

Docket: 2015-3982(IT)G

BETWEEN:

WESTSOURCE GROUP HOLDINGS INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 4, 2016, at Toronto, Ontario

Before: The Honourable Justice Valerie Miller

Appearances:

Counsel for the Appellant:	Thang Trieu Kristen Duerhammer
Counsel for the Respondent:	Donna Dorosh Kelly Smith Wayland

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the Appellant's 2011 taxation year is dismissed.

Costs are awarded to the Respondent.

Signed at Ottawa, Canada, this 24th day of January 2017.

“V.A. Miller”

V.A. Miller J.

Citation: 2017TCC9
Date: 20170124
Docket: 2015-3982(IT)G

BETWEEN:

WESTSOURCE GROUP HOLDINGS INC.,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

V.A. Miller J.

Overview

[1] When WestSource Group Holdings Inc. (the “Appellant”) filed its income tax return for the 2011 taxation year, it did not include any information concerning Scientific Research and Experimental Development (“SR&ED”). On June 28, 2013, it requested permission to amend its 2011 return to report SR&ED expenditures and to claim the corresponding Refundable Investment Tax Credit (“RITC”) amounts with respect to these SR&ED expenditures.

[2] In its amended return, the Appellant reported SR&ED expenditures for two projects. However, on Schedule 60 of Form T661, it failed to provide project information in boxes 240, 242 and 244 for Project 1. These boxes were completed for Project 2.

[3] Project 2 was accepted as filed without a review and the Appellant was granted the RITC for this Project. Project 1 was not accepted.

[4] The question before the Court was whether the information required in boxes 240, 242 and 244 of Schedule 60 was “prescribed information” for the purposes of subsection 37(11) of the *Income Tax Act* (the “Act”).

[5] It is my view that this question must be answered in the affirmative.

Facts

[6] There were no witnesses at the hearing of this appeal. The hearing proceeded on the basis of admissions made by the Appellant, a joint book of documents and argument by the parties.

[7] The Appellant is a privately held corporation based in Saskatchewan. Its principal service is to provide management services to its subsidiary companies.

[8] The Appellant has a December 31 year end and it was initially assessed for its 2011 taxation year by notice dated July 11, 2012. On June 28, 2013, it filed an amended return for its 2011 taxation year in which it reported SR&ED expenditures for two projects which were described as follows:

Project 1: WSG P01 Multiple Aspect Wind Turbine Development (“Project 1”)

Project 2: 50kW Asynchronous, Winched Tower Wind Turbine Development (“Project 2”)

[9] The RITC claimed was as follows:

Project 1 \$29,504

Project 2 \$26,894

[10] The Minister of National Revenue (the “Minister”) determined that the Appellant had filed the relevant prescribed forms in respect of its SR&ED and RITC claims with its amended return. Those forms were T661 and T2 SCH31. The T661 form addressed the SR&ED expenditures and the T2 SCH31 form addressed the corporation’s claim for a RITC.

[11] The prescribed forms were filed in a timely manner. They were filed on June 28, 2013 and the Appellant’s deadline was June 30, 2013.

[12] However, the Appellant failed to complete boxes 240, 242 and 244 for Project 1 in Schedule 60 of Form T661. As a result, Project 1 was not accepted and the Minister determined that the Appellant was entitled to a RITC of \$26,894 for Project 2 only.

[13] In its Answer to the Reply and answers to discovery questions concerning the Amended Reply, the Appellant admitted all of the assumptions of fact made by the Minister. Those assumptions included the preceding facts and the following:

- g) line 240 of Schedule 60 is to describe the technological advancements the claimant is trying to achieve;
- h) line 242 of Schedule 60 is to describe the technological obstacles or uncertainties the claimant had to overcome to achieve the technological advancements;
- i) line 244 of Schedule 60 is to describe the work performed (the systemic investigation) in the tax year to overcome the technological obstacles or uncertainties in line 242;
- j) the Minister did not complete a detailed technical review or financial review of Project 1;
- k) the Appellant did not describe any technological advancements that it was trying to achieve with respect to Project 1;
- l) the Appellant did not identify any technological obstacles or uncertainties encountered with respect to Project 1;
- m) the Appellant did not demonstrate that it undertook a systemic investigation or search to overcome any technological obstacles or uncertainties with respect to Project 1; and
- n) the Appellant did not substantiate the Project 1 work as eligible SR&ED activity.

[14] Although the Appellant admitted the facts at paragraphs 13(m) and (n), it wrote that the assumptions made at paragraphs 13(m) and (n) were “immaterial and were not made because the Minister never asked the appellant to substantiate eligibility”.

Issue

[15] The issue is whether the information required in boxes 240, 242 and 244 of Schedule 60 is “prescribed information”.

Legislative Provisions

[16] The definition of SR&ED is contained in subsection 248(1) of the *Act* as follows:

scientific research and experimental development means systematic investigation or search that is carried out in a field of science or technology by means of experiment or analysis and that is

- (a) basic research, namely, work undertaken for the advancement of scientific knowledge without a specific practical application in view,
- (b) applied research, namely, work undertaken for the advancement of scientific knowledge with a specific practical application in view, or
- (c) experimental development, namely, work undertaken for the purpose of achieving technological advancement for the purpose of creating new, or improving existing, materials, devices, products or processes, including incremental improvements thereto,

and, in applying this definition in respect of a taxpayer, includes

- (d) work undertaken by or on behalf of the taxpayer with respect to engineering, design, operations research, mathematical analysis, computer programming, data collection, testing or psychological research, where the work is commensurate with the needs, and directly in support, of work described in paragraph (a), (b), or (c) that is undertaken in Canada by or on behalf of the taxpayer,

but does not include work with respect to

- (e) market research or sales promotion,
- (f) quality control or routine testing of materials, devices, products or processes,
- (g) research in the social sciences or the humanities,
- (h) prospecting, exploring or drilling for, or producing, minerals, petroleum or natural gas,
- (i) the commercial production of a new or improved material, device or product or the commercial use of a new or improved process,
- (j) style changes, or
- (k) routine data collection; (activités de recherche scientifique et de développement expérimental)

[17] Subsection 37(11) of the *Act* requires that a taxpayer, making an SR&ED claim under subsection 37(1), must file a prescribed form containing prescribed information in respect of the expenditure. It also creates the filing deadline for the SR&ED claim. It reads:

37(11) Subject to subsection 37(12), no amount in respect of an expenditure that would be incurred by a taxpayer in a taxation year that begins after 1995 if this Act were read without reference to subsection 78(4) may be deducted under subsection 37(1) unless the taxpayer files with the Minister a prescribed form containing prescribed information in respect of the expenditure on or before the day that is 12 months after the taxpayer's filing-due date for the year. (emphasis added)

[18] If the taxpayer does not file the prescribed form with the prescribed information within the deadline given in subsection 37(11), the expenditures do not qualify as SR&ED expenditures. Subsection 37(12) reads:

37(12) If a taxpayer has not filed a prescribed form in respect of an expenditure in accordance with subsection 37(11), for the purposes of this Act, the expenditure is deemed not to be an expenditure on or in respect of scientific research and experimental development.

[19] The filing requirements for a RITC are similar to those provided in section 37. Subsection 127.1(1) reads:

127.1 (1) Where a taxpayer (other than a person exempt from tax under section 149) files

(a) with the taxpayer's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(f) or subsection 150(4)) for a taxation year, or

(b) with a prescribed form amending a return referred to in paragraph 127.1(1)(a)

a prescribed form containing prescribed information, the taxpayer is deemed to have paid on the taxpayer's balance-due day for the year an amount on account of the taxpayer's tax payable under this Part for the year equal to the lesser of

(c) the taxpayer's refundable investment tax credit for the year, and

(d) the amount designated by the taxpayer in the prescribed form.

[20] Paragraph (m) of the definition of "investment tax credit" in subsection 127(9) also contains a filing deadline similar to subsection 37(12). It reads:

127(9)

except that no amount shall be included in the total determined under any of paragraphs (a) to (e.2) in respect of an outlay, expense or expenditure that would, if this Act were read without reference to subsections 127(26) and 78(4), be made or incurred by the taxpayer in the course of earning income in a particular taxation year, and no amount shall be added under paragraph (b) in computing the taxpayer's investment tax credit at the end of a particular taxation year in respect of an outlay, expense or expenditure made or incurred by a trust or a partnership in the course of earning income, 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;

[21] Although the Minister has the discretion to waive the requirement to provide prescribed information in certain circumstances, that discretion does not extend to the prescribed information required for the purposes of subsection 37(11) or paragraph 127(9)(m). Subsections 220(2.1) and (2.2) read as follows:

Waiver of filing of documents

(2.1) Where any provision of this Act or a regulation requires a person to file a prescribed form, receipt or other document, or to provide prescribed information, the Minister may waive the requirement, but the person shall provide the document or information at the Minister's request.

Marginal note: Exception

(2.2) Subsection (2.1) does not apply in respect of a prescribed form, receipt or document, or prescribed information, that is filed with the Minister on or after the day specified, in respect of the form, receipt, document or information, in subsection 37(11) or paragraph (m) of the definition investment tax credit in subsection 127(9).

[22] The term "prescribed" is defined, in part, in subsection 248(1) to mean:

(a) 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,

The Appellant's Position

[23] Counsel for the Appellant argued that the failure to include information in boxes 240, 242 and 244 in Schedule 60 should not disqualify it from receiving the RITC for Project 1. Counsel argued that the Minister's position was overly simplistic and frustrated Parliament's intent in enacting the SR&ED program.

[24] Counsel submitted that there is no definition of the term "prescribed" as it may apply to "prescribed information" for the purposes of subsection 37(11) or 127(9). He concluded that because there are no regulations or rules prescribed by regulation with respect to the phrase "prescribed information", there was no "prescribed information" for the purposes of subsection 37(11) and 127(9).

The Respondent's Position

[25] Counsel for the Respondent submitted that the information requested in boxes 240, 242 and 244 in Schedule 60 was "prescribed information". She stated that the information required in these boxes "goes to the heart of whether the claim made is SR&ED". As a result, the failure to provide this information was fatal to the Appellant's claim as it did not substantiate that Project 1 was an eligible SR&ED activity.

Analysis

[26] It is my view that, in accordance with the definition of the term "prescribed" in section 248 of the *Act*, the information to be given on a prescribed form is "prescribed information". Therefore the information required in boxes 240, 242 and 244 of Form T661 is "prescribed information".

[27] The instructions on Form T661 also clearly state that the information given on the form is "prescribed information". They read, in part:

"The information requested in this form and documents supporting your expenditures are prescribed information."

[28] Failure to provide the "prescribed information" required in boxes 240, 242 and 244 of Form T661 means that the Appellant did not meet the requirements of subsection 37(11) of the *Act* and the Minister properly determined that Project 1 did not qualify for the SR&ED program in its 2011 taxation year.

[29] Counsel for the Appellant also argued that the purpose for the tax incentives offered for doing SR&ED work is to allow Canadian businesses to make

advancements in science and technology. As a result, the phrase “prescribed information” should be interpreted liberally.

[30] With respect, counsel’s interpretation of “prescribed information” would have me ignore the term altogether. However, the rule against tautology makes it clear that all words in a statute must be given meaning: *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2011 SCC 53 at paragraph 38.

[31] Moreover, a taxpayer must establish that its project satisfies the following three criteria before its project will be accepted as a SR&ED activity:

1. There is scientific or technological uncertainty;
2. The taxpayer has carried out a systematic investigation in a field of technology by means of experiment or analysis;
3. The work was undertaken for the purposes of achieving a technological advancement for the purpose of creating new, or improving existing, materials, devices, products or processes, including incremental.

(6379249 *Canada Inc. v R*, 2015 TCC 77 at paragraph 59)

[32] The information requested in boxes 240, 242 and 244 specifically addresses these criteria. As stated by counsel for the Respondent, the information in these boxes “goes to the heart of whether the claim made is SR&ED”. Because there was no information submitted in these boxes, the Minister was correct in determining that the Appellant did not establish that its work on Project 1 was an eligible SR&ED activity.

[33] Furthermore, subsection 220(2.2) has removed the Minister’s authority to waive the requirement to provide the prescribed information mandated by subsection 37(11) of the Act.

[34] At the hearing, counsel for the Appellant stated that the Appellant and WestSource Solutions Inc. had collaborated on Project 1. Counsel argued that the Minister could have found the missing prescribed information for the Appellant if he had looked at the Form T661 which had been filed on behalf of WestSource Solutions Inc.

[35] It is my view that subsection 37(11) is clear. The taxpayer seeking to claim an SR&ED expenditure must file the prescribed information with the Minister. The Minister is not required to look into another taxpayer's file to ascertain the prescribed information for the Appellant: *Easy Way Cattle Oilers Ltd v The Queen*, 2016 FCA 301.

[36] The appeal is dismissed with costs to the Respondent.

Signed at Ottawa, Canada, this 24th day of January 2017.

“V.A. Miller”

V.A. Miller J.

CITATION: 2017TCC9

COURT FILE NO.: 2015-3982(IT)G

STYLE OF CAUSE: WESTSOURCE GROUP HOLDINGS INC.
AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 4, 2016

REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller

DATE OF JUDGMENT: January 24, 2017

APPEARANCES:

Counsel for the Appellant: Thang Trieu
Kristen Duerhammer

Counsel for the Respondent: Donna Dorosh
Kelly Smith Wayland

COUNSEL OF RECORD:

For the Appellant:

Name: Thang Trieu
Kristen Duerhammer

Firm: KPMG Law LLP

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