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What's in a name? The GST (Goods and Services Tax)/HST (Harmonized Sales Tax) new housing rebate, for one

June 1, 2015 | David M. Sherman

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Here is a new way for real estate lawyers to make a mistake when acting for a purchaser: In the recent *Kandiah v. The Queen*, the Tax Court of Canada ruled that where Mr. X signed an agreement to purchase a new home, and Mrs. X took title on closing, they were not entitled to the new housing rebate.

The *Excise Tax Act* paragraph 254(2)(e) requires "ownership" to be transferred to the same person who signed the agreement of purchase and sale.

There may be an exception in many cases, as the same judge ruled in *Rochefort v. The Queen* that Mrs. X had an interest in the home at the time the agreement was signed because it was intended to be the matrimonial home, and also that Mr. X received "ownership" on closing through his spousal rights. However, it is uncertain whether the CRA (Canada Revenue Agency) or the Tax Court will always apply this exception and under what conditions.

There is no indication that the CRA (Canada Revenue Agency) is currently examining all new housing rebate applications to the level of detail of checking title against the agreement of purchase and sale. However, this could happen; and if the CRA (Canada Revenue Agency) is auditing the rebate for any other reason, it will request the closing documents and this issue will come up.

It is therefore prudent to ensure that the person who will ultimately take title is the one who signs the agreement of purchase and sale. Arguably, a lawyer who fails to advise his or her client of this issue may be liable in negligence if the purchasers lose the new housing rebate as a result. (On a home in Ontario costing over \$400,000, the rebate is \$24,000 or more. Outside Ontario, the maximum rebate is \$6,300, where the new home costs \$350,000; the federal rebate is phased down to zero as the price approaches \$450,000.)

ABOUT THE AUTHOR

David M. Sherman is a tax lawyer, author and consultant in Toronto. He is author and editor of numerous Carswell publications on tax law, including the *Practitioner's Income Tax Act*, *Practitioner's Goods and Services Tax Annotated*, *Canada GST (Goods and Services Tax) Service*, *Lawyer's Guide to Income Tax and GST (Goods and Services Tax)/HST (Harmonized Sales Tax)*, and many others. His client work consists primarily of advising lawyers and accountants on technical tax and GST (Goods and Services Tax)/HST (Harmonized Sales Tax) issues, and representing taxpayers in disputes with the CRA (Canada Revenue Agency).

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