



## CRA Continues to Review and Deny GST/HST New Housing Rebate Claims

### February 2023 Tax Alert

The GST/HST new housing rebate (the “New Housing Rebate”) allows individuals to recover some of the GST or the federal portion of the HST paid, in regards to a new or substantially renovated house. One of the conditions for the New Housing Rebate is that the individual must have acquired the property with the intention to make it their principal residence or the principal residence of a family member. In recent years, the CRA has denied numerous New Housing Rebate applications, as the applicant was unable to establish principal residence intentions. As such, taxpayer should be prepared to demonstrate their intention, when claiming the New Housing Rebate.

In the recent Tax Court of Canada decision of *Al Bondokji v the King*, the taxpayer owned a property for three years, sold it, and then claimed the New Housing Rebate upon the sale. The taxpayer alleged he had lived with his wife in the property and only sold it due to health reasons. After the sale, the taxpayer alleged he and his wife had returned to living in their previous family home. In response, the Minister took the position that the taxpayer never lived in the property and did not purchase it with the intention to make it his principal residence. Accordingly, the Minister denied the New Housing Rebate application. The taxpayer appealed the decision to the Tax Court of Canada.

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On review of the appeal, the Tax Court of Canada confirmed that “little weight” is given to the taxpayer’s stated intentions. Instead, the Court will focus on the surrounding circumstances and the taxpayer’s behaviour. In reviewing the evidence, the Court noted that, despite bearing the burden of proof, the taxpayer had provided no evidence as to when they moved in, what belongings and furnishings were brought, what time was spent there, etc. There was also no evidence of any health change after the purchase. Accordingly, the Tax Court of Canada dismissed the appeal and the denial of the New Housing Rebate was confirmed.

The Tax Court of Canada’s decision confirms the need for taxpayers to be prepared and able to produce supporting documents when their New Housing Rebate application is reviewed or denied. With the assistance of a tax litigator, these documents can be properly identified and then produced in a compelling manner. For example, a rebate applicant should be prepared to produce moving expense receipts, photographs of living in the property, new furniture receipts, mail change forms, etc. Similarly, a rebate applicant should be prepared to produce any emails, text messages, or social media posts that conveys their intention (e.g. an email to the real estate agent about what kind of house they are looking for or a social media post about buying the property). In addition, a rebate applicant should be prepared to produce any documents that convey the decision to sell was triggered by something new and unplanned for (e.g. a notice from the kids’ school about a boundary change). Further, a rebate applicant should be prepared to produce the property listing documents, which ideally will support the application. Together, these documents will confirm that the New Housing Rebate application should be granted.

For more information or to discuss any current tax disputes regarding a New Housing Rebate application, please contact **our firm**.

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