Docket: 2018-3717(IT)I

BETWEEN:

WAYNE G. PATRIE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 29, 2019, at Edmonton, Alberta
Before: The Honourable Mr. Justice Randall S. Bocock

For the Appellant:	The Appellant Himself
Counsel for the Respondent:	Allan Mason

JUDGMENT

WHEREAS the Court has issued its Reasons for Judgment on this date in this appeal;

NOW THEREFORE the appeal from the reassessment in respect of the 2016 taxation year is allowed, without costs, on the basis that the Appellant is entitled to the Home Accessibility Tax Credit pursuant to Section 118.041 of the *Income Tax Act*, RSC 1985, C.1, as amended (the "*Act*").

The matter is referred back to the Minister of National Revenue for reconsideration and reassessment.

Signed at Vancouver, British Columbia, this 12th day of December 2019.

"R.S. Bocock"

Bocock J.

Citation: 2019TCC276
Date: 20191212
Docket: 2018-3717(IT)I

BETWEEN:

WAYNE G. PATRIE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Bocock J.

I. INTRODUCTION

[1] The Appellant, Mr. Patrie, claimed the Home Accessibility Tax Credit (the "HAT Credit") in the 2016 taxation year. He claimed the full amount permitted: $10,000. The HAT Credit is a new provision, encompassed within section 118.041 under the *Income Tax Act*, RSC 1985, C.1, as amended (the "*Act*"). Its purpose, when enacted in 2015, was to allow seniors and reduced mobility Canadians a deduction for expenditures used to gain greater accessibility to and in their homes. The Minister denied Mr. Patrie the HAT Credit on the basis that the modifications undertaken to the property did not fall within the definition of a "qualifying renovation" and/or the modifications were "made or undertaken primarily for the purpose of increasing or maintaining the value of the … dwelling."

II. ADDITIONAL FACTS

[2] Some additional facts are helpful. Mr. Patrie and his wife have owned their house in Sherwood Park, Alberta since 1989. The house has a backyard and garden. Until 2016, the entry from the house to the yard was by virtue of two wooden steps without any railing or landing area. Precisely described, one would call the pre-existing steps rickety. Mrs. Patrie suffers from reduced mobility owing to her affliction with profound atrial fibrillation and Type II diabetes. She is 76 years old. It is uncontested that she is an "eligible individual", the house is an

"eligible dwelling" and Mr. Patrie is a "qualifying individual" as regards the HAT Credit and its definitions within the *Act*.

[3] The renovations undertaken to ease Mrs. Patrie's accessibility were the removal of the pre-existing steps and the construction of a deck made of footings, joists, decking, railings and a 5-foot wide stairway, all surrounded with sturdy aluminium railings. The cost incurred by Mr. Patrie for the construction, the expenditure of which is also not disputed, exceeded $11,000. The HAT Credit is capped at a maximum of $10,000.

[4] Specifically, the Minister disallowed the HAT Credit for two primary reasons:

1. Mrs. Patrie's enhanced accessibility to the house does not fall within the required definitional ambit and/or consequential threshold for such improvements to be a qualified renovation and therefore an eligible renovation (the "outside the prescribed scope" grounds for disallowance);

2. Even if the renovations were qualified renovations, such renovations were primarily made to enhance or maintain the value of the house and are therefore specifically excluded (the "primary value intention" exclusion).

Legislation

[5] The excerpted provisions of section 118.041 of the *Act* relevant to this appeal are:

> **Definitions**
>
> **118.041(1)** The following definitions apply in this section.
>
> **[…]**
>
> ***Qualifying expenditure*** of an individual means an outlay or expense … made … that is directly attributable to a qualifying renovation … but does not include an outlay or expense.
>
> **[…]**
>
> **(g)** made or incurred primarily for the purpose of increasing or maintaining the value of the eligible dwelling;

[…]

[…]

Qualifying renovation means a renovation or alteration of an eligible dwelling of a qualifying individual or an eligible individual in respect of a qualifying individual that

(a) is of an enduring nature and integral to the eligible dwelling; and

(b) is undertaken to

(i) enable the qualifying individual to gain access to, or to be mobile or functional within, the eligible dwelling, or

(ii) reduce the risk of harm to the qualifying individual within the eligible dwelling or in gaining access to the dwelling.

Respondent's Summarized Position and Submissions

[6] In confirming the reassessment, the Minister's agents repeated their generic opinion that decks do no meet the definitional requirements of a qualified renovation for the HAT Credit. Respondent's counsel submitted in a more thoughtful, nuanced and particularized method that the improvements were outside the prescribed scope of a qualified renovation because:

(i) the renovation is not of an enduring and integral character to the house;

(ii) Mrs. Patrie's accessibility, mobility and/or functionality to, in or around the house was not sufficiently assisted through the renovations;

(iii) the Technical Notes introduced with the legislative amendments to the *Act* in 2015 specifically indicate:

> The improvements must be of an enduring nature and be integral to the eligible dwelling. Examples of eligible expenditures include expenditures relating to wheelchair ramps, walk-in bathtubs, wheel-in showers and grab bars.

; and,

(v) the renovations undertaken are disproportionately larger, grander and more intricate than those minimally required to accomplish increased access, mobility, functionality or to reduce the risk of harm within or in accessing the house.

[7] Further, in the alternative, Respondent's counsel argues that the improvements were undertaken primarily to improve or maintain the value of the house and therefore fell within the exclusion in (g) of the definition of qualifying expenditure. Cited as evidence was Mr. Patrie's contention that the house was always intended to have a deck and that until the renovations were undertaken, Mrs. Patrie was not afforded an opportunity to sit on the deck, visit with family and enjoy the garden. Secondly, Mr. Patrie's intention in replacing the pre-existing steps and in constructing the deck was to conform with the building code, which Mr. Patrie believed mandated such rectification.

[8] To buttress the argument or increased value, Respondent's counsel analogized that the medical expense deduction found elsewhere in the *Act* provided no tax relief for the costs of housing and food, except where a clear nexus existed between the need and the affliction: *Lister v. HMQ*, 2006 FCA 331 at paragraph 15 and 16.

Analysis and Decision

[9] The following facts, grounded in the reality of the novelty of the HAT Credit, are determinative to the outcome of this appeal.

(i) Generally

[10] The pre-existing steps had been in place for some 18 years. Their replacement was necessitated not because of their *de minimus* nature, rickety state or pressing or mediate need to enhance the value of the property or rectify building code deficiencies. There was no imminent marketing plan or sale for the house. The Patries still live in the house. What occurred was the worsening of Mrs. Patrie's mobility. Her use of and access to the house from kitchen to garden were increasingly compromised and limited. This was clear from the many before, during and after construction photographs presented in Court along with Mr. Patrie's testimony. This evidence clearly showed a very tenuous point of entry and unstable access point for someone with such compromised mobility. For a more agile person, it mattered not.

[11] Empirically, the scope, degree and prospective duration of Mrs. Patrie's utility, accessibility and use of the house, particularly the kitchen and garden were broadened, enhance and elongated by the renovations. The opinion within the Technical Notes, which limited qualifying renovations to assisted devices, such as wheelchair ramps, walk-in tubs and showers and grab bars, is firmly anchored in the past. It echoes of the medical expense deduction in section 118.2 of the *Act*. More importantly, it is not borne out by the wording in this entirely new section. The purpose of the new legislation is to make accessible renovations more affordable to seniors living in the community, in turn, within the safety and comfort of their houses. The health cost savings to society, dignity of the elderly and lessening of isolation in institutions, where not a choice of the senior or immobile person, comprise the proximate goals of extending this fiscal benefit to seniors and the mobility compromised.

[12] Officials in the Department of Finance in the Technical Notes appear to have conflated the medical expense and assisted device expense deduction with this new and distinct HAT Credit. Whatever reason would exist for legislatively creating a distinctly worded deduction if a pre-existing test for qualification were to apply? Respondent's counsel was certainly advised of this view of the Court during argument. If Parliament had wanted the HAT Credit restricted to such assisted devices, it would have:

(i) specifically listed such devices in what constitutes a qualifying renovation;

(ii) specifically excluded decks, platforms and reconstructed stairways in the detailed exclusions, and;

(iii) not have adopted the broad, generic wording it did.

(ii) Outside the Prescribed Scope?

[13] The renovations, whatever their magnitude, fall within the two conditions of a qualified renovation and are within the prescribed scope. The first condition is that the renovations are of "an enduring and integral nature to the dwelling". The elaborate construction into the headers of the concrete foundation of the house, the use of anchors into the pre-existing foundation and the 9 cement footings below the deck ensure its endurance, possibly beyond that of the main dwelling. As to its integration, the costs of demolition and separation of the deck from the existing dwelling could well exceed the costs of its initial construction. Even Respondent's

counsel, having been presented with the evidence, acknowledged the weakness of any argument to the contrary.

[14] The second condition for a qualifying renovation is that it enables access or mobility or function within or gaining access to the house. Logically, empirically and sensically the renovations did both. Whether they did that and more is not textually the test. It is a minimum threshold not an exclusive purpose-test. The words "solely", "principally" or "singly" do not appear in this sub-paragraph. There were other collateral benefits beyond the defined thresholds, but there is no restriction in achieving such other uses explicitly or implicitly within the provisions.

[15] Similarly, the second condition for qualification is that the "risk of harm" within or gaining access to the house be reduced or "gaining access" to the house be increased. Certainly the latter was accomplished and quite possibly the former.

[16] Finally, the described purposes of gaining access, mobility, functionality, reduction of harm within and in gaining access to the house are all clearly disjunctive as drafted in the provision. Should only one of these five conditions be met, a taxpayer would otherwise qualify. Arguably, the Patries satisfied almost all, if not all.

(iii) Does the primary value intention exclusion apply?

[17] The Respondent's suggestion of a primary value intention also fails. Evidence of making the improvements primarily to enhance or maintain value is vague at best. The medical opinions, the Minister's acceptance of Mrs. Patrie's condition as a qualified individual and the presence of Mr. Patrie's preoccupation with ensuring that the deck's specifications thoroughly accomplished the increased and lengthened utility and mobility by Mrs. Patrie in and around the house are relevant facts. On balance, they cumulatively rebut the suggestion or assumption that the foremost reason for the construction was to increase the value of the property.

[18] Even the suggestion by Mr. Patrie of his confused and incorrect belief that mandatory rectification of the sub-standard pre-existing steps was legally required is not cogent evidence of a primary value intention. The pre-existing steps had been in existence since at least 1989. Mr. Patrie's view was they were sub-standard from the outset. If he had been intent on benefitting from their replacement with compliant steps, as likely as not, he would have replaced them years before. He did not. He replaced them when his wife's mobility from age and affliction demanded

it. This sufficiently supplants and rebuts any primary value intention argument supported by the desire to collaterally comply with the building code.

[19] Further, the collateral coincidence of such renovations increasing or maintaining the value of the property is not the expressed test. Such thinking is not consistent with the wording contained in the exclusion described in sub-paragraph (g). The intention to add or maintain value must be primary. Absent some evidence that the taxpayer foremost sought to improve or maintain the value of the property and only secondarily solve accessibility, the exclusion in sub-paragraph (g) of being "primarily undertaken" to increase or maintain value cannot be sustained. If the drain on the federal treasury is too great because of the existing wording, then Parliament can repeal or amend its textually clear provisions. Until then, the Minister and her agents must have some prominent factual basis for asserting a taxpayer's primary economic purpose in undertaking these improvements before this exclusion is invoked.

[20] For these reasons, the appeal is allowed, without costs.

Signed at Vancouver, British Columbia, this 12th day of December 2019.

"R.S. Bocock"

Bocock J.

CITATION:	2019 TCC 276
COURT FILE NO.:	2018-3717(IT)I
STYLE OF CAUSE:	WAYNE G. PATRIE AND HER MAJESTY THE QUEEN
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REASONS FOR JUDGMENT BY:	The Honourable Mr. Justice Randall S. Bocock
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APPEARANCES:

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Counsel for the Respondent:	Allan Mason

COUNSEL OF RECORD:

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