

BETWEEN:

CHOBHAM CORPORATION LTD.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on July 3, 2025, at Toronto, Ontario

Before: The Honourable Justice Joanna Hill

Appearances:

Counsel for the Appellant: Matthew G. Williams
Leonard Gilbert

Counsel for the Respondent: Gabriel Caron

JUDGMENT

Further to the attached Reasons, the appeals from assessments issued for the Appellant's 2015, 2017, 2019, and 2020 taxation years are dismissed. The Respondent is entitled to Tariff costs under Schedule II of the *Tax Court of Canada Rules (General Procedure)*.

Signed this 17th day of July 2026.

“Joanna Hill”

Hill J.

BETWEEN:

CHOBHAM CORPORATION LTD.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Hill J.

I. Overview

[1] The Appellant is a non-resident trust with a contributor who resides in Canada, specifically in the province of Quebec. Because of that resident contributor, the Appellant filed federal and provincial income tax returns on the basis that it is deemed resident of Canada under the *Income Tax Act* and deemed resident of Quebec under the *Quebec Taxation Act*.

[2] The Appellant's overall tax burden was higher than anticipated because the Minister of National Revenue imposed a federal surtax and denied the Appellant's claim for an abatement for Quebec tax. The Minister determined that the Appellant did not have income earned in a province because it did not factually reside in Quebec on the last day of each taxation year, as required by subsection 2601(1) of the *Income Tax Regulations*.

[3] In its appeal from the resulting reassessments, the Appellant argued that the requirements of Regulation 2601(1) were met because the *Quebec Taxation Act* deemed it to be resident in that province. The Appellant stated that the federal surtax should not apply and that it is entitled to the Quebec abatement because it was liable to pay—and did in fact pay—tax in Quebec.

[4] The Appellant's argument cannot succeed because it ignores the clear requirements of the federal legislation, as well as the scope of this Court's jurisdiction. The text of Regulation 2601(1) contains specific criteria regarding factual residence that is consistent with the context and purpose of the enabling provisions in the *Income Tax Act*.

[5] The application of the federal surtax and entitlement to the Quebec abatement does not depend on whether the Appellant was liable to pay tax in that province. Parliament enacted provisions framing the issue as whether an individual had income earned in a province, based in part on whether that individual factually resided in that province on the last day of a taxation year.

[6] The deemed residence provision in the Quebec *Taxation Act* cannot be used to satisfy the residency requirement in Regulation 2601(1) for two reasons. First, Parliament chose not to incorporate provincial standards in the regulation. Second, that deeming provision creates a legal fiction only for the purpose of the Quebec *Taxation Act*. The Appellant continued to factually reside outside of Canada.

[7] The federal government has been aware of the higher tax burden for individuals deemed resident in both Canada and Quebec since the 1980s. It chose to address the problem through a remission order that does not apply to the Appellant.

[8] This Court does not have the power to broaden the scope of Regulation 2601(1) to alleviate the Appellant's tax burden in this regard.

II. Background

[9] The facts relating to the four taxation years at issue are not in dispute. The following summary is taken from the parties' Agreed Statement of Facts and Joint Book of Documents.

[10] The Appellant is a trust that is factually resident in Panama.¹ It did not carry on a business or have a permanent establishment in Canada.² During the years at issue, it had foreign accrual property income and deemed interest income.³

¹ Agreed Statement of Facts at paras. 3 and 5.

² *Ibid.* at para. 7.

³ *Ibid.* at para. 8.

[11] A person who resided in Quebec contributed to the Appellant.⁴ The Appellant filed federal trust income tax returns on the basis that it is a deemed resident of Canada for federal tax purposes.⁵ The Appellant also filed Quebec trust income tax returns on the understanding that it is a deemed resident of Quebec for Quebec tax purposes.⁶ In filing its federal returns, the Appellant claimed an abatement for Quebec tax.

[12] The Minister reassessed the Appellant to deny the Appellant's claim for the Quebec abatement and to assess a federal surtax. The Minister concluded that the Appellant's income was not taxable in a province, further to the criteria in subsection 2601(1) of the *Income Tax Regulations*.⁷

[13] The Appellant's position on appeal is that the Quebec *Taxation Act* deems it to be resident in Quebec and that determination should inform the application of the federal *Regulations*. The Appellant argues that the federal surtax should not apply, and that it is entitled to the Quebec abatement because it was in fact taxed in that province.

[14] The Respondent argues that the reassessments are correct because the *Income Tax Act* only deems the Appellant to be resident in Canada, not in a particular province. The federal surtax applies and the Quebec abatement is not available because the Appellant was not factually resident in that province. The Respondent maintains that the deeming provision under the Quebec *Taxation Act* does not affect the interpretation and application of the *Income Tax Act* and *Regulations*.

[15] As outlined below, I agree with the Respondent's position. Despite the unfair result, the Minister's reassessments are correct because the relevant provisions of the *Income Tax Act* and *Regulations* were properly applied.

III. The Legislative Frameworks

[16] One of the underlying issues in this appeal is whether provisions of the *Income Tax Act* and *Regulations* can be reconciled with the Quebec *Taxation Act*.

⁴ *Ibid.* at para. 6.

⁵ *Ibid.* at para. 9.

⁶ *Ibid.* at paras. 10 and 12.

⁷ *Ibid.* at para. 15.

The Appellant's argument is based on the similarity between the federal and provincial statutes.

A. The federal legislative framework

[17] Pursuant to subsection 104(2) of the *Income Tax Act*, the Appellant is deemed to be an individual for tax purposes in respect of the trust property.

[18] Pursuant to paragraph 94(3)(a), the Appellant also was deemed to be resident in Canada for various purposes, including computing its taxable income, because it had a Canadian "resident contributor" during the taxation years at issue:

94(3) If at a specified time in a trust's particular taxation year (other than a trust that is, at that time, an exempt foreign trust) the trust is non-resident (determined without reference to this subsection) and, at that time, there is a resident contributor to the trust or a resident beneficiary under the trust, (a) the trust is deemed to be resident in Canada throughout the particular taxation year for the purposes of ... (ii) computing the trust's income for the particular taxation year, ...	94(3) Les règles ci-après s'appliquent à l'égard d'une fiducie qui, à un moment déterminé de son année d'imposition donnée, compte un contribuant résident ou un bénéficiaire résident, n'est pas une fiducie étrangère exempte et est, compte non tenu du présent paragraphe, un non-résident : a) la fiducie est réputée résider au Canada tout au long de l'année donnée en vue : ... (ii) de calculer son revenu pour l'année donnée, ...
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[19] The definition of "resident contributor" is grounded in whether a particular individual resides in Canada:

94 (1) The following definitions apply in this section and section 94.2. <i>resident contributor</i>, to a trust at any time, means a person that is, at that time, resident in Canada and a contributor to the trust, but — if the trust was created before 1960 by a person who was non-	94 (1) Les définitions qui suivent s'appliquent au présent article et à l'article 94.2. <i>contribuant résident</i> S'entend, relativement à une fiducie à un moment donné, de la personne qui, à ce moment, est à la fois un résident du Canada et un contribuant de la fiducie, à l'exclusion, si la fiducie a été
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resident when the trust was created — does not include an individual (other than a trust) who has not, after 1959, made a contribution to the trust.	établie avant 1960 par une personne qui était un non-résident au moment de l'établissement de la fiducie, du particulier (sauf une fiducie) qui n'a pas fait d'apport à la fiducie après 1959.
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[20] The federal surtax and Quebec abatement provisions both turn on whether an individual earned income in a particular province.

[21] The federal surtax is found in subsection 120(1) of the *Income Tax Act*. This provision imposes a surtax on income not earned in a province and approximates the amount of provincial tax that would otherwise be payable:

120 (1) There shall be added to the tax otherwise payable under this Part by an individual for a taxation year the amount that bears the same relation to 48% of the tax otherwise payable under this Part by the individual for the year that (a) the individual's income for the year, other than the individual's income earned in the year in a province, bears to (b) the individual's income for the year.	120 (1) Est ajoutée à l'impôt qu'un particulier est par ailleurs tenu de payer en vertu de la présente partie pour une année d'imposition la somme qui est, par rapport à 48 % de cet impôt, ce que : a) son revenu pour l'année, autre qu'un revenu gagné dans une province pour l'année, est par rapport : b) à son revenu pour l'année.
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[22] The Quebec abatement is found in subsection 120(2) of the *Income Tax Act* and sections 26 and 27 of the *Federal-Provincial Fiscal Arrangements Act*.⁸ Subsection 120(2) provides a refundable credit against federal tax that is supplemented by additional credits under the *Federal-Provincial Fiscal Arrangements Act*. Eligibility depends on an individual's income earned in a province:

120(2) Each individual is deemed to have paid, in prescribed manner and on prescribed dates, on account of the	120 (2) Chaque particulier est réputé avoir payé, selon les modalités et aux dates réglementaires, au titre de son impôt pour une
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⁸ R.S.C., 1985, c. F-8, s. 1. Section 27 provides an increase to the amount provided under the *Income Tax Act*, "with respect to the income of an individual earned in any such taxation year in that province".

individual's tax under this Part for a taxation year an amount that bears the same relation to 3% of the tax otherwise payable under this Part by the individual for the year that	année d'imposition, payable en vertu de la présente partie, une somme qui est par rapport à 3 % de l'impôt qu'il est par ailleurs tenu de payer pour l'année, en vertu de la présente partie, ce que :
(a) the individual's income earned in the year in a province that, on January 1, 1973, was a province providing schooling allowances within the meaning of the <i>Youth Allowances Act</i> , chapter Y-1 of the Revised Statutes of Canada, 1970,	a) son revenu gagné au cours de l'année dans une province qui, le 1 ^{er} janvier 1973, était une province accordant des allocations scolaires au sens de la <i>Loi sur les allocations aux jeunes</i> , chapitre Y-1 des Statuts révisés du Canada de 1970,
bears to	est par rapport :
(b) the individual's income for the year.	b) à son revenu pour l'année.

[23] Pursuant to subsection 120(4), “income earned in the year in a province” means amounts determined under section 2601 of the *Income Tax Regulations*. Since the Appellant did not carry on business or have a permanent establishment in Canada, it attempted to rely on Regulation 2601(1). The first criterion is that an individual must reside in a particular province:

2601 (1) If an individual resides in a particular province on the last day of a taxation year and has no income for the taxation year from a business with a permanent establishment outside the province, the individual's income earned in the taxation year in the particular province is the individual's income for the taxation year.	2601 (1) Si un particulier réside dans une province le dernier jour d'une année d'imposition et n'a tiré aucun revenu pour l'année d'une entreprise ayant un établissement stable à l'extérieur de la province, son revenu gagné pendant l'année dans la province correspond à son revenu pour l'année.
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B. The Quebec Taxation Act

[24] The Appellant relied on provisions of the *Quebec Taxation Act* that contain similar language to paragraph 94(3)(a) of the *Income Tax Act*. If a trust has a resident contributor, then subsection 595(a) of the *Taxation Act* deems the trust to be resident in Canada for various purposes, including computing income generally and with respect to specific provisions in the provincial statute. Both section 593 and subsection 595(a) refer to Canada, rather than the province of Quebec:

593. In this chapter and Chapter VI.2, “resident contributor” to a trust at any time means a person that is, at that time, resident in Canada and a contributor to the trust, but—if the trust was created before 1 January 1960 by a person who was not resident in Canada when the trust was created—does not include an individual (other than a trust) who has not, after 31 December 1959, made a contribution to the trust;	593. Dans le présent chapitre et le chapitre VI.2, l’expression: «contribuant résident» d’une fiducie à un moment quelconque désigne une personne qui, à ce moment, réside au Canada et est un contribuant de la fiducie, mais ne comprend pas, si la fiducie a été créée avant le 1^{er} janvier 1960 par une personne qui ne résidait alors pas au Canada, un particulier, autre qu’une fiducie, qui n’a pas fait d’apport à la fiducie après le 31 décembre 1959;
595. Where, but for this section, a trust would not be resident in Canada at a specified time in a particular taxation year and, at that time, there is a resident contributor to the trust or a resident beneficiary under the trust, the following rules apply, unless the trust is an exempt foreign trust at that time: (a) the trust is deemed to be resident in Canada throughout the particular taxation year for the purpose of i. computing the trust’s income for the particular year, ...	595. Lorsque, en l’absence du présent article, une fiducie ne résiderait pas au Canada à un moment déterminé d’une année d’imposition donnée et que, à ce moment, la fiducie compte un contribuant résident ou un bénéficiaire résident, les règles suivantes s’appliquent, sauf si la fiducie est une fiducie étrangère exempte à ce moment: a) la fiducie est réputée, tout au long de l’année d’imposition donnée, résider au Canada aux fins: i. de calculer son revenu pour l’année donnée; ...

[25] Subsection 595(f) of the *Taxation Act* outlines when a trust will be deemed resident in Quebec.

(f) where there is, at that time, a resident contributor to the trust that is a tax-liable taxpayer in respect of the trust or a resident beneficiary under the trust that is a tax-liable taxpayer in respect of the trust if a connected contributor to the trust at that time is a tax-liable taxpayer in respect of the trust at that time, the trust is deemed, for the purpose of applying Book II and determining the	f) si la fiducie compte, à ce moment, soit un contribuant résident qui est un contribuable assujetti à l’égard de la fiducie, soit un bénéficiaire résident qui est un contribuable assujetti à l’égard de la fiducie si un contribuant rattaché de la fiducie à ce moment est un contribuable assujetti à l’égard de la fiducie à ce moment, la fiducie est, aux fins d’appliquer le livre II et d’établir son assujettissement à l’impôt en vertu de la
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trust's tax liability under this Part, to be resident in Québec on the last day of the particular year and, where the trust is, in respect of the particular year, an electing trust or a trust that does not meet the condition of paragraph <i>a</i> of the definition of "electing trust" in the first paragraph of section 593, its income for the particular year is deemed to be equal to the portion of that income, otherwise determined, that may reasonably be considered as being attributable to property that was contributed to the trust at or before that time by a contributor that is at that time a resident contributor to the trust and a tax-liable taxpayer in respect of the trust or, if there is at that time a resident beneficiary under the trust that is a tax-liable taxpayer in respect of the trust, a connected contributor to the trust and a tax-liable taxpayer in respect of the trust; ...	présente partie, réputée résider au Québec le dernier jour de l'année donnée et, dans le cas où la fiducie est, à l'égard de l'année donnée, une fiducie déterminée ou une fiducie qui ne remplit pas la condition prévue au paragraphe <i>a</i> de la définition de l'expression «fiducie déterminée» prévue au premier alinéa de l'article 593, son revenu pour l'année donnée est réputé égal à la partie de ce revenu, déterminé par ailleurs, que l'on peut raisonnablement considérer comme étant attribuable à des biens qui ont fait l'objet d'un apport à la fiducie, au plus tard à ce moment, par un contribuant qui est, à ce moment, soit un contribuant résident de la fiducie et un contribuable assujetti à l'égard de la fiducie, soit, si la fiducie compte, à ce moment, un bénéficiaire résident qui est un contribuable assujetti à l'égard de celle-ci, un contribuant rattaché de la fiducie et un contribuable assujetti à l'égard de la fiducie; ...
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[26] Residence in Quebec on the last day of a taxation year triggers the liability to be taxed in that province, pursuant to section 22 of the *Taxation Act*:

22. Every person who is an individual resident in Québec on the last day of a taxation year or a corporation having an establishment in Québec at any time in a taxation year shall pay a tax on the taxable income of the individual or the corporation, as the case may be, for that taxation year. The tax payable under section 750 by an individual referred to in the first paragraph who carries on a business in Canada but outside Québec is equal to the proportion of the tax that would be determined under this section but for this paragraph that the individual's income earned in Québec is of the individual's	22. Toute personne qui est un particulier résidant au Québec le dernier jour d'une année d'imposition ou qui est une société ayant un établissement au Québec à un moment quelconque d'une année d'imposition doit payer un impôt sur son revenu imposable pour cette année d'imposition. L'impôt à payer en vertu de l'article 750 par un particulier visé au premier alinéa qui exerce une entreprise hors du Québec au Canada, est égal à la partie de l'impôt qui serait établi en vertu de cet article, si on ne tenait pas compte du présent alinéa, représentée par la proportion qui existe entre son revenu gagné au Québec et son revenu
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income earned in Québec and elsewhere, as determined by the regulations.	gagné au Québec et ailleurs, tels qu'établis par les règlements.
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IV. Analysis

[27] The Appellant argues that it met the provincial residency requirement in Regulation 2601(1) because subsection 595(f) of the Quebec *Taxation Act* deems it resident in Quebec.

[28] The Appellant accepts that paragraph 94(3)(a) of the *Income Tax Act* does not apply because it only deems the Appellant to be resident in Canada. The Appellant also does not argue that the factual residence of its resident contributor can be used to satisfy the requirements of Regulation 2601. Indeed, these positions would extend paragraph 94(3)(a) beyond its intended scope.

[29] However, the Appellant's reliance on the Quebec deeming provision also improperly extends the intended scope of the federal provisions, subsection 595(f) of the Quebec *Taxation Act*, and this Court's jurisdiction. Absent clear wording in Regulation 2601(1), this Court does not have the power to incorporate a provision of the Quebec *Taxation Act* to satisfy a requirement under the federal *Income Tax Act*. The Appellant's position ignores the text, context, and purpose of Regulation 2601(1) and its enabling provisions.

A. Residence must be determined within the confines of the federal legislative framework

[30] The primary issue in this appeal is the proper interpretation of Regulation 2601(1). As outlined by the Supreme Court of Canada, regulations must be interpreted using a modified version of the modern approach to statutory interpretation.⁹ Specifically, regulations must be read in the context of and with regard to the language of the relevant enabling provisions.¹⁰

⁹ *Bristol-Myers Squibb Co. v. Canada (Attorney General)*, 2005 SCC 26 at paras. 98-99; *Georgeson Shareholder Communication Canada Inc. v. HMTQ*, 2019 TCC 148 at paras. 56-57.

¹⁰ *Ibid.*

[31] The Appellant’s interpretation is not consistent with this approach, especially bearing in mind the following principles recently summarized by the Federal Court of Appeal:¹¹

- the text is the “anchor of the interpretative exercise”;¹²
- where the language is clear and unambiguous and unaffected by context and purpose, it must be given its effect;¹³ and
- purpose cannot be used to create an unexpressed exception to clear language.¹⁴

[32] The Appellant’s position improperly changes the text, context, and purpose to achieve a specific result in its case.

(1) The text

[33] There is no ambiguity in the residency requirement in Regulation 2601(1). The first criterion is whether an individual resides in a particular province on the last day of a taxation year:

2601 (1) If an individual resides in a particular province on the last day of a taxation year and has no income for the taxation year from a business with a permanent establishment outside the province, the individual’s income earned in the taxation year in the particular province is the individual’s income for the taxation year.	2601 (1) Si un particulier réside dans une province le dernier jour d’une année d’imposition et n’a tiré aucun revenu pour l’année d’une entreprise ayant un établissement stable à l’extérieur de la province, son revenu gagné pendant l’année dans la province correspond à son revenu pour l’année.
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[34] The use of the word “resides” refers to established principles of residency under the *Income Tax Act*. While taxpayers may be deemed resident in Canada under various provisions such as paragraph 94(3)(a), those provisions do not apply

¹¹ *Hunt v. HMTK*, 2026 FCA 88 at paras. 10–14.

¹² *Ibid.* at para. 11.

¹³ *Ibid.* at para. 13.

¹⁴ *Ibid.*

for the purpose of Regulation 2601(1) because they do not refer to any particular province.

[35] Regulation 2601(1) applies if the individual is factually resident in a province on December 31 of a particular taxation year. Factual residence is determined under common law tests.¹⁵ Where a corporation or trust is factually resident is determined by the central management and control test.¹⁶

[36] In some instances, the application of the common law test can produce different results or conflict with a deemed residence provision. In *Gardner*, the Federal Court of Appeal held that although a taxpayer may be deemed resident in Canada for the purposes of paragraph 250(1)(c) of the *Income Tax Act*, that does not prevent the taxpayer from being found in fact to be or not to be an ordinary resident of a province.¹⁷

[37] In the present case, the parties agree that the Appellant is factually resident in Panama. The Appellant has attempted to overcome this hurdle by relying on the deemed residence provision in the Quebec *Taxation Act*. In doing so, the Appellant has effectively added words and terms to the text of Regulation 2601(1).

[38] Contrary to the Appellant's assertions, the provision does not refer to whether an individual resides in a particular province for "tax purposes".¹⁸ The text also does not refer to determinations under provincial law, either directly or indirectly.

[39] By way of contrast, the Respondent highlights various provisions in the *Income Tax Act* that either implicitly or explicitly incorporate provincial laws. For example, subparagraph 8(1)(i)(iv) allows a deduction for annual membership dues in a trade union "as defined in any provincial statute".¹⁹

[40] In the present case, there is no need to resort to provincial legislation because residence is not governed by the general law of the provinces. This Court is often required to address provincial legislative determinations that govern transactions and relationships between parties as they relate to a taxpayer's liability

¹⁵ See the discussions in Vern Krishna, *Fundamentals of Canadian Income Tax*, Vol. 1: *Personal Tax*, 2nd ed. (Thomson Reuters, 2019), Chapter 3: "Taxable Nexus".

¹⁶ *Ibid.*, Chapter 3: "Taxable Nexus", Part V: "Trusts" at 131–133.

¹⁷ *Gardner v. HMTQ*, 2001 FCA 401 at para. 18.

¹⁸ Appellant's Memorandum of Fact and Law at paras 45-46.

¹⁹ Respondent's Written Submissions at para. 31.

under the *Income Tax Act*.²⁰ Deemed residence under the Quebec *Taxation Act* does not fall into that category.

[41] Finally, the Appellant's position ignores well-established legal principles regarding the limited scope of deeming provisions.²¹ Subsection 595(f) of the *Taxation Act* creates a legal fiction, deeming the Appellant to be resident in Quebec for the limited purpose of determining its provincial tax liability under that statute. The actual situation, namely that the Appellant is factually resident in Panama, still stands for other purposes outside of the Quebec *Taxation Act*.

[42] The fact that the Appellant did not earn income in Quebec also still stands. As a result, the Appellant's position also ignores the remainder of Regulation 2601(1), which refers to the individual's actual income earned in the particular province. The Quebec deeming provision cannot be used to overcome this additional hurdle in the Appellant's case.

(2) The immediate context

[43] The immediate context supports the plain meaning of the text. Regulation 2601 contains other subsections with specific criteria regarding the factual residence of individuals.

[44] Like Regulation 2601(1), Regulation 2601(2) applies to individuals who reside in a particular province on the last day of a taxation year. The difference is that this provision applies to individuals who have business income from a permanent establishment *outside* that particular province:

2601(2) If an individual resides in a particular province on the last day of a taxation year and has income for the taxation year from a business with a permanent establishment outside the particular province, the individual's income earned in the taxation year in the particular province is the amount, if any, by which	2601(2) Si un particulier réside dans une province le dernier jour d'une année d'imposition et a tiré un revenu pour l'année d'une entreprise ayant un établissement stable à l'extérieur de cette province, son revenu gagné pendant l'année dans la province correspond à l'excédent de la somme visée à l'alinéa a) sur celle visée à l'alinéa b) : a) son revenu pour l'année;
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²⁰ See the general principles in *Barejo Holdings ULC v. HMTQ*, 2015 TCC 274 at para. 8.

²¹ *Durocher v. HMTQ*, 2016 FCA 299 at para. 48; *La Survivance v. HMTQ*, 2006 FCA 129 at paras. 53–55.

(a) the individual's income for the taxation year exceeds (b) the total of all amounts each of which is the individual's income for the taxation year from carrying on a business that is earned in a province other than the particular province or in a country other than Canada, determined in accordance with this Part.	b) le total des sommes représentant chacune son revenu pour l'année provenant de l'exploitation d'une entreprise qui est gagné une autre province ou dans un pays étranger et calculé conformément à la présente partie.
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[45] Regulation 2601(3) applies to individuals who reside in Canada on the last day of a taxation year, but who do not reside in a particular province. Those individuals have income earned in a province because they carry on business in that province:

2601(3) If an individual, who resides in Canada on the last day of a taxation year and who has carried on business in a particular province at any time in the taxation year, does not reside in the particular province on the last day of the taxation year, the individual's income earned in the taxation year in the particular province is the individual's income for the taxation year from carrying on business earned in the particular province, determined in accordance with this Part.	2601(3) Si un particulier, qui réside au Canada le dernier jour d'une année d'imposition et qui exploite une entreprise dans une province au cours de l'année, ne réside pas dans cette province le dernier jour de l'année, son revenu gagné pendant l'année dans la province correspond à son revenu pour l'année provenant de l'exploitation d'une entreprise, gagné dans la province et calculé conformément à la présente partie.
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[46] Arguably, Regulation 2601(3) could apply to the Appellant because paragraph 94(3)(a) deems it to be resident in Canada "throughout the particular taxation year". However, the Appellant otherwise does not meet the requirements of this provision because it did not carry on business in a province.

[47] With Regulations 2601(1), 2601(2), and 2601(3), Parliament outlined three specific scenarios in which an individual will be considered to have "income earned in a province" for the purpose of section 120 of the *Income Tax Act*.

[48] The Appellant’s argument that deemed residence under the Quebec *Taxation Act* meets the provincial residency requirement would undermine the proper application of these related Regulations.

(3) The broader context

[49] The context of the enabling provisions in the *Income Tax Act* also does not support the Appellant’s position.

[50] Regulation 2601(1) is found in Part XXVI “Income Earned in a Province by an Individual”. Regulation 2600(1) confirms that Part XXVI contains the prescribed rules to apply the definition of “income earned in the year in a province” in subsection 120(4) of the *Income Tax Act*. That provision contains definitions for all of subsection 120:

120(4) In this section, <i>income earned in the year in a province</i> means amounts determined under rules prescribed for the purpose of regulations made on the recommendation of the Minister of Finance;	120(4) Les définitions qui suivent s’appliquent au présent article. <i>revenu gagné au cours de l’année dans une province</i> Les montants déterminés conformément aux règles établies à cette fin par règlement pris sur recommandation du ministre des Finances.
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[51] The federal surtax in subsection 120(1) is calculated based on an amount that excludes the individual’s income earned in the year in a province, while the Quebec abatement in subsection 120(2) is calculated based on the individual’s income earned in that province.

[52] As a result, the context for the application of Regulation 2601(1) does not include a determination of whether an individual was liable to pay tax in a province. It does not reflect Parliament’s intention that the application of these provisions should be determined by provincial taxing legislation.

[53] Parliament chose the term “income earned in a province” and defined it within the specific parameters in Regulation 2601.

(4) The purpose

[54] The objective of Regulation 2601(1) is to define “income earned in the year in a province” for the purpose of section 120 of the *Income Tax Act*.

[55] Section 120 sets out the rules that integrate the federal and provincial income tax systems for individuals.²² The federal surtax imposes additional tax on income not earned in a province, while the Quebec abatement offers a credit with respect to income earned in that province.

[56] Relevant federal government publications outline that Parliament intended to approximate amounts (additional or reduced federal tax), with respect to income earned in or outside of a province rather than with respect to any specific determinations under provincial taxing statutes.

[57] The provisions are general by design. Parliament did not attempt to address the variances between provinces, either in terms of provincial tax rates or specific provincial criteria that determine liability.

(a) the federal surtax

[58] The purpose of the federal surtax has been consistently stated in government publications dating back to 1982. Department of Finance Technical Notes describe it as an additional federal tax with respect to income that is not earned in a province, the same term used in subsection 120(1).²³

[59] The 2000 Technical Notes offer additional background information. The federal surtax was introduced in 1972. Its purpose is to ensure that deemed residents and others with income not earned in a province face a total income tax burden roughly comparable to that of Canadian residents. Income considered to have been earned in Canada, but not considered to be earned in a province, is subject to this surtax.²⁴

[60] The federal surtax is calculated to approximate provincial taxes,²⁵ and the percentage of additional federal tax has been periodically amended over the years.

²² Canada, Department of Finance, Technical Notes, March 2001.

²³ 1982 Technical Notes; March 2001 Technical Notes; June 1989 Technical Notes.

²⁴ Canada, Department of Finance, “The Budget Plan 2000” (February 28, 2000) at 238, 2000 Budget Supplementary Information.

²⁵ See also the June 1989 and March 2001 Technical Notes.

[61] Consistent with the federal objective of approximating a combined federal and provincial income tax burden, the provisions do not take into account whether an individual has in fact paid tax in a province.

(b) the Quebec abatement

[62] Department of Finance Budget information from 1979 outlines that this special abatement is provided because Quebec opted out of direct cost-sharing programs under the federal-provincial fiscal arrangements.²⁶ The Quebec abatement is intended to reduce the federal income tax payable by Quebec residents, and enable the Quebec government to levy its provincial income tax at higher rates. The federal government uses funds that otherwise would have been paid to Quebec under federal-provincial programs to help offset the overall personal income tax burden of Quebec residents.²⁷

[63] The Quebec abatement was 16.5% in 1979,²⁸ and that percentage has not been amended in the relevant provisions of the *Income Tax Act* and the *Federal-Provincial Fiscal Arrangements Act*. It is an approximation that does not take into account fluctuations in Quebec provincial income tax rates.

(5) Conclusion

[64] Parliament used the same residency requirement as many of the provinces and territories, namely residence on the last day of a taxation year, as one of the criteria to determine whether an individual had income earned in a province for the purpose of section 120. However, the objective was not to determine whether an individual was liable to pay tax or did in fact pay tax in a province. Instead, Parliament sought to establish general parameters for (a) the federal surtax that would apply to approximate provincial and territorial tax rates across the country, and (b) the Quebec abatement that would apply regardless of the provincial income tax rate in that province in any given year.

B. The Appellant's interpretation creates jurisdictional issues

²⁶ Canada, Department of Finance, 1979 Budget Supplementary Information, *Notices of Ways and Means Motions and supplementary information on the Budget* (December 11, 1979) at 68.

²⁷ See Quebec, Government Publications, *Selected News Releases*, Quebec Abatement (October 30, 2015) at 1.

²⁸ 1979 Budget Supplementary Information.

[65] Regulation 2601 has three categories of how income earned in province is defined for the purpose of section 120 of the *Income Tax Act*. The provisions do not depend on criteria or determinations in any provincial income tax statutes or the amount of tax a province chooses to levy in a particular taxation year. Framing the requirement in relation to where an individual resides and the type of income they earn avoids questions of whether the individual has filed a provincial income tax return, has been assessed by a province, and whether that assessment is correct under that province's legislation.

[66] Federal and provincial tax liabilities remain separate jurisdictional issues. The Minister's determination of whether the federal surtax should be applied does not impact a taxpayer's provincial tax liability.²⁹ Provincial taxes are not assessed on the basis of the Minister's determination, but under the taxing statutes of respective provinces that provide for a right of appeal to the respective provincial superior courts. The federal surtax is similarly not assessed on the basis of any provincial determination, but under the relevant provisions of the federal *Income Tax Act* and Regulations.

[67] This Court does not have the jurisdiction to pronounce on the validity of an assessment of provincial income tax, and the validity and correctness of the federal assessment in no way hinges on the allocation of provincial tax.³⁰

[68] Notably, these jurisdictional concerns are summarized in a 1998 Canadian Tax Foundation article relied on by the Appellant. In describing the "advent of the abatement" in the 1950s, the author noted the advantages of providing a deduction in relation to federal corporate income tax rather than a credit with respect to Quebec corporate income tax:³¹

By providing a deduction related to the federal [corporate income tax] instead of the provincial one, the federal law freed its administrators from the necessity of finding out what provincial taxes should have been levied and what taxes were actually paid. The deduction in the form of an abatement also did not encroach on the freedom of Quebec or any future non-agreeing province to vary its taxes on corporations as it pleased. In short, the abatement allowed both the provinces and

²⁹ *Sutcliffe v. HMTQ*, 2004 FCA 376 at paras. 9–11.

³⁰ *Ibid.* paras. 13-14.

³¹ Ernest H. Smith, *Special Studies in Taxation and Public Finance: No 1: Federal-Provincial Tax Sharing and Centralized Tax Collection in Canada*, Chapter 5: "The 1952 Tax Rental Agreements and the Isolation of Quebec" (Toronto: Canadian Tax Foundation, 1998) at 55.

Ottawa greater flexibility than a credit would have—and made life easier for taxpayers.

[69] The same considerations apply as a basis to reject the Appellant's argument.

[70] The federal structure respects the right of the provinces to determine how they will impose tax. Using residency criteria that mirrors but does not incorporate provincial taxing legislation does not require the Minister or this Court to apply provincial legislation to determine whether an individual is liable to pay tax in a province. The provinces similarly do not have to be concerned with whether the Minister has properly imposed a federal surtax according to the federal *Income Tax Act* and Regulations.

C. Parliament chose to address this problem outside of the *Income Tax Act*

[71] The federal government is aware that the proper application of the federal surtax provisions may result in a higher tax burden for taxpayers deemed resident in Quebec.

[72] However, neither the legislation nor the Regulations have been amended to address this issue.

[73] Instead, the federal government has alleviated the additional tax burden for individuals deemed resident in Quebec through two remission orders issued under the *Financial Administration Act* and the *Income Tax Act*.

[74] The first was registered on January 21, 1983, and applied to the 1979 to 1982 taxation years.³² The current remission order was registered on July 5, 1989, and still applies today.³³

[75] The full title of the current remission order speaks for itself: *Order Respecting the Remission of Income Tax in Respect of Certain Income of Individuals Earned in the Province of Quebec (1988)*. It provides relief to three types of taxpayer according to their residence (i) individuals who did not reside in Canada at any time in a taxation year, (ii) individuals who did not reside in a

³² *Income Earned in Quebec Income Tax Remission Order, 1982*, P.C. 1983-105 (January 20, 1983) / SOR/83-96 (January 21, 1983).

³³ *Income Earned in Quebec Income Tax Remission Order, 1988*, SI/89-157 / P.C. 1989-1204 (June 22, 1989).

province (or territory) on the last day of a taxation year, and (iii) individuals who resided in the province of Quebec on the last day of a taxation year.

[76] Individuals who did not reside in a province or territory on the last day of a taxation year are granted remission of the amount by which federal income taxes paid (or payable) exceeds the amount that would have been payable if the individual had resided in the Province of Quebec on the last day of the taxation year.³⁴

[77] The remission order applies to five categories of individuals according to criteria similar to the deemed resident provisions in subsection 250(1) of the *Income Tax Act*.³⁵ It does not apply to the Appellant, who is deemed resident under paragraph 94(3)(a).

[78] Parliament created a solution that did not disturb the broad framework in subsection 120(1) and Regulation 2601. The fact that the solution does not include the Appellant is not a sufficient basis for this Court to improperly extend the interpretation of what it means to reside in a province on the last day of a taxation year.

V. Conclusion

[79] The Appellant has a sympathetic case. It is caught by deeming provisions and rules in section 94 of the *Income Tax Act* designed to ensure that non-resident trusts do not defer or completely avoid tax on accumulated income.³⁶ The province of Quebec seems to have adopted similar legislation for the same purpose.

[80] Unfortunately, those deeming provisions do not align with the federal surtax and Quebec abatement provisions in section 120 of the *Income Tax Act*. The deemed residence provision in paragraph 94(3)(a) was enacted in 2012, several decades after the federal surtax and Quebec abatement were introduced and several decades after the remission orders were registered.

[81] As a result, the Appellant paid federal and Quebec income taxes, was assessed a federal surtax, and was denied the Quebec abatement. This specific

³⁴ *Ibid.* s. 5(1).

³⁵ *Ibid.* s. 5(2).

³⁶ See *Garron Family Trust v. HMTQ*, 2009 TCC 450 at para. 274; *Antle v. HMTQ*, 2009 TCC 465 at para. 94.

result is unfair and arguably does not align with Parliament's general intentions for either section 120 or section 94 of the *Income Tax Act*.

[82] However, the Appellant's remedy does not lie with this Court. Regulation 2601(1) cannot be interpreted to answer the question of whether the Appellant was resident in Quebec on the last day of a taxation year with reference to a deeming provision in the Quebec *Taxation Act*.

[83] The appeal is therefore dismissed. The Respondent is entitled to Tariff costs under the *Tax Court of Canada Rules (General Procedure)*.

Signed this 17th day of July 2026.

“Joanna Hill”

Hill J.

CITATION: 2026 TCC 127

COURT FILE NO.: 2022-1934(IT)G

STYLE OF CAUSE: CHOBHAM CORPORATION LTD. v.
HIS MAJESTY THE KING

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 3, 2025

REASONS FOR JUDGMENT BY: The Honourable Justice Joanna Hill

DATE OF JUDGMENT: July 17, 2026

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