

BETWEEN:

REFIND ENVIRONMENT INC.,

Applicant,

and

HIS MAJESTY THE KING,

Respondent.

Application heard on September 11, 2023 at Toronto, Ontario with written submissions received October 5, 2023, October 30, 2023, and December 15, 2023

Before: The Honourable Justice David E. Spiro

Appearances:

Counsel for the Applicant: Andrew Rogerson

Counsel for the Respondent: Eric Myles

JUDGMENT

The application for an extension of time to file a notice of objection against assessments under the *Excise Tax Act* related to nine reporting periods of the Applicant beginning on December 1, 2016 and ending on August 31, 2018 and beginning on December 1, 2018 and ending on May 31, 2019 is dismissed, without costs.

Signed at Toronto, Ontario, this 4th day of January 2024.

“David E. Spiro”

Spiro J.

Citation: 2024 TCC 2
Date: 20240104
Docket: 2021-1039(GST)APP

BETWEEN:

REFIND ENVIRONMENT INC.,

Applicant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Spiro J.

[1] This is an application for an extension of time to file a notice of objection against assessments under the *Excise Tax Act* (the “ETA”).

[2] The assessments related to nine reporting periods of the Applicant. The first set of reporting periods began on December 1, 2016 and ended on August 31, 2018. The second set began on December 1, 2018 and ended on May 31, 2019.

[3] There is no dispute about two critical dates. First, there is no dispute about the date on which the Minister of National Revenue (the “Minister”) sent notices of assessment to the Applicant. That date was November 27, 2019.

[4] Second, there is no dispute about the date on which the Applicant filed with the Minister an application for an extension of time to object. That date was February 26, 2021.

[5] It is also common ground that the Applicant did not file a notice of objection with the Minister within 90 days from the mailing date of the notices of assessment as required by subsection 301(1.1) of the ETA.

[6] The only issue is whether the Applicant timely filed its application for an extension of time to object.

Position of the Crown

[7] The Crown says the Applicant filed its application with the Minister for an extension of time to object one day late. On the Crown's theory, the last date on which the Applicant could have filed its application with the Minister was February 25, 2021.

Position of the Applicant

[8] The Applicant says that the last date on which it could have filed its application with the Minister for an extension of time to object was one day later – February 26, 2021 – the date on which it actually filed its application.

The Excise Tax Act

[9] Subsection 301(1.1) of the ETA allows 90 days from the mailing date of the notice of assessment to file a notice of objection. If one misses that deadline, paragraph 303(7)(a) allows an additional year to file an application with the Minister to extend time to object. If the Minister refuses the application one may proceed to the Court to grant the application but, under paragraph 304(5)(a), the Court cannot grant the application if it was not filed with the Minister within that additional year.

[10] I have reproduced the relevant provisions in their statutory context [with emphasis added]:

Objection to assessment

301(1.1) Any person who has been assessed and who objects to the assessment may, within ninety days after the day notice of the assessment is sent to the person, file with the Minister a notice of objection in the prescribed form and manner setting out the reasons for the objection and all relevant facts.

Extension of time by Minister

303(1) Where no objection to an assessment is filed under section 301 ... within the time limit otherwise provided, a person may make an application to the Minister

to extend the time for filing a notice of objection ... and the Minister may grant the application.

Duties of Minister

303(5) On receipt of an application made under subsection (1), the Minister shall, with all due dispatch, consider the application and grant or refuse it, and shall thereupon notify the person of the decision by registered or certified mail.

When order to be made

303(7) No application shall be granted under this section unless

(a) the application is made within one year after the expiration of the time otherwise limited by this Part for objecting ... ; and

(b) the person demonstrates that

(i) within the time otherwise limited by this Part for objecting,

(A) the person was unable to act or to give a mandate to act in the person's name, or

(B) the person had a bona fide intention to object to the assessment ... ,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application was made as soon as circumstances permitted it to be made.

Extension of time by Tax Court

304(1) A person who has made an application under section 303 may apply to the Tax Court to have the application granted after either

(a) the Minister has refused the application, or

(b) ninety days have elapsed after service of the application under subsection 303(1) and the Minister has not notified the person of the Minister's decision,

but no application under this section may be made after the expiration of thirty days after the day the decision has been mailed to the person under subsection 303(5).

Powers of Court

304(4) The Tax Court may dispose of an application made under subsection (1) by

- (a) dismissing it, or
- (b) granting it,

and in granting an application, it may impose such terms as it deems just or order that the notice of objection or the request be deemed to be a valid objection ... as of the date of the order.

When application to be granted

304(5) No application shall be granted under this section unless

(a) the application was made under subsection 303(1) within one year after the expiration of the time otherwise limited by this Part for objecting ... ;
and

(b) the person demonstrates that

(i) within the time otherwise limited by this Act for objecting,

(A) the person was unable to act or to give a mandate to act in the person's name, or

(B) the person had a bona fide intention to object to the assessment ... ,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application was made under subsection 303(1) as soon as circumstances permitted it to be made.

[11] Two timing questions arise for consideration. The first relates to the 90-day objection period and the second relates to the one-year application period.

The 90 Day Objection Period

[12] The answer to the first timing question turns on the interpretation of subsection 301(1.1) of the ETA which sets out the 90-day deadline to file a notice of objection:

301(1.1) Any person who has been assessed and who objects to the assessment may, within ninety days after the day notice of the assessment is sent to the person, file with the Minister a notice of objection in the prescribed form and manner setting out the reasons for the objection and all relevant facts.

[13] In its submissions, the Applicant places considerable emphasis on the word “after” in the phrase in subsection 301(1.1) of the ETA which provides that a notice of objection must be filed within ninety days *after* the day that notice of the assessment is sent to the person.

[14] The Applicant contends that the word “after” means that the 90-day clock to file a notice of objection commences on the day *after* the Minister sent the notice of assessment. As the Minister sent notices of assessment to the Applicant on November 27, 2019, we should count the 90 days commencing on November 28, 2019.

[15] In support of its position, the Applicant refers to subsections 27(4) and 27(5) of the *Interpretation Act*:

27(4) Where a time is expressed to begin after ... a specified day, the time does not include that day.

27(5) Where anything is to be done within a time after ... a specified day, the time does not include that day.¹

¹ In its entirety, section 27 of the *Interpretation Act* provides:

[16] The Crown agrees with that proposition.² I am satisfied that this reading of subsection 301(1.1) of the ETA reflects its proper interpretation.

[17] The Applicant then argues that because the 90-day clock commenced on November 28, 2019 (the day *after* the mailing of the notices of assessment), the 90th day fell on February 26, 2020.³ Under the Applicant's theory, the last day for filing a notice of objection would have been February 26, 2020.

[18] The Applicant's computation of the 90-day objection period is wrong. If we start counting on the day *after* the mailing date of the notices of assessment, namely, on November 28, 2019, the 90th day actually fell on February 25, 2020. Because the notice of objection had to be filed *within* those 90 days, the deadline to file a notice of objection fell on February 25, 2020. That was the last day on which the Applicant could have filed a notice of objection without having to apply for an extension of time.

Clear days

27(1) Where there is a reference to a number of clear days or "at least" a number of days between two events, in calculating that number of days the days on which the events happen are excluded.

Not clear days

27(2) Where there is a reference to a number of days, not expressed to be clear days, between two events, in calculating that number of days the day on which the first event happens is excluded and the day on which the second event happens is included.

Beginning and ending of prescribed periods

27(3) Where a time is expressed to begin or end at, on or with a specified day, or to continue to or until a specified day, the time includes that day.

After specified day

27(4) Where a time is expressed to begin after or to be from a specified day, the time does not include that day.

Within a time

27(5) Where anything is to be done within a time after, from, of or before a specified day, the time does not include that day.

² At paragraph 9 of the written submissions of the Crown filed on October 30, 2023.

³ At paragraph 11 of the written submissions of the Applicant filed on October 5, 2023.

[19] Based on subsections 27(4) and 27(5) of the *Interpretation Act*, I am satisfied that February 25, 2020 was the last day on which the Applicant could have filed a notice of objection with the Minister.

[20] Now that we have established that date, how do we compute the one-year period to apply for an extension of time?

The One Year Application Period

[21] The answer to the second timing question turns on the interpretation of paragraphs 303(7)(a) and 304(5)(a) of the ETA which set out the one year period for filing an application to extend time to object:

303(7) No application shall be granted [by the Minister] under this section unless

(a) the application is made within one year after the expiration of the time otherwise limited by this Part for objecting ... ;

304(5) No application shall be granted [by the Tax Court] under this section unless

(a) the application was made under subsection 303(1) within one year after the expiration of the time otherwise limited by this Part for objecting ... ;

[22] We have already established that the last day on which the Applicant could have filed a notice of objection with the Minister was February 25, 2020.

[23] The Applicant argues that the one-year application period should be counted starting *the day after* February 25, 2020. In that regard, it relies once again on subsections 27(4) and 27(5) of the *Interpretation Act*.

[24] If the Applicant's theory is correct, the last day to file its application was February 26, 2021 – the day on which it was actually filed.

[25] The Applicant's approach to the computation of the one-year application period is wrong. I agree with the Crown that February 25, 2021 was the last day on which an application to extend time to object could have been filed with the Minister.

[26] The flaw in the Applicant’s argument arises from conflating units of time. The provision dealing with the objection period uses the unit of a *day* to compute time. The provisions dealing with the application period use the unit of a *year* to compute time.

[27] Subsection 37(1) of the *Interpretation Act* is the relevant provision where the benchmark is a year – not subsections 27(4) or 27(5). Subsection 37(1) of the *Interpretation Act* simply tells us that the expression “year” means any period of twelve consecutive months.⁴

[28] We now return to the provisions at issue:

303(7) No application shall be granted [by the Minister] under this section unless

(a) the application is made within one year after the expiration of the time otherwise limited by this Part for objecting ... ;

⁴ In its entirety, section 37 of the *Interpretation Act* provides:

Construction of year

37(1) The expression **year** means any period of twelve consecutive months, except that a reference

(a) to a **calendar year** means a period of twelve consecutive months commencing on January 1;

(b) to a **financial year** or **fiscal year** means, in relation to money provided by Parliament, or the Consolidated Revenue Fund, or the accounts, taxes or finances of Canada, the period beginning on April 1 in one calendar year and ending on March 31 in the next calendar year; and

(c) by number to a Dominical year means the period of twelve consecutive months commencing on January 1 of that Dominical year.

Governor in Council may define year

37(2) Where in an enactment relating to the affairs of Parliament or the Government of Canada there is a reference to a period of a year without anything in the context to indicate beyond doubt whether a financial or fiscal year, any period of twelve consecutive months or a period of twelve consecutive months commencing on January 1 is intended, the Governor in Council may prescribe which of those periods of twelve consecutive months shall constitute a year for the purposes of the enactment.

304(5) No application shall be granted [by the Tax Court] under this section unless

(a) the application was made under subsection 303(1) within one year after the expiration of the time otherwise limited by this Part for objecting ... ;

[29] The expression “within one year after the expiration of the time” means exactly that – within *one year after* the expiration of the 90 days. The last date that falls within *one year after* February 25, 2020 is February 25, 2021.

Conclusion

[30] The Applicant did not file its application with the Minister for an extension of time to object within the time required by paragraph 303(7)(a) of the ETA. I must, therefore, dismiss the Applicant’s application and shall do so without costs. Finally, I am grateful to both counsel for their thorough oral and written submissions.

Signed at Toronto, Ontario, this 4th day of January 2024.

“David E. Spiro”

Spiro J.

CITATION: 2024 TCC 2

COURT FILE NO.: 2021-1039(GST)APP

STYLE OF CAUSE: Refind Environment Inc. v. His Majesty the King

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 11, 2023

REASONS FOR JUDGMENT BY: The Honourable Justice David E. Spiro

DATE OF JUDGMENT: January 4, 2024

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