

Docket: 2012-1217(IT)G

BETWEEN:

EASY WAY CATTLE OILERS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on January 20, 2015 and May 12, 2015,
at Saskatoon, Saskatchewan.

Before: The Honourable Justice Steven K. D'Arcy

Appearances:

Counsel for the Appellant: Adam D. Hnatyshyn

Counsel for the Respondent: John Krowina

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeal with respect to a reassessment made under the *Income Tax Act* for the 2008 taxation year is dismissed, with costs.

Signed at Antigonish, Nova Scotia, this 21st day of August 2015.

“S. D’Arcy”

D'Arcy J.

Citation: 2015 TCC 211
Date: 20150821
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EASY WAY CATTLE OILERS LTD.,

Appellant,

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REASONS FOR JUDGMENT

D'Arcy J.

[1] The issue in this appeal is whether paragraph (m) of the definition of investment tax credit in subsection 127(9) of the *Income Tax Act* (the “Act”) precludes the Appellant from claiming an investment tax credit for its 2008 taxation year in respect of certain scientific research and experimental development (“SR & ED”) expenditures.

Summary of Facts

[2] Most of the relevant facts are contained in the Partial Agreed Statement of Facts, which states the following:

- a) The Appellant’s corporate tax year end date is December 31st;
- b) The Appellant’s corporate taxation year end for 2008 was December 31, 2008;
- c) The filing due date for the Appellant’s T2 Corporate Income Tax Return for the 2008 taxation year was June 30, 2009;
- d) The Appellant filed its T2 Corporate Income Tax Return for the 2008 taxation year on September 30, 2009;

- e) The Appellant's T2 Corporate Income Tax Return for the 2008 taxation year was initially assessed on October 5, 2009;
- f) The deadline for the Appellant to file a completed Form T661 relative to the Appellant's 2008 SR & ED claim was June 30, 2010;
- g) The deadline for the Appellant to claim Investment Tax Credits in relation to its claim for SR & ED was June 30, 2010;
- h) The Appellant, by its accountants, BDO Canada LLP, filed a completed Form T661 with the Canada Revenue Agency (CRA) in support of its 2008 SR & ED claim on June 30, 2010;
- i) The Appellant, by its accountants, BDO Canada LLP, filed a completed Form T2SCH31 with the CRA in support of its claim for Investment Tax Credits on August 16, 2010;
- j) The CRA denied the Appellant's claim for an SR & ED Investment Tax Credit by Corporation Notice of Reassessment issued to the Appellant on March 7, 2011.

[3] The technical report filed by the Appellant with its Form T661 states that the research and development was related to "The development of a Rotational Molding Oven Prototype that is a low-cost 16' x 16' x 16' cubic rotational furnace for making one piece buildings and components for the oil patch industry".¹

[4] The March 7, 2011 Corporation Notice of Reassessment indicates that the Appellant incurred allowable SR & ED expenditures of \$95,791 in its 2008 taxation year.²

[5] I heard from two witnesses during the hearing. The Appellant had retained the first witness, Mr. Jim Figley, to prepare the required SR & ED documentation for its 2008 taxation year. The second witness, Mr. Devrin Dowie, is a financial review manager with the CRA.

[6] Mr. Figley went through the Form T661 (including a technical report) and the T2SCH31 ("Schedule 31") that the Appellant filed with the CRA.³ He traced all of the information used in the calculations contained in the Schedule 31 filed by the Appellant on August 16, 2010 to either the T2 Corporation Income Tax Return

¹ Exhibit A-1, page 3.

² Exhibit AR-1, Tabs 5 and 3(B).

³ Exhibit AR-1, Tabs 3A, 3B, 3C, 3D, and 3F; Exhibit A-1.

(the “T2”) filed by the Appellant on September 30, 2009 or the Form T661 filed by the Appellant on June 30, 2010.⁴

[7] Mr. Dowie’s testimony focused on the steps the CRA had taken during the relevant period to inform the public that Schedule 31 is a prescribed form used to calculate a taxpayer’s investment tax credits in respect of SR & ED expenditures.

The Law

[8] Subsection 127(5) allows a taxpayer to deduct from the tax otherwise payable under Part I of the *Act* a certain amount with respect to its investment tax credit in respect of certain property and expenditures, including its SR & ED expenditures.

[9] Investment tax credit is defined in subsection 127(9). The relevant portion of the definition for the purposes of this appeal is contained in paragraph (*m*) of the definition, which reads as follows:

except that no amount shall be included in the total determined under any of paragraphs 9(*a*) to (*e.2*) in respect of an outlay, expense or expenditure that would . . . be made or incurred by the taxpayer in the course of earning income in a particular taxation year . . . if . . .

(*m*) the taxpayer does not file with the Minister a prescribed form containing prescribed information in respect of the amount on or before the day that is one year after the taxpayer’s filing due date for the particular year.

[10] The word *prescribed* is defined in part, in subsection 248(1), to mean “in the case of a form, the information to be given on a form or the manner of filing a form, authorized by the Minister”.

[11] Subsection 244(16) addresses the matter of when a form is authorized by the Minister. It states:

Every form purporting to be a form prescribed or authorized by the Minister shall be deemed to be a form authorized under this Act by the Minister unless called in question by the Minister or by a person acting for the Minister or Her Majesty.

⁴ Transcript, pages 16-30, Testimony of Mr. Jim Figley.

The Appellant's Position

[12] The Appellant argued that Schedule 31 is not a prescribed form.

[13] The Appellant also argued that, even if Schedule 31 was a prescribed form, it was still entitled to the investment tax credit since it had provided all prescribed information.

[14] Counsel for the Appellant noted that the Schedule 31 filed by the Appellant offered no unique prescribed information. It simply contained calculations. All of the information required to perform such calculations was contained in either the Form 661 or the T2 filed by the Appellant. The Appellant filed each of these forms on or before June 30, 2010. The information requested in a few sections of Schedule 31 was not contained in either the Form 661 or the T2 filed by the Appellant. However, this information was not relevant to the Appellant's SR & ED expenditures and the ITC application.

[15] In the Appellant's view, the question the Court must ask is whether the Appellant submitted, on or before June 30, 2010, the required information for the SR & ED credit in a sufficiently clear and complete manner such that the CRA could calculate the investment tax credit.

The Respondent's Position

[16] Counsel for the Respondent raised the following three points:

- (a) Schedule 31 is the prescribed form which must be filed pursuant to the requirements of paragraph (*m*) of the definition of investment tax credit in subsection 127(9). If no schedule 31 is filed, no investment tax credits are available.
- (b) Subsection 244(16) deems a form which purports to be a prescribed form to be in fact and for all legal purposes a prescribed form. Schedule 31 is authorized by the Minister and only the Minister, pursuant to that provision, can call it into question.
- (c) The T2 and Form T661 filed by the Appellant did not contain all information required to calculate the investment tax credit.

The Court's Decision

[17] I agree with the Respondent that Schedule 31 is a prescribed form for the purposes of paragraph (m) of the definition of investment tax credit. Mr. Dowie's testimony clearly shows that it is a form that purports to be a form authorized by the Minister.

[18] Schedule 31 is referred to in numerous CRA publications as either a prescribed form or a form used to provide the CRA with prescribed information in respect of the amount of the investment tax credit. For example, CRA Application Policy 2004-02R, 2004-02R2, 2004-02R4 entitled *Filing Requirements for Claiming SR & ED* states:

For the purpose of paragraph (m) of the definition of an ITC in subsection 127(9) of the Act,

*Schedule T2SCH31, *Investment Tax Credit—Corporations*, is the prescribed form for corporations and

...⁵

[19] In my view, the result of the application of paragraph (m) of the definition of investment tax credit in subsection 127(9) is that no amount can be included in the determination of the amount of the Appellant's investment tax credit for its 2008 taxation year in respect of its SR & ED qualifying expenditure pool unless the Appellant filed, on or before June 30, 2010, a prescribed form authorized by the Minister for the purposes of paragraph (m) of the definition.

[20] For a corporation that form is Schedule 31.

[21] I agree with Mr. Figley that the Minister could have calculated the Appellant's investment tax credits for its 2008 taxation year using the information the Appellant included in its T2 and Form 661. The Appellant filed these forms, which are prescribed forms, with the CRA on or before the June 30 deadline.

[22] However, there is no evidence before me that the T2 and Form 661 are forms authorized by the Minister as prescribed forms for the purposes of paragraph (m) of the definition of investment tax credit.

⁵ CRA Application Policy SR & ED 2004-02R, 2004-02R2 and 2004-02R4, *Filing Requirements for Claiming SR & ED*. See also CRA Guide T4088, *Scientific Research and Experimental Development (SR & ED) Expenditures Claim – Guide to Form T661*.

[23] In summary, the Appellant has not satisfied the requirement of filing on or before June 30, 2010 a prescribed form (in this instance Schedule 31) in respect of the amount sought as an investment tax credit. As a result, it is not entitled to claim an investment tax credit in respect of its allowable SR & ED expenditures for its 2008 taxation year.

[24] I appreciate that this is a harsh result; however, Parliament has clearly directed that the Appellant had to file the Schedule 31 on or before June 30, 2010.

[25] For the foregoing reasons, the appeal is dismissed with costs.

Signed at Antigonish, Nova Scotia, this 21st day of August 2015.

“S. D’Arcy”

D’Arcy J.

CITATION: 2015 TCC 211

COURT FILE NO.: 2012-1217(IT)G

STYLE OF CAUSE: EASY WAY CATTLE OILERS LTD. v.
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REASONS FOR JUDGMENT BY: The Honourable Justice Steven K. D'Arcy

DATE OF JUDGMENT: August 21, 2015

APPEARANCES:

Counsel for the Appellant: Adam D. Hnatyshyn
Counsel for the Respondent: John Krowina

COUNSEL OF RECORD:

For the Appellant:

Name: Adam D. Hnatyshyn

Firm: Hnatyshyn Gough
Saskatoon, Saskatchewan

For the Respondent: William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada