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RE: Medallion Corporation
v. Her Majesty the Queen
2016-953(GST)G

CERTIFICATE OF SERVICE**Class: C**Section 17.2(4) of the *Tax Court of Canada Act*

I HEREBY CERTIFY that the original and two copies of the notice of appeal were filed on March 14, 2016, in the office of the Registry of the Court and the said copies were transmitted on April 13, 2016, to the office of the Deputy Attorney General of Canada.

DATED at Ottawa, this 13th day of April, 2016.

For the Registrar

GILLES PATRICE
REGISTRY ASSISTANT
ADJOINT DU GREFFE

c.c. Canada Revenue Agency/ Agence du revenu du Canada
Department of Justice (Ottawa)/ Ministère de la Justice (Ottawa)

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Court File No.: 206953 (EST) 9

TAX COURT OF CANADA

In re the *Excise Tax Act*, R.S.C. 1985, c. E-15

B E T W E E N :

MEDALLION CORPORATION

Appellant

– and –

HER MAJESTY THE QUEEN

Respondent

NOTICE OF APPEAL

TAKE NOTICE that Medallion Corporation (the “**Appellant**”) appeals to this Honourable Court pursuant to section 306 of the *Excise Tax Act* from the Notice of Assessment dated February 23, 2015 in respect of reporting periods between January 1, 2011 to December 31, 2011 and the Notices of Reassessment dated March 11, 2015 in respect of reporting periods between January 1, 2012 to December 31, 2013 (the “**Relevant Period**”), as confirmed by Notices of Confirmation dated December 16, 2015 (CRA Appeals Division File Numbers GB1514 7152 5104, GB1514 7152 5504 and GB1514 7152 6262).

I. FACTS

1. The Appellant is a corporation resident in Canada and is registered for goods and services tax / harmonized sales tax ("**GST/HST**") under Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the "**ETA**").
2. The Appellant's GST/HST number is 87010 8313 RT0001.
3. The Appellant has a monthly GST/HST reporting period.

The Business

4. The Appellant has expertise in the leasing, management and operation of real property.
5. Medallion Realty Holdings Limited ("**Realty**") and other parties own commercial and residential real property in Canada (the "**Properties**").
6. Realty and the other parties who own the Properties are hereinafter referred to as the "**Co-Owners**".
7. Throughout the period January 1, 2011 through December 31, 2013, inclusive (the "**Relevant Period**"), the Appellant and each of its co-venturers formed joint ventures to earn leasing revenues from the Properties.
8. The joint venture for each of the Properties was governed by a written joint venture agreement ("**JVA**") between the Appellant and its co-venturer(s), i.e., the particular Co-Owner(s).
9. The JVAs entered into between the Appellant and each of the Co-Owners in respect of all the Properties relevant to this appeal are virtually identical.
10. The purpose of each of the joint ventures is to earn rental income from the leasing of the Properties.
11. In forming each of these joint ventures, and as confirmed by each of the JVAs entered into in respect of the Properties throughout the Relevant Period:

- (a) Each of the Co-Owners agreed to contribute certain of its Properties and related equipment, and the Appellant agreed to contribute its skill and expertise in the leasing, management and operation of the Properties.
- (b) The Appellant negotiated and entered into leases of the Properties with tenants in its own name for and on behalf of itself and the relevant Co-Owner.
- (c) The Appellant was directly obligated to the tenants under leases and was responsible for, *inter alia*, compliance with the *Landlord and Tenant Act* (Ontario), the *Tenant Protection Act, 1997* (Ontario) and the *Commercial Tenancies Act* (Ontario).
- (d) The relevant Co-Owner and the Appellant had a joint property interest in the production of the joint venture; being the rents, parking income, laundry machine income, common maintenance charges, property tax billings and all other charges to commercial tenants as or on account of rent (the “**Gross Rental and Other Income**”) to the extent of their proportionate interests.
- (e) The JVA allocated the parties’ respective obligations for expenses related to their own assets used in the joint venture as well as expenses of the undertaking in general.
- (f) The Appellant also incurred and/or paid certain expenses in connection with the Properties as agent of the relevant Co-Owner. The expenses incurred as agent were expenses that the relevant Co-Owner was required to incur as owner of the Properties and related equipment, so that it could continue to honour its commitment of contributing to the joint venture Properties available for rent (the “**Owner’s Expenses**”). The Owner’s Expenses included such things as insurance for property damage, utilities to the Properties, property taxes and assessments and equipment maintenance and repair.
- (g) Each of the relevant Co-Owners paid its Owner’s Expenses from its share of the Gross Rental and Other Income.

- (h) All other expenses incurred in connection with the leasing, management and operation of the Properties, including any equipment used therein, were either for the sole account of the Appellant as necessary to meet its obligation to contribute leasing, management and operational expertise, or were for the joint account of the Appellant and the relevant Co-Owner.
 - (i) Pursuant to the JVA, oversight of management of the joint venture is by the Joint Venture Management Committee, comprised of a representative of both the relevant Co-Owner and the Appellant (the "**Joint Management Committee**").
 - (j) The Joint Management Committee was responsible for significant business, operational, strategic and regulatory issues.
 - (k) If there was disagreement among the Joint Management Committee, the JVA provides for the appointment of a third party arbitrator.
12. The Appellant did not enter into a joint venture election pursuant to section 273 of the ETA with any of the Co-Owners in respect of the Properties that form the subject matter of this appeal. As such, the Appellant and the relevant Co-Owner were each required to and did report and remit the HST on its own, and only on its own, proportionate share of the Gross Rental and Other Income.
13. Each JVA expressly provided that the relationship between the Appellant and the relevant Co-Owner does not constitute a partnership at law.
14. Each of the Appellant and the relevant Co-Owner accounted for its proportionate share of the joint venture revenues as such.
15. Throughout the Relevant Period, the Appellant did not supply any services to the Co-Owners nor receive any fees from the Co-Owners in relation to the Properties. The Appellant did, however, render services to tenants of the Properties as part of the supplies jointly made with the Co-Owners to the tenants.
16. Throughout the Relevant Period, the Appellant collected and remitted HST in respect of its proportionate share of the Gross Rental and Other Income that arose as a result of

taxable supplies of the joint venture (i.e., commercial rents), and the Appellant did not charge, collect or remit any amounts as or on account of HST in respect of its proportionate share of the Gross Rental and Other Income that arose as a result of exempt supplies of the joint venture (i.e., residential rents).

The Reassessments

17. By Notices of Assessment dated February 23, 2015, the Minister of National Revenue (the “**Minister**”) assessed the Appellant 13% HST totaling \$1,150,620.61 (plus interest) in respect of its proportionate share of Gross Rental and Other Income received during its reporting periods in 2011. The total amount assessed for the 2011 reporting periods, including interest, was \$1,352,324.59.
18. By Notices of Assessment dated March 11, 2015, the Minister assessed the Appellant 13% HST totaling \$1,183,724.56 (plus interest) in respect of its proportionate share of Gross Rental and Other Income received during its reporting periods in 2012. The total amount assessed for the 2012 reporting periods, including interest, was \$1,349,310.68.
19. By Notices of Assessment dated March 11, 2015, the Minister assessed the Appellant 13% HST totaling \$1,272,413.08 (plus interest) in respect of its proportionate share of Gross Rental and Other Income received during its reporting periods in 2013. The total amount assessed for the 2013 reporting periods, including interest, was \$1,378,192.95.
20. The above-noted assessments in respect of the periods within the 2011, 2012 and 2013 years are hereinafter referred to collectively as the “**Assessments**”.
21. The basis of the Assessments is that the Appellant’s proportionate share of the Gross Rental and Other Income was consideration received for the supply of property management services to the Co-Owners that is subject to HST.
22. In making the Assessments, the Minister characterized the Appellant’s proportionate share of Gross Rental and Other Income as consideration for a taxable supply of services to the Co-Owners without regard to: the relationship of the parties, the conduct of the

parties, the terms of JVAs or the manner in which the Appellant and the Co-Owners accounted for their proportionate share of revenues and expenses.

23. The Appellant duly objected to the Assessments by filing Notices of Objection.
24. The Minister confirmed the Assessments through Notices of Confirmation dated December 16, 2015 (the “**Confirmations**”).
25. The Minister’s reason for confirming the Assessments was that there was no joint venture between the Appellant and each of the Co-Owners on the basis that there was no sharing of expenses. As stated in the Confirmations:

Appeals reviewed the JVA you provided, and it is Appeals’ conclusion that the arrangement between you and each of the property owners is not one of joint venture, mainly because the agreement does not provide for profit sharing. Nor is there any evidence of profit sharing.

...

... The JVA does not provide, nor is there any evidence that the expenses you incurred and the expenses incurred by each of the property owners, ought to be allocated either in the proportion in which gross rentals were allocated, or in any other mutually agreed proportion. Further, the expenses for which you are responsible are consistent with those incurred by a property manager. As such, while your revenue was determined as a percentage of the gross rental revenue from each rental property you managed, in the absence of evidence of the sharing of expenses, it is Appeals’ conclusion that the arrangement between you and each of the rental property owners is not one of joint venture as a right to participate in the profits is absent.

...

In conclusion, it is Appeals’ position that revenues of \$9,787,792.27, you received from the rental property owners, is consideration for your supply of property management services to them

[emphasis added]

26. The Appellant objects to the Assessments in full on the basis that it entered into joint ventures evidenced in writing in respect of the Properties with each of the Co-Owners, and that the Appellant contributed its skills, resources, expertise and personnel to such joint ventures. The Appellant did not make a supply of any services to the Co-Owners.

II. ISSUES

27. The issues in this appeal are:

- (a) Whether the Appellant formed joint ventures with each of the Co-Owners, in respect of the Properties.
- (b) Whether the Appellant's proportionate interest in the Gross Rental and Other Income was consideration for a taxable supply of property management services to the Co-Owners.

III. STATUTORY PROVISIONS AND REASONS RELIED UPON

- 28. The Appellant relies upon the entire ETA, and in particular the definitions of "consideration", "recipient", "supply" and "taxable supply" in subsection 123(1), and sections 165 and 273.
- 29. The Minister erred in making the Assessments, as the Minister improperly concluded that no joint venture existed between the Appellant and each of the Co-Owners.
- 30. The Minister further erred in determining that the Appellant made a supply of property management services to the Co-Owners. The only supplies made by the Appellant were made jointly with the Co-Owners to the tenants of the Properties.

The arrangements between the Appellant and the Co-Owners constitute joint ventures

- 31. The determination of whether a joint venture exists for purposes of the ETA must be determined on the basis of the conduct between the parties, the nature of their intentions, the facts and circumstances of their situation, and the relevant agreement between them.
- 32. Throughout the Relevant Period, the Appellant and each of the Co-Owners:
 - (a) Intended to create a joint venture in respect of each of the Properties;
 - (b) Entered into written JVAs in respect of the Properties; and

- (c) Conducted themselves and accounted for their revenues and expenses consistent with, and only with, their establishment of joint ventures in respect of each of the Properties. This includes, *inter alia*, reporting the GST/HST on their proportionate share of revenues and claiming a proportionate share of ITCs to the extent inputs were used in commercial activities.
33. In respect of each Property, and pursuant to the terms of each JVA between the Appellant and the relevant Co-Owner:
- (a) The Co-Owner contributed the Property and the Appellant contributed the skills, resources, expertise and personnel to the common undertaking of providing rental accommodation (commercial or residential) to tenants.
 - (b) The production or profits of the joint venture between the Appellant and the Co-Owner are the Gross Rental and Other Income. The Appellant and the Co-Owner each had a joint proportionate interest in the Gross Rental and Other Income.
 - (c) While day-to-day responsibilities of the venture were carried out by the Appellant, any significant business, operational, strategic and regulatory issues were subject to joint control exercised through the Joint Management Committee.
 - (d) The Appellant and the Co-Owner had a clear expectation of profit (and at the very least, there was an "adventure in the nature of trade"). In addition, the Appellant and the Co-Owner were each entitled to a proportionate share of the Gross Rental and Other Income. The JVA further allocated each party's expenses. Each of the Appellant and the Co-Owner then calculated their own profit (or loss).
 - (e) Finally, the JVA was limited to a single Property and limited purpose. Each of the participants can and do carry on their own business outside the joint venture.
34. The Minister erred in denying the existence of joint ventures between the Appellant and each Co-Owner solely on the basis that all expenses were not shared proportionately, based on an agreed *percentage allocation*.

35. A fundamental characteristic of a joint venture is that it is created by contract. Parties to a joint venture agreement are therefore free to contractually allocate (or not allocate) expenses as they see fit.
36. The Minister acknowledged in the Confirmations that the Appellant is responsible for expenses listed in Schedule C to the JVAs, while the Co-Owners are responsible for the expenses listed in clause (g) of Section 6 of the JVAs.
37. Accordingly, the parties to the JVAs did in fact allocate expenses in an agreed manner, which, contrary to the conclusion reached by the Minister, entirely supports the existence of a joint venture.
38. The arrangements between the Appellant and each of the Co-Owners in respect of the Properties thus constitute "joint ventures" as a matter of fact and law.
39. As the Appellant and each Co-Owner did not enter into an election under section 273 of the ETA, each participant properly reported the HST collectible on its proportionate share of the Gross Rental and Other Income and claimed ITCs to the extent it was entitled on its own expenses and its proportionate share of any joint expenses.

The Appellant did not supply services to the Co-Owners

40. The Appellant's contribution of property management skills, resources, expertise and personnel to the joint ventures does not constitute a taxable supply of "property management services" to the Co-Owners.
41. The only supplies made by the Appellant were made jointly with the Co-Owners to the tenants of the Properties.
42. Throughout the Relevant Period, the Appellant collected and remitted HST in respect of its proportionate share of the Gross Rental and Other Income that arose as a result of taxable supplies of the joint venture (i.e., commercial rents).

43. The Gross Rental and Other Income is not consideration paid or payable by the Co-Owners to the Appellant and cannot be characterized as consideration for services that were neither supplied to, nor paid or payable by, the Co-Owners.
44. As no amounts whatsoever were paid or payable by the Co-Owners to the Appellant, and as the Appellant made no supplies to the Co-Owners, there was no HST collectible by the Appellant from the Co-Owners.
45. The Assessments must therefore be vacated in full.

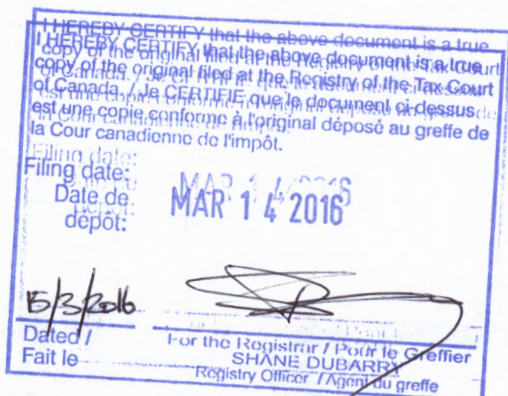
IV. RELIEF SOUGHT

46. The Appellant respectfully requests that:
 - (a) its appeal be allowed in full;
 - (b) the Assessments be vacated in full;
 - (c) the Minister pay applicable interest to the Appellant on any amounts paid on account of any portion of the Assessments so cancelled or vacated;
 - (d) costs in this appeal; and
 - (e) such further and other relief that this Honourable Court may deem just.

DATED at Toronto, in the Province of Ontario, this 14th day of March, 2016.

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Per: 

Neil E. Bass / Angelo Gentile
 Counsel for the Appellant

Court File No.

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TAX COURT OF CANADA

In re the *Excise Tax Act*, R.S.C. 1985, c. E-15

BETWEEN:

MEDALLION CORPORATION

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

NOTICE OF APPEAL



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