tax for the taxable supplies is included, the total tax rate, and the amount paid or payable for each supply (or the total amount paid or payable for all supplies) to which the same total tax rate applies – required where the amount paid or payable for the supply/supplies includes the amount of tax and one or more supplies are taxable supplies that are not zero-rated [*my emphasis*];²²
- h. an indication of the status of each taxable supply that is not a zero-rated supply – required where the status of two or more supplies is different [*my emphasis*];²³
- i. name of recipient;²⁴
- j. terms of payment;²⁵ and
- k. a description of each supply sufficient to identify it.²⁶

[17] Section 2 of the Regulations defines “supporting documentation” to include invoices, receipts, credit card receipts, debit notes, account books or ledgers, written contracts or agreements, digital records, and any other document validly issued or signed by the registrant in respect of the supply in question.

[18] Subsection 169(5) of the Act also gives the Minister discretion to exempt registrants from any of the above documentation requirements plus specify the terms and conditions for exemption, where she is satisfied that there are or will be sufficient supporting records.

Administrative framework

[19] The Minister has an administrative arrangement with the Canadian Dental Association such that orthodontists may file their GST returns using 35% of the patient’s total treatment cost as an estimate of the consideration for the supply of the orthodontic appliance. When the actual figures become available (such as at year-

end), orthodontists are then required to reconcile their 35% ITC estimate with their actual taxable supplies.²⁷

[20] The arrangement acknowledges that an orthodontist may make multiple supplies consisting of an exempt consultative, diagnostic, treatment or other health care service along with a zero-rated supply of an orthodontic appliance. The arrangement also requires that the orthodontist identify the consideration for the zero-rated supply of the appliance separately from the consideration for the exempt supply of services.²⁸

Factual background

[21] The appellant is the professional corporation of Dr. Kevin Davis, who has been practising orthodontics since 1998. Dr. Davis owns a group of practices collectively called Davis Orthodontics which includes Red Hill Orthodontics (“Red Hill”), an existing practice he purchased in 2015. The disallowed ITCs which are the subject of this appeal pertain to orthodontic treatments provided by the appellant to its patients at Red Hill.

[22] Dr. Davis testified that during the period under appeal, he and two associate orthodontists treated patients at Red Hill along with a care team consisting of hygienists, dental assistants, administrative assistants, and treatment coordinators.

[23] He testified that as an orthodontist, he specializes in straightening teeth and jaws for both health-related and cosmetic reasons. He stated that new patients are typically referred to his clinic and the first meeting with them is a complimentary consultation. During a consultation, the clinic takes x-rays of the patient’s teeth; he then reviews these x-rays, has an initial discussion with the patient, performs a clinical assessment, and lastly discusses his findings and treatment options with the patient (and perhaps their parent) in a consultation room. If the patient (and their parent, as the case may be) wishes to proceed with treatment, then a treatment coordinator takes over from Dr. Davis to discuss payment options and further explain what the appliances look like.

[24] Dr. Davis explained that appliances are the tools in an orthodontist’s tool kit. With respect to the appliances themselves, he explained that they generally consist of: (1) braces which are glued on and prescribed for each tooth; (2) a series of clear, removable aligners called Invisalign which he customizes using software and a three-dimensional mould/scan of the patient’s teeth; (3) retainers or bite plates which are either used to move the teeth/jaws of younger children or to hold teeth in place

at the very end of treatment; and (4) growth modifiers which are used on growing children to make their jaws move into different positions. He stated that the appliances achieve the necessary movements while he determines what the movements will be.

[25] With respect to the Invisalign appliances, Dr. Davis explained that once he designs a series of aligners using their software, the Invisalign company manufactures them according to his specifications. He stated that the average series for one patient consists of about 30 aligners; the patient is expected to wear each aligner for about 20 hours a day and to change aligners on their own every one to two weeks as their teeth move. He testified that he would see the patient every two to four months to monitor the orthodontic movement; for most patients, it becomes necessary at some point to change the shape of the teeth by filing and/or polishing them and perhaps add tooth-colored glue “handles” to individual teeth to facilitate the necessary movement.

[26] Dr. Davis stated that the appropriate appliance for a particular patient would depend on their orthodontic problem. He explained that in some instances, one appliance might be clearly superior to another while in other instances, the options are comparable so he would discuss the pros and cons with the patient during the initial consultation to help them make an informed choice.

[27] He testified that while he is discussing treatment options with the patient, a treatment coordinator prepares a financial worksheet²⁹ for discussion with the patient and/or their parent immediately following the consultation. Dr. Davis stated that the treatment coordinator ordinarily puts the financial worksheet on a computer screen for discussion with the patient and/or parent while finalizing the payment plan with them. He testified that a worksheet is created for and reviewed with every patient, and that this procedure and the format of the worksheets were the same before and after the period under appeal. The worksheet has either Red Hill’s or Davis Orthodontics’ name and logo, is entitled “Worksheet – Treatment Payment Options”, and has blanks for the following information:

- a. the patient’s name
- b. the name of a responsible party (e.g. parent);
- c. a description of the treatment including the type (e.g. full orthodontic treatment), estimated duration, specific appliances selected by the patient (e.g. clear braces), and total treatment fee;

- d. a family discount (if the patient belongs to the same family as another clinic patient);
- e. the total amount due after applying the family discount;
- f. if installment payments will be made -- the amount of the initial payment, the remaining balance, the remaining balance broken down into the agreed number of monthly payments with a start date, and the method of payment;
- g. the name of the treatment coordinator;
- h. the name of the specific orthodontist seen by the patient; and
- i. a price list for three specific appliances, i.e. clear braces, retainers for life (a one-time fee for replacement retainers), and Acceledent (a vibrating device that makes tooth movement more comfortable). If selected, their cost would be included in the total treatment fee in (c) above.

[28] He explained that certain information from the completed worksheet would then be exported to a one-page financial agreement³⁰; the worksheet remains in the appellant's computer system while the patient takes the financial agreement with them. The agreement has Red Hill's name and logo, is entitled "Financial Agreement", and includes the following information:

- a. the patient's name;
- b. the name of a responsible party (e.g. parent);
- c. a description of the treatment including the type (e.g. full orthodontic treatment), estimated duration, specific appliances selected by the patient (e.g. clear braces), and total treatment fee;
- d. a family discount (if the patient belongs to the same family as another clinic patient);
- e. the total amount due after applying the family discount;
- f. if installment payments will be made -- the amount of the initial payment, the remaining balance, the remaining balance broken down into the agreed

number of monthly payments with a start date, and the method of payment (e.g. credit card);

- g. the date of the agreement; and
- h. signature line for the adult patient or responsible party, along with date of signature.

[29] The agreement includes several terms and conditions, and the important one for the purposes of this appeal reads as follows:

Our orthodontic fee includes a portion, up to 35%, relating to the value of orthodontic appliances as well as the value for the services of installing, maintaining, restoring, repairing or modifying your orthodontic appliances. All of our materials, appliances and services are either zero-rated or exempt for GST/HST purposes. As a result, GST/HST is not added or included in our orthodontic fees.³¹

[30] The appellant's bookkeeper Manuel Huerta testified that after the Minister assessed to disallow the ITCs in question in June 2016³², the financial agreements were revised to include a numerical breakdown of the total fee to show the portion attributed to the appliance versus consultative, diagnostic and treatment procedures. He testified that other than this change, the agreements remained the same and specifically, continued to include total treatment fee along with the clause regarding the 35% apportionment for appliances.³³ He also stated that at the appellant's year-end, he reconciles the 35% ITC estimate against the appellant's actual taxable supplies as a percentage of total revenue.³⁴

Analysis

[31] Modern statutory interpretation is founded on the basis that the words of an Act should 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.³⁵

[32] The Supreme Court of Canada has said that the particularity and detail of many tax provisions often leads to an emphasis on textual interpretation³⁶. Where there is more than one reasonable interpretation of a provision, it may be necessary to look more to context and purpose over the ordinary meaning of words³⁷. Legislative purpose does not replace clear statutory language but rather, assists to arrive at the most plausible interpretation of an ambiguous statutory provision.³⁸

Context and purpose may reveal and resolve latent ambiguities where the meaning of a provision does not appear to be ambiguous.³⁹

The appellant's orthodontic services (not including appliances) are exempt supplies

[33] There was no evidence or assertion that the appellant made cosmetic service supplies and aside from the specific issue of the orthodontic appliances, the parties otherwise agree that the appellant's orthodontic services were tax-exempt. Therefore, I do not propose to do an in-depth analysis of how one arrives at this conclusion other than to say that (aside from the issue of appliances) the appellant's orthodontic services are tax-exempt by both sections 2 and 5 of Schedule V, Part II depending on the aspect under discussion. For example, section 5 might apply more to the expertise provided directly to a patient by an orthodontist or their professional corporation (depending on who is licensed to practise) while section 2 might apply more to the accompanying supplies which are equally necessary but flow less directly from the orthodontist's expertise (e.g. taking x-ray images on-site).

[34] In the case of an orthodontic practice, a plain reading of sections 2 and 5 plus the relevant cascading and interconnected provisions shows that there is potential overlap in their application. It results in the appellant's orthodontic services (not including the appliances) being tax-exempt under sections 2, 5, or both.

The appellant's supplies of orthodontic appliances are zero-rated

[35] In the present case, the logical starting point is section 11.1 of Schedule VI, Part II. Section 11.1 is worded plainly ("a supply of an orthodontic appliance") and is situated within Schedule VI, Part II, so its context is that of medical and assistive devices.

[36] In a Goods and Services Tax Technical Paper issued by the Minister of Finance in 1989, the federal government introduced and explained the GST, which would replace the existing federal sales tax in January 1991.⁴⁰ The paper sets out that medical devices are tax-free and include orthopaedic braces, while health care services (both institutional health care services and those provided by health care practitioners) are tax-exempt and include dental services other than those which are purely elective and cosmetic.⁴¹

[37] When section 11.1 was added in 1997, the accompanying explanatory note from the Department of Finance read as follows:

New section 11.1 of Part II of Schedule VI unconditionally zero-rates a supply of an orthodontic appliance. Under the existing legislation, these appliances are zero-rated unconditionally under section 23 of this Part as an orthopaedic brace.

This amendment applies to supplies for which all of the consideration becomes due or is paid without having become due after April 23, 1996.⁴²

[38] To assist in understanding what “unconditionally” means in this instance, it is helpful to then review the Department of Finance’s 1997 explanatory note for section 23, which reads as follows:

Amended section 23 of Part II of Schedule VI combines sections 23 and 23.1 to clarify the treatment of orthotic and orthopaedic devices. Amended section 23 unconditionally zero-rates the supply of orthotic or orthopaedic devices that are made to order for an individual. It should be noted that orthodontic appliances are unconditionally zero-rated under new section 11.1. All other orthotic and orthopaedic devices will be zero-rated only where they are purchased under a prescription issued by a medical practitioner to a consumer. Therefore, items, such as cradle arm slings, cervical collars, knee braces and obus forms, are taxable at a rate of seven per cent unless purchased on the written order of a medical practitioner.

As of April 23, 1996, the term “medical practitioner” is used instead of “practitioner” for consistency with the terminology used in Part II of Schedule V...⁴³

[39] The Technical Paper shows that from the inception of the GST, Parliament intended for orthopaedic braces to be tax-free while the Finance explanatory notes show that orthodontic appliances were considered to be a zero-rated orthopaedic brace under section 23. The disciplines of orthodontics, orthopaedics and orthotics all deal with aspects of the musculoskeletal system (i.e. the body’s muscles and bones) so it is logical that their respective devices/appliances were all contemplated by Parliament’s contemporaneous amendment of section 23, repealing of section 23.1, and addition of section 11.1 in 1997.

[40] The Finance explanatory notes show that Parliament intended for the newly amended section 23 to unconditionally zero-rate orthotic and orthopaedic devices in only specific circumstances; at the same time, orthodontic appliances were moved from section 23 to newly created section 11.1 with an accompanying explanatory note which placed no limits on their unconditional zero-rating. It is reasonable to assume that Parliament wished to make it clear that the new limits introduced for orthotic and orthopaedic devices did not apply to orthodontic appliances.

[41] The statute makes it clear (and Parliamentary intent confirms) that a conventional orthodontic practice consists of exempt supplies of services and zero-rated supplies of appliances. It is unnecessary to use the common law test⁴⁴ for determining single versus multiple supplies or to consider whether the supply of an appliance is incidental to the supply of orthodontic treatment⁴⁵ because the statute has directly addressed the tax status of both.

[42] I am unaware of a legislative basis for finding that Schedule V takes precedence over Schedule VI where there is an apparent or potential conflict between the two. In my view, the correct reading of the provisions dealing with orthodontic services and appliances does not lead to a conflict in any event.

Supporting documentation for input tax credits

[43] In disallowing the appellant's ITC claim, the Minister found that the appellant failed to follow the requirements of the administrative arrangement⁴⁶ because the consideration for the zero-rated supply of the orthodontic appliance was not identified separately from the consideration for the exempt supply of orthodontic services on the patient invoices (i.e. the financial agreements).⁴⁷

[44] While this Court does not have the jurisdiction to resolve the ITC issue under appeal in terms of the administrative arrangement, I will make the observation that the arrangement itself would fall under the discretionary powers granted to the Minister by subsection 169(5) of the Act. By virtue of the arrangement, the Minister is using her statutory discretion to exempt orthodontists from certain requirements of subsection 169(4), and to specify terms and conditions of the exemption. This arrangement appears to have been in place since about 1991.⁴⁸

[45] With respect to the prescribed information in section 3 of the Regulations, the ones which are most relevant to the Minister's reference to consideration not being identified separately for zero-rated versus exempt supplies are as follows:

- a. total amount paid or payable for all of the supplies;⁴⁹
- b. the amount of tax paid or payable in respect of each supply or all the supplies – required where the amount paid or payable for the supply/supplies does not include the amount of tax [*my emphasis*];⁵⁰ and
- c. a statement that the tax for the taxable supplies is included, the total tax rate, and the amount paid or payable for each supply (or the total amount

paid or payable for all supplies) to which the same total tax rate applies – required where the amount paid or payable for the supply/supplies includes the amount of tax and one or more supplies are taxable supplies that are not zero-rated [*my emphasis*].⁵¹

[46] The appellant's financial agreement sets out the total treatment cost and itemizes the cost of any specific appliances selected by the patient (e.g. clear braces). The agreement's clause regarding 35% apportionment for appliances informs the patient that: (1) up to 35% of the orthodontic fee is being paid for appliances and appliance-related supplies, (2) all the appellant's supplies to the patient are either zero-rated or exempt, and (3) as a result, no GST/HST has been included in the fee.⁵²

[47] In the present situation, the only taxable supplies are zero-rated so prescribed information requirement (c) above does not apply. Since the total treatment fee in the financial agreement already includes the amount of tax (being zero), prescribed information requirement (b) above also does not apply.

[48] That leaves only prescribed information requirement (a) above, i.e. the total amount paid or payable for all of the supplies. This wording refers only to a total for all supplies so there is no requirement to separate the consideration for zero-rated versus exempt supplies; therefore, the appellant has met this statutory requirement.

[49] I am mindful of the Minister's administrative policy and will say that the 35% apportionment clause combined with the amount of the total treatment fee in the financial agreement seem to make the consideration allocated to the zero-rated appliances versus the exempt services sufficiently clear, i.e. it is calculable and unambiguous as to what 35% of a specific amount is.

Conclusion

[50] For all the above reasons, the appeal is allowed with costs.

[51] The parties shall have until May 31, 2021 to reach an agreement on costs, failing which the appellant shall file written submissions by June 30, 2021 and the respondent shall file a written response by July 30, 2021. Any such submissions shall not exceed five pages in length. If the parties do not advise the Court that they have reached an agreement and no submissions are received by these dates, then costs shall be awarded to the appellant in accordance with Tariff B.

Signed at Ottawa, Canada, this 25th day of March 2021.

“Susan Wong”

Wong J.

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DATE OF HEARING: August 19 and 20, 2020
REASONS FOR JUDGMENT BY: The Honourable Justice Susan Wong
DATE OF JUDGMENT: March 25, 2021

APPEARANCES:

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Counsel for the Respondent: Rishma Bhimji and Priya Bains

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¹ Notices of confirmation (Joint book of documents, Exhibit A-1, Tabs 6 and 7); June 3, 2016 letter and statements of audit adjustments from Canada Revenue Agency auditor (Joint book of documents, Exhibit A-1, Tab 4)

² *Excise Tax Act*, subsection 169(1)

³ *Excise Tax Act*, subsection 123(1)

⁴ *Excise Tax Act*, Schedule V, Part II, section 1.2

⁵ *Excise Tax Act*, Schedule V, Part II, section 1, definition of “qualifying health care supply”

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- ⁶ *Excise Tax Act*, Schedule V, Part II, sections 1 (definition of “cosmetic service supply”), 1.1, and 9
- ⁷ *Excise Tax Act*, Schedule V, Part II, section 5
- ⁸ *Excise Tax Act*, Schedule V, Part II, section 2
- ⁹ *Excise Tax Act*, Schedule V, Part II, section 1, definition of “medical practitioner”
- ¹⁰ *Excise Tax Act*, Schedule V, Part II, section 1, definition of “institutional health care service”
- ¹¹ *Excise Tax Act*, Schedule V, Part II, section 1, definition of “health care facility”
- ¹² Statutes of Canada, c. 10, s. 126
- ¹³ Department of Finance Explanatory Notes to Bill C-70 (July 10, 1997), clauses 126 and 130
- ¹⁴ *Excise Tax Act*, Schedule VI, Part II, section 1.2
- ¹⁵ SOR/91-45
- ¹⁶ *Input Tax Credit Information (GST/HST) Regulations*, Paragraph 3(a)(i)
- ¹⁷ *Input Tax Credit Information (GST/HST) Regulations*, Paragraph 3(a)(ii) and (iii)
- ¹⁸ *Input Tax Credit Information (GST/HST) Regulations*, Paragraph 3(a)(iv)
- ¹⁹ *Input Tax Credit Information (GST/HST) Regulations*, Paragraph 3(b)(i)
- ²⁰ *Input Tax Credit Information (GST/HST) Regulations*, Paragraph 3(b)(iii)(A)
- ²¹ *Input Tax Credit Information (GST/HST) Regulations*, Paragraph 3(b)(iii)(B)
- ²² *Input Tax Credit Information (GST/HST) Regulations*, Paragraph 3(b)(iv)
- ²³ *Input Tax Credit Information (GST/HST) Regulations*, Paragraph 3(b)(v)
- ²⁴ *Input Tax Credit Information (GST/HST) Regulations*, Paragraph 3(c)(ii)
- ²⁵ *Input Tax Credit Information (GST/HST) Regulations*, Paragraph 3(c)(iii)
- ²⁶ *Input Tax Credit Information (GST/HST) Regulations*, Paragraph 3(c)(iv)
- ²⁷ GST/HST Ruling RITS #56427 dated December 1, 2004 – Eligibility by an Orthodontist for Input Tax Credits, page 2 (Appellant’s book of authorities, Tab 14)
- ²⁸ GST/HST Ruling RITS #56427 dated December 1, 2004 – Eligibility by an Orthodontist for Input Tax Credits, page 1 (Appellant’s book of authorities, Tab 14)
- ²⁹ Joint book of documents, Exhibit A-1, Tabs 13, 17, and 18
- ³⁰ Joint book of documents, Exhibit A-1, Tabs 8, 13, and 16
- ³¹ Joint book of documents, Exhibit A-1, Tabs 13 and 16
- ³² Reply to notice of appeal, paragraph 11
- ³³ Financial agreement dated July 15, 2016, Joint book of documents, Exhibit A-1, Tab 8, page 86
- ³⁴ Joint book of documents, Exhibit A-1, Tab 14
- ³⁵ *Canada Trustco Mortgage Co v. Canada*, 2005 SCC 54, [2002] 2 SCR 601 at paragraph 10; *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27, 1998 CanLII 837 at paragraph 21.
- ³⁶ *Canada Trustco Mortgage Co v. Canada*, 2005 SCC 54, [2002] 2 SCR 601 at paragraph 11.
- ³⁷ *Canada Trustco Mortgage Co v. Canada*, 2005 SCC 54, [2002] 2 SCR 601 at paragraph 10; *Placer Dome Canada Ltd v. Ontario (Minister of Finance)*, 2006 SCC 20 (CanLII), [2006] 1 SCR 715 at paragraph 22.
- ³⁸ *Placer Dome Canada Ltd v. Ontario (Minister of Finance)*, 2006 SCC 20 (CanLII), [2006] 1 SCR 715 at paragraph 23.
- ³⁹ *Canada Trustco Mortgage Co v. Canada*, 2005 SCC 54, [2002] 2 SCR 601 at paragraph 47; *Placer Dome Canada Ltd v. Ontario (Minister of Finance)*, 2006 SCC 20 (CanLII), [2006] 1 SCR 715 at paragraph 22.
- ⁴⁰ Goods and Services Tax Technical Paper issued by the Honourable Michael H. Wilson, Minister of Finance, August 1989, at page 3 (Government of Canada Publications catalogue number F34-42/1989E-PDF;F2-85/2-1989E-PDF)

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- ⁴¹ Goods and Services Tax Technical Paper issued by the Honourable Michael H. Wilson, Minister of Finance, August 1989, at pages 86 to 88 (Government of Canada Publications catalogue number F34-42/1989E-PDF;F2-85/2-1989E-PDF)
- ⁴² Department of Finance Explanatory Notes to Bill C-70 (July 10, 1997), clause 126
- ⁴³ Department of Finance Explanatory Notes to Bill C-70 (July 10, 1997), clause 130
- ⁴⁴ *O.A. Brown v. The Queen*, [1995] TCJ No. 678, 1995 CarswellNat 37 at paragraphs 22 to 24.
- ⁴⁵ *Excise Tax Act*, section 138
- ⁴⁶ GST/HST Ruling RITS #56427 dated December 1, 2004 – Eligibility by an Orthodontist for Input Tax Credits (Appellant’s book of authorities, Tab 14)
- ⁴⁷ Notices of confirmation (Joint book of documents, Exhibit A-1, Tabs 6 and 7); June 3, 2016 letter and statements of audit adjustments from Canada Revenue Agency auditor (Joint book of documents, Exhibit A-1, Tab 4)
- ⁴⁸ Canadian Dental Association Communiqué, April/May 1991 (Joint book of documents, Exhibit A-1, Tab 1)
- ⁴⁹ *Input Tax Credit Information (GST/HST) Regulations*, Paragraph 3(a)(iv)
- ⁵⁰ *Input Tax Credit Information (GST/HST) Regulations*, Paragraph 3(b)(iii)(A)
- ⁵¹ *Input Tax Credit Information (GST/HST) Regulations*, Paragraph 3(b)(iv)
- ⁵² Joint book of documents, Exhibit A-1, Tabs 13 and 16