

Docket: 2010-320(IT)I

BETWEEN:

AMIRIX SYSTEMS INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on September 14, 2010, at Toronto, Ontario

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: David J. Rotfleisch  
Yonathan Moussadji

Counsel for the Respondent: Toks C. Omisade

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 1997 taxation year is dismissed, with costs.

Signed at Victoria, British Columbia, this 1st day of February 2011.

“L.M. Little”

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Little J.

Citation: 2011 TCC 60  
Date: February 1st, 2011  
Docket: 2010-320(IT)I

BETWEEN:

AMIRIX SYSTEMS INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Little J.

A. FACTS

[1] The Appellant maintains that it was carrying on scientific research and experimental developments in the year under appeal.

[2] The Appellant originally filed an incorrect income tax return for the 1997 taxation year.

[3] In the tax return that was filed, the Appellant did not claim all of the Scientific Research and Experimental Development credits (“SR&ED”) to which it was entitled. As a result of this mistake, the Appellant incorrectly reduced federal income tax credits (“ITCs”) to which it was entitled.

[4] The records of the Canada Revenue Agency (“CRA”) indicate that the Minister of National Revenue (the “Minister”) reassessed the Appellant’s 1997 tax return on five separate occasions, i.e.:

November 1, 1999;

January 4, 2000;

March 26, 2001;

May 7, 2002; and  
May 15, 2002.

[5] The Appellant filed a Notice of Objection to the Notice of Reassessment issued on May 15, 2002.

[6] On August 30, 2007, the parties executed Minutes of Settlement.

[7] Pursuant to the Minutes of Settlement, the Appellant's taxable income was increased from \$650,696 to \$1,937,610. Federal ITCs of \$205,844 were allowed for the 1997 taxation year.

[8] Following the settlement, the Appellant submitted a plan to the Minister requesting that the Minister apply ITCs from the 1997, 1998, 1999 and 2000 taxation years plus a Nova Scotia Manufacturing and Processing Investment Tax credit ("M&P credit") from the year 2000 to its income in the 1997 taxation year.

[9] On April 4, 2008, the Minister issued a Notice of Reassessment in accordance with the plan submitted by the Appellant. In the Notice of Reassessment, the Minister charged the Appellant interest on the carryback from 1998 to 2000.

[10] The Appellant objected to the interest calculation.

[11] On November 10, 2009, the Minister varied the Reassessment by changing the effective interest date on all credits carried back to 1997 to November 28, 2000.

[12] The Appellant filed an appeal to the Tax Court.

## B. ISSUES TO BE DECIDED

[13] The issues to be decided are:

- a) whether the Minister reassessed the Appellant for the 1997 taxation year in accordance with the Minutes of Settlement; and
- b) whether the Minister correctly identified the effective date for calculation of interest when applying the tax credit to the 1997 taxation year.

## C. ANALYSIS AND DECISION

[14] The parties filed an Agreed Statement of Facts in which they agreed that the Appellant had an SR&ED expenditure pool of \$1,413,822.

[15] The Appellant's main argument is that when it submitted the settlement proposal to the Minister, it requested a substitution of provincial credits for federal credits, i.e., Nova Scotia M&P credits for federal SR&ED credits.

[16] Counsel for the Appellant claims that the treatment that was proposed is in accordance with CRA assessing policy.

[17] Counsel for the Appellant attempted to distinguish the case of *Connaught Laboratories Limited v The Queen*, 94 D.T.C. 6697 [*Connaught*], on the grounds that in *Connaught* the carryback of a capital loss was requested as a result of a CRA audit, while in this situation there was no audit involved.

[18] Counsel for the Respondent's main argument is that the Appellant's balance due date for the 1997 taxation year was August 31, 1997. However, Counsel for the Respondent noted that the Appellant is claiming a combination of provincial and federal carrybacks from 1998 to 2000 that were not available at that time.

[19] Counsel for the Respondent said that the Appellant chose to carry forward the SR&ED expenditure pool instead of using it to reduce its tax liability when it submitted its plan following the settlement. Counsel for the Respondent noted that the Appellant chose to rely on federal ITC credits and Nova Scotia M&P credits to reduce its tax liability in 1997. Counsel for the Respondent noted that it is because of these carrybacks that the Appellant is in a refund position. Counsel for the Respondent said that the Appellant cannot rely on the SR&ED expenditure pool and ask for a substitution since it did not claim the expenditure pool in the first place.

[20] In my opinion the position adopted by the Minister is correct. The appeal is dismissed, with costs.

Signed at Victoria, British Columbia, this 1st day of February 2011.

“L.M. Little”

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Little J.

CITATION: 2011 TCC 60

COURT FILE NO.: 2010-320(IT)I

STYLE OF CAUSE: AMIRIX SYSTEMS INC. AND HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 14, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little

DATE OF JUDGMENT: February 1, 2011

APPEARANCES:

    Counsel for the Appellant: David J. Rotfleisch  
    Yonathan Moussadji

    Counsel for the Respondent: Toks C. Omisade

COUNSEL OF RECORD:

    For the Appellant:

        Name: David J. Rotfleisch

        Firm: Rotfleisch & Samulovitch

    For the Respondent: Myles J. Kirvan  
    Deputy Attorney General of Canada  
    Ottawa, Canada