Docket: 2023-465(GST)I

BETWEEN:

ARLO LITMAN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on February 21, 2024, at Ottawa, Ontario

Before: The Honourable Justice Gabrielle St-Hilaire

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Alex Hibberd

JUDGMENT

In accordance with the attached reasons for judgment, the appeal from the assessment made under the *Excise Tax Act* in respect of the New Housing Rebate is allowed, without costs, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment.

Signed at Ottawa, Canada, this 3rd day of May 2024.

"Gabrielle St-Hilaire"

St-Hilaire J.

Citation: 2024 TCC 58
Date: May 3, 2024
Docket: 2023-465(GST)I

BETWEEN:

ARLO LITMAN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

St-Hilaire J.

I. Introduction

[1] In 2019, Arlo Litman built a laneway house on top of a detached garage on his property in Ottawa. In 2021, he claimed a new housing rebate in the amount of $17,372.38 in respect of the laneway house pursuant to section 256 of the *Excise Tax Act*, RSC 1985, c E-15 (ETA). The Minister of National Revenue (Minister) denied the rebate application, primarily on the basis that the Appellant had not made substantial renovations to a housing unit.

[2] The Appellant testified that he built the laneway house as a place of residence for his mother-in-law, so that she could live close to her daughter and grandchildren, and age in place. He asserted that his mother-in-law lived there continuously for over a year but because of changes in the family, she now splits her time between Ottawa and her condominium in Waterloo, where her son lives.

II. Issue

[3] The sole issue in this appeal is whether Mr. Litman is eligible for the new housing rebate and more specifically, whether he meets the conditions set out in

subsection 256(2) of the ETA. In light of the parties' submissions at the hearing, I would characterize the fundamental question as being whether the Appellant constructed or substantially renovated a residential complex for use as a primary place of residence for a relation of his as required by paragraph 256(2)(a) of the ETA. However, I hasten to add that the Appellant must also meet the other conditions for the rebate found in paragraphs 256(2)(b) to (d).

[4] Subsection 256(2) of the ETA reads as follows:

Rebate for owner-built homes **(2)** Where **(a)** a particular individual constructs or substantially renovates, or engages another person to construct or substantially renovate for the particular individual, a residential complex that is a single unit residential complex or a residential condominium unit for use as the primary place of residence of the particular individual or a relation of the particular individual, **(b)** the fair market value of the complex, at the time the construction or substantial renovation thereof is substantially completed, is less than $450,000, **(c)** the particular individual has paid tax in respect of the supply by way of sale to the individual of the land that forms part of the complex or an interest therein or in respect of the supply to, or importation by, the individual of any improvement thereto or, in the case of a mobile home or floating home, of the complex (the total of which tax under subsection 165(1) and sections 212 and 218 is referred to in this subsection as the "total tax paid by the particular individual"), **(d)** either **(i)** the first individual to occupy the complex after the construction or substantial renovation is begun is the particular individual or a relation of the particular individual, or **(ii)** the particular individual makes an exempt supply by way of sale of the complex and ownership of the	**Remboursement — habitation construite par soi-même** **(2)** Le ministre verse un remboursement à un particulier dans le cas où, à la fois : **a)** le particulier, lui-même ou par un intermédiaire, construit un immeuble d'habitation — immeuble d'habitation à logement unique ou logement en copropriété — ou y fait des rénovations majeures, pour qu'il lui serve de résidence habituelle ou serve ainsi à son proche; **b)** la juste valeur marchande de l'immeuble, au moment où les travaux sont achevés en grande partie, est inférieure à 450 000 $; **c)** le particulier a payé la taxe prévue à la section II relativement à la fourniture par vente, effectuée à son profit, du fonds qui fait partie de l'immeuble ou d'un droit sur ce fonds, ou relativement à la fourniture effectuée à son profit, ou à l'importation par lui, d'améliorations à ce fonds ou, dans le cas d'une maison mobile ou d'une maison flottante, de l'immeuble (le total de cette taxe prévue au paragraphe 165(1) et aux articles 212 et 218 étant appelé « total de la taxe payée par le particulier » au présent paragraphe); **d)** selon le cas : **(i)** le premier particulier à occuper l'immeuble après le début des travaux est le particulier ou son proche, **(ii)** le particulier effectue par vente une fourniture exonérée de l'immeuble, et la propriété de celui-ci est transférée à l'acquéreur avant que

complex is transferred to the recipient before the complex is occupied by any individual as a place of residence or lodging, the Minister shall, subject to subsection (3), pay a rebate to the particular individual equal to the amount determined by the formula **A × ($450,000 - B)/$100,000** where **A** is the lesser of 36% of the total tax paid by the particular individual before an application for the rebate is filed with the Minister in accordance with subsection (3), and **(i)** if all or substantially all of that tax was paid at the rate of 5%, $6,300, **(ii)** if all or substantially all of that tax was paid at the rate of 6%, $7,560, and **(iii)** in any other case, the lesser of $8,750 and the amount determined by the formula **(C × $2,520) + (D × $1,260) + $6,300** where **C** is the extent (expressed as a percentage) to which that tax was paid at the rate of 7%, and **D** is the extent (expressed as a percentage) to which that tax was paid at the rate of 6%, and **B** is the greater of $350,000 and the fair market value of the complex referred to in paragraph (b).	l'immeuble ne soit occupé à titre résidentiel ou d'hébergement. Le montant remboursable est égal au montant obtenu par la formule suivante : **A × (450 000 $ - B)/100 000 $** où : **A** représente 36 % du total de la taxe payée par le particulier avant l'envoi de la demande de remboursement au ministre ou, s'il est moins élevé, celui des montants ci-après qui est applicable : **(i)** si la totalité ou la presque totalité de la taxe a été payée au taux de 5 %, 6 300 $, **(ii)** si la totalité ou la presque totalité de la taxe a été payée au taux de 6 %, 7 560 $, **(iii)** dans les autres cas, 8 750 $ ou, s'il est moins élevé, le montant obtenu par la formule suivante : **(C × 2 520 $) + (D × 1 260 $) + 6 300 $** où : **C** représente le pourcentage qui représente la mesure dans laquelle la taxe a été payée au taux de 7 %, **D** le pourcentage qui représente la mesure dans laquelle la taxe a été payée au taux de 6 %, **B** 350 000 $ ou, si elle est plus élevée, la juste valeur marchande de l'immeuble visée à l'alinéa b).

[5] In interpreting subsection 256(2), the Court is called upon to consider several relevant definitions. I refer to them throughout these reasons and their complete text can be found in Appendix A.

III. Facts

[6] In 2016, the Appellant purchased the property at 80 Huron Avenue North for $810,000. The property included a house and a detached garage. The house has four levels, with a third attic floor and a finished basement. Each level measures approximately 1,000 square feet.

[7] The laneway house sits on the pre-existing garage, which continues to be used as a garage. The laneway house contains a kitchen, bathroom and laundry room. It measures about 373 square feet, although its footprint measures approximately 651 square feet. The Appellant explained that the garage was lowered, the drywall was removed, the garage door was removed, modified and reattached and a separate entrance was constructed. The concrete pad and the foundation remained in place, as did the studs. The electrical system was redone. There is a secondary electrical panel in the garage and the electricity is "fed" through the main panel in the house; there is one electricity bill. The sewage pipes go through the main house while the gas line goes directly to the laneway house.

[8] The laneway house was never rented, never used as an Airbnb nor was it ever a place of business. The Appellant's mother-in-law was the first and exclusive occupant of the laneway house. The Appellant expressed the view that if he were to sell his house, the garage and the laneway house would also have to be sold, as he did not think that severance would be authorized.

[9] In addition to testifying for himself, the Appellant called Rayeed Choudhury, the Canada Revenue Agency (CRA) appeals officer on this file. At the time of his involvement in this matter, Mr. Choudhury had about 4.5 years of experience in that role. He asserted that he was familiar with the new housing rebate but acknowledged that this was his first file involving a laneway house. I found Mr. Choudhury to be a credible and generally forthright witness but there is very little, if any, useful evidence that came out of his testimony. I do not fault him for that.

[10] Mr. Choudhury stated that he was familiar with the CRA's practices and guidance regarding laneway houses. The Appellant spent considerable time examining Mr. Choudhury, referring to examples in CRA administrative documents and asking which of those were most similar to the Appellant's situation. In addition to several hypothetical questions, Mr. Choudhury was asked whether he agreed with the information in the CRA materials. I find that whatever an appeals officer may think of what the CRA wrote in its public administrative documents is of no relevance to the application of the law to the Appellant's circumstances. Mr. Choudhury asserted that CRA documents, such as the GST/HST Technical Information Bulletin B-092 (Exhibit A-10; [Bulletin B-092]), offer guidance but are not determinative.

[11] Mr. Choudhury acknowledged that in examining the Appellant's objection, he concluded that the renovations did not meet the requirements of a substantial renovation pursuant to subsection 256(2) of the ETA. Although not included in the

reasons for denying the rebate in the notice of confirmation, Mr. Choudhury stated that he had also considered that the laneway house was not a newly constructed property. He found that it was an addition to a pre-existing structure, that being the garage, which was part of the main house property.

IV. The Parties' Positions

The Appellant's position

[12] In his application, the Appellant claimed the new housing rebate on the basis that the laneway house was a substantial renovation of the pre-existing garage (see Exhibit A-4, Construction Summary Worksheet; see also the Appellant's written submissions at para 18). In his notice of appeal, the Appellant's main argument was that the laneway house is a substantially renovated residential complex but added that in the alternative, the laneway house is a newly constructed housing unit.

[13] At the hearing, the Appellant switched his positions and focussed on his argument that the laneway house with the garage was a separate newly constructed residential complex. He expressed the view that the laneway house met the definition of "single unit residential complex" found in subsection 256(1) of the ETA because it includes a residential complex that does not contain more than two units. He further argued that he meets the definition of residential complex in subsection 123(1) of the ETA because "the laneway house is its own residential complex". In his view, the existence of a garage does not change the character of the laneway house as a residential complex. The Appellant submitted that there was not a residential complex before, and now there is one, such that there is a new residential complex. He added that it was not necessary to knock down the garage entirely and start from scratch to build the laneway house in order to be entitled to the rebate.

[14] Although, at times it appeared that the Appellant was conflating his arguments, I will treat his submissions on substantial renovation as an alternative argument.

The Respondent's position

[15] The Respondent argued that the Appellant had not substantially renovated a residential complex nor had he constructed a new residential complex. The

Respondent asserts that in determining whether the Appellant is eligible for the rebate, one has to consider the house and the garage with the laneway house as a whole because they are inseparable.

[16] The Respondent asserted that the separate garage was an appurtenance to the main house such that the laneway house is a renovation of a residential complex that includes the main house. Counsel for the Respondent submitted that unless there is separate title there could be no rebate. He later stated that he did not know if separate legal title was necessarily a requirement. The Respondent submitted that the Appellant did not meet the meaning of substantial renovation, which generally requires that all or substantially all of a building, ignoring core structural elements, have been removed or replaced and this has been interpreted as meaning 90%.

V. Analysis

[17] The Appellant referred to the Goods and Services Tax Technical Paper wherein the Honourable Michael H. Wilson, Minister of Finance, asserted that "[t]hrough this system of tax rebates, the government will meet its commitment to ensure that the new system does not pose a barrier to the affordability of housing in Canada". (Exhibit A-14, August 1989 at p 19). The Appellant suggested that, in light of the housing crisis, those pronouncements were just as important today as they were 35 years ago. In his written submissions, the Appellant submitted that the denial of the rebate on laneway houses "would eliminate the availability of a key rebate that would otherwise incentivize much-needed construction that is required to address the housing crisis. This could in turn, impact the availability of diverse housing options, decrease housing affordability, and increase suburban sprawl, among other impacts" (Appellant's written submissions at para 9).

[18] One would have to have their head buried in the sand not to recognize that Canada is facing a national housing crisis and that measures are being taken to address this challenge. Having said that, I cannot ignore that the new housing rebate provision at issue in this appeal is replete with restrictions and conditions that must be met failing which there is no entitlement to the rebate. The rebate provision is an exception to the ETA's purpose, which is to raise government revenue. I adopt the view expressed in previous cases describing the rebate provision as a limited exception and, moreover, as a carefully tailored exception to the application of the GST (see *Canada v Sneyd*, 2000 CanLII 15708 (FCA) at para 13; *Erickson v R*, 2001 CanLII 569 (TCC) at para 15).

[19] I will now consider the specific requirements of subsection 256(2) of the ETA to determine the Appellant's eligibility to the new housing rebate. To meet the condition expressed in paragraph 256(2)(a) of the ETA, the Appellant must show that in having the laneway house built over a pre-existing garage he either constructed or substantially renovated a residential complex that is a "single unit residential complex". This latter expression is defined in subsection 256(1) to include "a multiple unit residential complex that does not contain more than two residential units". In turn, "a multiple unit residential complex" is defined in subsection 123(1) of the ETA to mean "a residential complex that contains more than one residential unit, but does not include a condominium complex". The definition of "residential unit" is found in subsection 123(1) of the ETA. The term is defined as including a detached house, semi-detached house, condominium unit, mobile home, apartment or similar premises and has been interpreted broadly. I find that the Appellant's laneway house, described earlier, is an apartment or similar premise and meets the definition of residential unit.

[20] Although the definitions are somewhat circular, the rebate is aimed at dwellings that contain no more than two residential units. In the circumstances, whether we are considering the whole property including the primary house and the laneway house or whether we are only considering the laneway house over the garage, and if either is a residential complex, it is a single unit residential complex.

[21] Having so found, I must consider the definition of "residential complex". The Appellant's main argument at trial, as indicated earlier, is that in building the laneway house on top of his pre-existing garage he constructed a new residential complex. The Respondent submitted that the laneway house was a residential unit but not a residential complex because it did not have a separate title. The Respondent argued that the Court must consider the property including the main house as a whole, the garage being an appurtenance to the main house and the land.

[22] The CRA has offered its guidance on how it might treat "guest and granny suites" for the purposes of the new housing rebate. I hasten to add that these are the CRA's views, they are not law, and they are not binding on this Court. However, as asserted by the Supreme Court of Canada, "[i]t is well established that in resolving doubt about the meaning of a tax provision, the administrative practice and interpretation adopted by the Minister, while not determinative, are important factors to be weighed" (*Placer Dome Canada Ltd. v Ontario (Minister of Finance*, 2006 SCC 20 at para 10, referring to *Harel v Deputy Minister of Revenue of Quebec*, [1978] 1 SCR 851).

[23] In Bulletin B-092, *supra*, the CRA writes as follows (at pp 30-31):

> The construction of a guest and granny suite may be eligible for the new housing rebate where:
>
> - the suite is constructed as an addition to the existing building and the existing building is substantially renovated;
> - the suite is constructed as an addition to the existing building and the addition is, or is intended to be, owned under separate title; or
> - where a self-contained suite is detached from the house so that it is its own building. In this situation, the rebate would be based on the fact that there is a newly constructed residential complex rather than a substantial renovation of an existing one.

[24] The CRA goes on to give examples of the situations described above. The "Bill M." example refers to the construction of a separate building that will be a self-contained granny suite, *not* held under separate title, and suggests that Bill would qualify for the rebate because he constructed a new residential complex (Bulletin B-092, *supra* at p 31). Thus, it appears that, according to the CRA, if the laneway house had been constructed directly on land as opposed to sitting on the pre-existing garage, and assuming all other conditions are met, the Appellant would have qualified for the rebate.

[25] Query whether the fact that the laneway house was built on the pre-existing garage, rather than being self-standing like the granny suite built by Bill M. in the CRA's example, disqualifies it from being a newly built residential complex. I find that it does not. The laneway house is detached from the main house and it forms a new residential complex where, prior to its construction, there was none. In addition, I see nothing in the definition of residential complex that requires that the laneway house be held under separate title to meet the requirements of that definition. And as noted earlier, CRA's own example suggests otherwise.

[26] I note that both parties referred to this Court's decision in *Lemieux v R* (2009 TCC 17) wherein Justice Tardif found that the Appellant was not entitled to the new housing rebate. In *Lemieux*, the appellant had constructed an addition, on top of a two-car garage attached to an existing 2,400 square-foot residence. I find the circumstances of that case to be so different from those in the present case that it is of little, if any, assistance in determining the issue before the Court.

[27] I found the Appellant's testimony about the occupancy of the laneway house to be credible. He stated that the laneway house was built for his mother-in-law.

Although she now spends part of her time at her condominium in Waterloo where her son and his family live, she was the first and only occupant and she lived in the laneway house continuously for over a year. I note that the Respondent agreed that if I were to find that the Appellant's mother-in-law lived in the laneway house for a year, the Appellant met the requirement that it be the primary place of residence of a relation (see the definitions of "relation" in subsection 256(1) and of "related" in subsection 126(2) of the ETA).

[28] For the reasons above, I find that the Appellant meets the condition in the concluding words of subsection 256(2)(a) of the ETA which requires that a residential complex be used as a primary place of residence of a relation of his. As the Appellant's mother-in-law was the first and only person to occupy the laneway house, the condition expressed in paragraph 256(2)(d) is also met.

[29] At this point, it bears mentioning that the Application for the new housing rebate, Form GST 191, submitted in September 2021 was not before the Court. In addition, when submitting Form GST 191, the individual making the claim is required to fill out a Construction Summary Worksheet, Form GST 191-WS, and attach it to Form GST 191. The full worksheet also was not before the Court. The Appellant introduced into evidence only pages 1, 2 and 3 of the 12-page document. Part C of Form GST 191-WS on pages 4 to 11 contains a chart wherein the individual applying for the rebate provides information about the construction details and invoices, including the amount of GST paid. Unfortunately, and surprisingly, neither party thought that the application form and the complete worksheet would be useful information for the Court in the circumstances of this appeal. Perhaps this reinforces the view that the basis for the Respondent's position that the rebate should be denied was not related to the requirement set out paragraph 256(2)(c) of the ETA.

[30] Paragraph 256(2)(c) of the ETA requires that the individual applying for the rebate have paid tax on the land that forms part of the complex or on any improvement thereto. In their Reply, the Respondent admitted that "the Minister refused the Appellant's application on the basis that it did not satisfy the criteria of subparagraph 256(2)(a)" but denied that "the Minister did not contest subparagraphs 256(2)(b) through (d) of the Act in further detail" (Reply at para 7). The Respondent did not otherwise refer to any such "contest". According to the Reply, the Minister made no assumptions of fact about tax having been paid by the Appellant on the land or any improvement thereto. Further, in the grounds relied on in their Reply, the Respondent made no submissions regarding the condition set out in paragraph 256(2)(c). I find that, by virtue of having paid tax on the building materials and

services and fees such as architect's fees associated with the construction of the laneway house, the Appellant has satisfied this requirement.

[31] In order to be eligible for the new housing rebate, paragraph 256(2)(b) of the ETA further requires that the fair market value of the complex, at the time the construction or substantial renovation is completed, be less than $450,000. The formula for the calculation of the rebate contained in subsection 256(2) provides that the rebate is gradually reduced when the fair market value of the property rises above $350,000. Once the fair market value reaches $450,000, the rebate is completely eliminated. In *Somers v R*, (2008 TCC 239 at para 4 [*Somers*]), Justice Webb explained the relevance of the fair market value for the purposes of the rebate as follows:

> Therefore if the fair market value of the residence was $350,000 or less, the actual fair market value is not relevant. If the fair market value was greater than $350,000 and less than $450,000, the actual fair market value is relevant as the amount of the fair market value would reduce the new housing rebate that would otherwise be available. If the fair market value of the residence was $450,000 or more, the actual fair market value is not relevant as no new housing rebate is available for properties with a fair market value within this range.

[32] In light of the definition of residential complex, the land immediately contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence must be included when determining fair market value.

[33] The Appellant purchased the property including the main house and detached garage in 2016 for $810,000. At the hearing, the Respondent submitted that the Appellant was not entitled to the rebate because the fair market value of the "property", defined as including the main house and the laneway house, exceeded $450,000.

[34] However, as I found that the Appellant constructed a new residential complex when he engaged someone to construct the laneway house, the rebate must be calculated on the basis of the fair market value of the laneway house and the land on which it sits. I would add that this finding is consistent with the CRA's own assertions in GST/HST Info Sheet GI-168 (Exhibit A-11 at pp 14-15).

[35] I acknowledge that the definition of fair market value accepted by the courts is found in *Henderson Estate and Bank of New York v MNR* (73 DTC 5471 at p 5476 (FCTD)) wherein Justice Cattanach stated as follows:

> That common understanding I take to mean the highest price an asset might reasonably be expected to bring if sold by the owner in the normal method applicable to the asset in question in the ordinary course of business in a market not exposed to any undue stresses and composed of willing buyers and sellers dealing at arm's length and under no compulsion to buy or sell.

[36] Neither party called an expert to provide an opinion on the fair market value of the laneway house. The Appellant testified that he sought, unsuccessfully, to have the laneway house appraised. He communicated with two accredited appraisers both of which replied that they could not provide a valuation as there were no comparables (see also Exhibit A-4, Form GST191-WS). In applying for the rebate, the Appellant used the construction costs of $255,607.90 to which he added $100,000 to account for the value of the land (see Exhibit A-4, Form GST191-WS).

[37] In *Qureshi v R* (2006 TCC 485 at para 10), Chief Justice Bowman, as he then was, stated, "[t]here is simply no justification for using cost or replacement cost as a measure of valuing when there is a market in which comparables are available." I would add that in *Somers*, *supra*, Justice Webb did not accept cost as an appropriate valuation method as there was evidence of comparable properties for him to consider. I accept the Appellant's testimony that he was unable to obtain an appraisal of the laneway house from two accredited appraisers who could not find comparables. I find that when there is no market to which one may look, construction costs which represent expenditures on which GST was paid can serve as an appropriate, although imperfect, valuation method.

[38] In applying for the rebate, the Appellant used the construction costs of $255,607.90 to which he added $100,000 to account for the value of the land (see Exhibit A-4, Form GST191-WS). I note that in paragraph 14 of their Reply, the Respondent stated additional facts in support of the assessment, facts for which they bear the onus of proof (*Canada v Loewen*, 2004 FCA 146 at paras 10-11). Paragraphs 14a), b) and c) of the Reply read as follows:

> 14. The AGC further states the following additional facts in support of the assessment under appeal:
>
> a) The Fair Market Value of the Property, after completion of the renovations, is equal to at least $450,000.00;
>
> b) The Appellant estimated the fair market value of the coach house to be $355,607.90;

> c) The Appellant estimated FMV was based on the construction costs and his own estimate of $100,000 for the roughly 30ft by 33ft portion of his plot that the garage occupied;

[39] Nowhere in the Reply does the Respondent dispute the amount of construction costs of $255,607.90 on which the Appellant based the calculation of the rebate according to the partial worksheet entered into evidence. Nor did Counsel for the Respondent take issue with this amount at the hearing. In response to questions from the Court about the $355,607.90 valuation, Counsel for the Respondent stated he could not speak to the fair market value of the laneway house because it could not be put on the market.

[40] I note that this Court has the discretion to disregard the rules of evidence when an appeal is heard under the informal procedure as is the present case (see *Selmeci v R*, 2002 FCA 293; *Suchon v R*, 2002 FCA 282). I hasten to add that the Federal Court of Appeal and this Court have asserted that this not mean that no rules of evidence apply and that a judge is obligated to accept all evidence that is tendered.

[41] I would have preferred that the complete worksheet, showing how the amount of construction costs was tabulated, be entered into evidence. However, I am prepared to accept the amount of $255,607.90 as construction costs on the basis of it being indicated on the partial worksheet (Exhibit A-4) and the Respondent having included this assumption of fact by virtue of the combination of paragraphs 14b) and c) in the Reply without raising any related concerns in the Reply or at the hearing.

[42] Regarding the estimate of $100,000 for the land contiguous to the laneway house, the Appellant did not provide any details of how he arrived at his estimate other than to indicate that he considered the size of the land occupied by the garage. He submitted that the appraisers to whom he spoke had suggested that the land would have nominal value since it could not be severed and developed. Nevertheless, the Appellant decided to assign a value of $100,000 to the land.

[43] I note that the property was purchased in 2016 for $810,000. I would add that in his Answer, the Appellant wrote that the Municipal Property Assessment Corporation assessed the value of the entire property in 2023 at $755,000. I understand that such assessments are also imperfect (see for example, *Somers*, *supra*). However, these two valuations provide important information in determining the reasonableness of the Appellant's valuation of the land at $100,000. The Respondent did not challenge this amount nor did they raise any related

concerns. In light of the information above, I find that the amount of $100,000 assigned to the land is reasonable.

[44] Imperfect as it is, I find that, for purposes of calculating the rebate, the Appellant has established that the value of the laneway house and the contiguous land is $355,607.90.

[45] For completeness, and because of the Minister's initial reason for denying the rebate, I will briefly address the Appellant's alternative argument, that he substantially renovated the garage such that the laneway house qualifies as a substantially renovated residential complex. I find that it does not. In order to renovate, let alone substantially renovate, a residential complex, there must first be a residential complex. I have canvassed the definition of this term earlier in these reasons. In my view, the pre-existing garage alone was not capable of being occupied as a place of residence; it was not a residential complex. If I were to consider the whole property including the main house to be the residential complex for the purposes of determining eligibility to the rebate, then I would find that the Appellant does not meet the meaning of "substantially renovate" as this term has been interpreted in the case law (see for example *Whittall v R*, 2017 TCC 212). Hence, the Appellant's alternative argument that, in building the laneway house, he substantially renovated a residential complex as provided for in subsection 256(2)(a) must fail.

VI. Conclusion

[46] For the reasons above, I conclude that the Appellant meets the conditions set out in subsection 256(2) of the ETA, and in particular, the condition that requires that he have constructed (or engaged another person to construct) a residential complex. He is thus entitled to the new housing rebate calculated on the basis of his construction costs for the laneway house and the value of the contiguous land.

[47] Although the Appellant abandoned his request for costs at the end of the hearing, presumably because he felt pressed for time, he did address this issue in his written submissions. The Appellant asserted that he was a highly experienced lawyer and had spent at least 50 hours in preparation of his appeal. He felt strongly that he should be entitled to costs in the amount of $870. The Appellant submitted that the Court enjoys a broad discretion to award costs in this appeal. He referred to several decisions, which I find inapplicable for various reasons including that they were appeals under other legislation such as the *Income Tax Act* and/or under the general procedure, or other types of matters before a different court.

[48] But more importantly, in section 18.3009 of the *Tax Court of Canada Act*, Parliament has chosen to limit the Court's jurisdiction to award costs in GST/HST appeals under the informal procedure. Hence, no costs can be awarded to the Appellant in this appeal (see *Canada v DiFlorio*, 2015 FCA 11 at para 9, *Wang v R*, 2021 TCC 86 at para 39).

[49] The appeal from the assessment made under the *Excise Tax Act* in respect of the new housing rebate is allowed, without costs, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment.

Signed at Ottawa, Canada, this 3rd day of May 2024.

"Gabrielle St-Hilaire"

St-Hilaire J.

Appendix A – Definitions - *Excise Tax Act*

Definition of single unit residential complex in subsection 256(1)

single unit residential complex includes (a) a multiple unit residential complex that does not contain more than two residential units, and **(b)** any other multiple unit residential complex if it is described by paragraph (c) of the definition ***residential complex*** in subsection 123(1) and contains one or more residential units that are for supply as rooms in a hotel, motel, inn, boarding house, lodging house or similar premises and that would be excluded from being part of the residential complex if the complex were a residential complex not described by that paragraph. (immeuble d'habitation à logement unique)	***immeuble d'habitation à logement unique*** Est assimilé à un immeuble d'habitation à logement unique : **a)** l'immeuble d'habitation à logements multiples de deux habitations; **b)** tout autre immeuble d'habitation à logements multiples, s'il est visé à l'alinéa **c)** de la définition de ***immeuble d'habitation*** au paragraphe 123(1) et contient une ou plusieurs habitations qui sont destinées à être fournies comme chambres dans un hôtel, un motel, une auberge, une pension ou un gîte semblable et qui ne seraient pas considérées comme faisant partie de l'immeuble d'habitation si celui-ci n'était pas visé à cet alinéa. (*single unit residential complex*)

Definition of multi unit residential complex in subsection 123(1)

multiple unit residential complex means a residential complex that contains more than one residential unit, but does not include a condominium complex; (*immeuble d'habitation à logements multiples*)	***immeuble d'habitation à logements multiples*** Immeuble d'habitation, à l'exclusion d'un immeuble d'habitation en copropriété, qui contient au moins deux habitations. (*multiple unit residential complex*)

Definition of residential complex in subsection 123(1)

residential complex means **(a)** that part of a building in which one or more residential units are located, together with **(i)** that part of any common areas and other appurtenances to the building and the land immediately contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, and **(ii)** that proportion of the land subjacent to the building that that part of the building is of the whole building, **(b)** that part of a building that is **(i)** the whole or part of a semi-detached house, rowhouse unit, residential condominium unit or other similar premises that is, or is intended to be, a separate parcel or other division of real property owned, or intended to be owned, apart from any other unit in the building, and **(ii)** a residential unit, together with that proportion of any common areas and other appurtenances to the building and the land subjacent or immediately contiguous to the building that is attributable to the unit and that is reasonably necessary for its use and enjoyment as a place of residence for individuals, **(c)** the whole of a building described in paragraph (a), or the whole of a premises described in subparagraph (b)(i), that is owned by or has been supplied by way of sale to an individual and that is used primarily as a place of residence of the individual, an individual related to the individual or a former spouse or common-law partner of the individual, together with **(i)** in the case of a building described in paragraph (a), any appurtenances to the building, the land subjacent to the building and that part of the land immediately contiguous to the building, that are reasonably necessary for the use and enjoyment of the building, and	***immeuble d'habitation*** **a)** La partie constitutive d'un bâtiment qui comporte au moins une habitation, y compris : **(i)** la fraction des parties communes et des dépendances et du fonds contigu au bâtiment qui est raisonnablement nécessaire à l'usage résidentiel du bâtiment, **(ii)** la proportion du fonds sous-jacent au bâtiment correspondant au rapport entre cette partie constitutive et l'ensemble du bâtiment; **b)** la partie d'un bâtiment, y compris la proportion des parties communes et des dépendances du bâtiment, et du fonds sous-jacent ou contigu à celui-ci, qui est attribuable à l'habitation et raisonnablement nécessaire à son usage résidentiel, qui constitue : **(i)** d'une part, tout ou partie d'une maison jumelée ou en rangée, d'un logement en copropriété ou d'un local semblable qui est, ou est destinée à être, une parcelle séparée ou une autre division d'immeuble sur lequel il y a, ou il est prévu qu'il y ait, un droit de propriété distinct des droits de propriété des autres parties du bâtiment, **(ii)** d'autre part, une habitation; **c)** la totalité du bâtiment visé à l'alinéa a) ou du local visé au sous-alinéa b)(i), qui est la propriété d'un particulier, ou qui lui a été fourni par vente, et qui sert principalement de résidence au particulier, à son ex-époux ou ancien conjoint de fait ou à un particulier lié à ce particulier, y compris : **(i)** dans le cas d'un bâtiment visé à l'alinéa a), les dépendances, le fonds sous-jacent et la partie du fonds contigu qui sont raisonnablement nécessaires à l'usage du bâtiment,

(ii) in the case of a premises described in subparagraph (b)(i), that part of any common areas and other appurtenances to the building and the land subjacent or immediately contiguous to the building that is attributable to the unit and that is reasonably necessary for the use and enjoyment of the unit, **(d)** a mobile home, together with any appurtenances to the home and, where the home is affixed to land (other than a site in a residential trailer park) for the purpose of its use and enjoyment as a place of residence for individuals, the land subjacent or immediately contiguous to the home that is attributable to the home and is reasonably necessary for that purpose, and **(e)** a floating home, but does not include a building, or that part of a building, that is a hotel, a motel, an inn, a boarding house, a lodging house or other similar premises, or the land and appurtenances attributable to the building or part, where the building is not described in paragraph (c) and all or substantially all of the leases, licences or similar arrangements, under which residential units in the building or part are supplied, provide, or are expected to provide, for periods of continuous possession or use of less than sixty days; (*immeuble d'habitation*)	**(ii)** dans le cas d'un local visé au sous-alinéa b)(i), la fraction des parties communes et des dépendances du bâtiment, et du fonds sous-jacent ou contigu à celui-ci, qui est attribuable à l'immeuble et raisonnablement nécessaire à son usage; **d)** une maison mobile, y compris ses dépendances et, si elle est fixée à un fonds (sauf un emplacement dans un parc à roulottes résidentiel) destiné à en permettre l'usage résidentiel, le fonds sous-jacent ou contigu qui est attribuable à la maison et qui est raisonnablement nécessaire à son usage résidentiel; **e)** une maison flottante. Ne sont pas des immeubles d'habitation tout ou partie d'un bâtiment qui est un hôtel, un motel, une auberge, une pension ou un gîte semblable, ni le fonds et les dépendances qui y sont attribuables, si le bâtiment n'est pas visé à l'alinéa c) et si la totalité ou la presque totalité des baux, licences ou accords semblables, aux termes desquels les habitations dans le bâtiment ou dans la partie de bâtiment sont fournies, prévoient, ou sont censés prévoir, des périodes de possession ou d'utilisation continues de moins de 60 jours. (*residential complex*)

Definition of residential unit in subsection 123(1)

residential unit means **(a)** a detached house, semi-detached house, rowhouse unit, condominium unit, mobile home, floating home or apartment, **(b)** a suite or room in a hotel, a motel, an inn, a boarding house or a lodging house or in a residence for students, seniors, individuals with a disability or other individuals, or **(c)** any other similar premises, or that part thereof that **(d)** is occupied by an individual as a place of residence or lodging,	***habitation*** Maison individuelle, jumelée ou en rangée, unité en copropriété, maison mobile, maison flottante, appartement, chambre d'hôtel, de motel, d'auberge ou de pension, chambre dans une résidence d'étudiants, d'aînés, de personnes handicapées ou d'autres particuliers ou tout gîte semblable, ou toute partie de ceux-ci, qui est, selon le cas : **a)** occupée à titre résidentiel ou d'hébergement;

(e) is supplied by way of lease, licence or similar arrangement for the occupancy thereof as a place of residence or lodging for individuals, **(f)** is vacant, but was last occupied or supplied as a place of residence or lodging for individuals, or **(g)** has never been used or occupied for any purpose, but is intended to be used as a place of residence or lodging for individuals; (*habitation*)	**b)** fournie par bail, licence ou accord semblable, pour être utilisée à titre résidentiel ou d'hébergement; **c)** vacante et dont la dernière occupation ou fourniture était à titre résidentiel ou d'hébergement; **d)** destinée à servir à titre résidentiel ou d'hébergement sans avoir servi à une fin quelconque. (*residential unit*)

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