

This is an appeal from a decision of the Nova Scotia Utility and Review Board which allowed an appeal from the decision of the Provincial Tax Commissioner, who assessed the respondent for sales tax and interest in respect to the purchase of certain equipment and fixtures when it purchased the assets of Canadian Tire Store #229 in Glace Bay. The respondent sold all of the assets of Canadian Tire Store #106 in Sussex, New Brunswick at the same time as it purchased the store in Glace Bay.

The issue raised on the appeal is whether the Review Board erred by finding that the respondent was entitled to the trade-in provisions of s. 10 of the **Health Services Tax Act**, R.S.N.S. 1989, c.198 which provides:

"10 Where tangible personal property is accepted in trade from the purchaser at the time of sale by the seller or vendor on account of the price of the property sold, the purchaser shall pay the tax on the difference between the purchase price of the property sold and the credit allowed for the tangible personal property accepted in trade on account of the purchase price."

After hearing evidence concerning the details of the purchase and sale of the stores and the involvement of Canadian Tire Corporation (C.T.C.) in the transactions and after examining the contracts, the Review Board relied on the decision of this Court in **Nova Scotia (Attorney General) v. Oxner** (1993), 121 N.S.R. (2d) 237 and concluded that:

" C.T.C. dominates these changeover transactions. It designates who it wants as the purchaser of the store; it provides a referee in establishing value for the assets; it prices the asset inventory; it provides and completes the forms to record the transactions; it provides financial support; it accepts final cheque payments from the purchaser; and it prepares final cheque payments for the vendor.

. . .

A taxpayer may arrange his affairs to take advantage of the provisions of the **Health Services Tax Act**. The sales contracts, as written allow the very prominent third party, C.T.C., to act as an intermediary in the sale and purchase of tangible personal property included in the changeover transactions.

The one day difference in the disposition of C.T.A.S.#106 and the purchase of C.T.A.S.#229 is immaterial. A transaction involving the sale of one store and the purchase of another, each in excess of a million dollars, where funds for the purchase of one is dependent on the sale of the other, would not be unusual in normal business practice.

The Board is satisfied that the contract provided for the trade-in credit. The Commissioner should have allowed the trade-in credit claimed under s.10 of the Act."

We have considered the evidence and the submissions of counsel and are satisfied that the Review Board committed no reversible error on a point of law in concluding that the parties agreed to a trade-in credit at the time of sale and that s.10 of the **Act** applied to the transactions. Therefore its decision should not be interfered with by this Court. We accordingly dismiss the appeal. It is not necessary to consider the Notice of Contention. The respondent shall have costs fixed at \$1,000.00, including disbursements.

Roscoe, J.A.

Concurred in:

Clarke, C.J.N.S.

Matthews, J.A.