

2024-538(IT)G

TAX COURT OF CANADA

BETWEEN:

CORNERSTONE CHRISTIAN SCHOOL

Appellant,

and

HIS MAJESTY THE KING

Respondent.

REPLY

In reply to the Appellant's Notice of Appeal with respect to the joint Notices of Determination and Notices of Assessment ("Determinations") for the Canada Emergency Wage Subsidy ("CEWS"), dated March 3, 2022, for the qualifying periods from March 15, 2020 to April 11, 2020 ("P1"), April 12, 2020 to May 9, 2020 ("P2"), May 10, 2020 to June 6, 2020 ("P3"), June 7, 2020 to July 4, 2020 ("P4"), July 5, 2020 to August 1, 2020 ("P5"), August 2, 2020 to August 29, 2020 ("P6"), August 30, 2020 to September 26, 2020 ("P7"), September 27, 2020 to October 24, 2020 ("P8"), October 25, 2020 to November 21, 2020 ("P9"), November 22, 2020 to December 19, 2020 ("P10"), December 20, 2020 to January 16, 2021 ("P11"), January 17, 2021 to February 13, 2021 ("P12"), and March 14, 2021 to April 10, 2021 ("P14"), April 11, 2021 to May 8, 2021 ("P15"), May 9, 2021 to June 5, 2021 ("P16"), June 6, 2021 to July 3, 2021 ("P17"), July 4, 2021 to July 31, 2021 ("P18"), August 1, 2021 to August 28, 2021 ("P19"), August 29, 2021 to September 25,

2021 (“P20”), and September 26, 2021 to October 23, 2021 (“P21”), referred to as the “Relevant Qualifying Periods”, the Attorney General of Canada (“AGC”) says as follows:

A. STATEMENT OF FACTS

1. The AGC admits the facts stated in paragraphs 1, 2, 3, 4, 13, 22, 29 at page 8, 32, 33, and 34
2. The AGC denies the facts alleged in paragraph 26 at page 7, 27 at page 7, 29 at page 7, and 30 at page 7. .
3. With respect to paragraphs 23, 25, and 27 at page 6, the AGC has no knowledge of, and puts in issue, the facts alleged in these paragraphs.
4. With respect to paragraphs 5, 6, 7, 9, 10, 11, 13, 14, 16, 17, and 26 at page 6, the AGC states that these paragraphs contain statements in the nature of argument, but insofar as they are allegations of fact, they are denied.
5. With respect to paragraphs 8, 30 at pages 7 and 10 and 31 at pages 7 and 10, the AGC states that the paragraphs make a statement of law and alleges no facts.
6. With respect to paragraph 12, the AGC:
 - a) denies that the Appellant was an “associate school” under *The Registered Independent Schools Regulations*;

for clarity, the Appellant is a “registered independent school” under the *Education Act*; and
 - b) states that the remainder of the paragraph contains statements in the nature of argument, but insofar as they are allegations of fact, they are denied.

7. With respect to paragraph 15, the AGC admits that the Appellant entered into a Memorandum of Agreement with the Board of Education of the Prairie South School Division No. 210 of Saskatchewan (the “Agreement”), and states that the AGC has no knowledge of when the Appellant entered into the Agreement.
8. With respect to paragraph 18, the AGC:
 - a) admits that section 3.03 of the Agreement provides the wording set out in the first sentence of this paragraph; and
 - b) states that the remainder of the paragraph contains statements in the nature of argument, but insofar as they are allegations of fact, they are denied.
9. With respect to paragraph 19, the AGC
 - a) admits that section 3.04 of the Agreement provides the wording set out by the Appellant in this paragraph and further states that section 3.04 of the Agreement also includes the wording “as determined by the Board in consultation with the [Appellant]... ”; and
 - b) has no knowledge of, and puts in issue, the facts alleged in the remainder of the paragraph.
10. With respect to paragraph 20, the AGC:
 - a) states there is no section 3.05 in the Agreement;
 - b) states for clarity that there are two paragraphs to section 3.04; and
 - c) states that the remainder of the paragraph contains statements in the nature of argument, but insofar as they are allegations of fact, they are denied.
11. With respect to paragraph 21, the AGC states:
 - a) it has no knowledge of, and puts in issue, the facts alleged with respect to the “Basic Rate grant” being only 80% for an associate school;

- b) admits the last part of the paragraph with respect to paragraph 4.02 a) & b) of the Agreement; and
 - c) has no knowledge of, and puts in issue, the facts alleged in the remainder of the paragraph.
- 12. With respect to paragraph 24, the AGC:
 - a) admits the statement that the Appellant is required to conform to provincial curriculum policy and the Goals of Education for Saskatchewan; and
 - b) has no knowledge of, and puts in issue, the remainder of facts alleged in the paragraph.
- 13. With respect to paragraph 26 at page 7, the AGC:
 - a) denies that the Appellant was a “qualifying entity” for all of the CEWS applications it submitted, as it did not meet all of the required conditions included in subsection 125.7(1) of the Act; and
 - b) admits that the Appellant filed its applications and attestations in the prescribed form when the application was made.
- 14. With respect to the second paragraph 27 at page 7, the AGC:
 - a) admits that the Appellant claimed the CEWS amounts set out in Appendix A;
 - b) denies that the Appellant claimed the amounts set out in Line C (basic “CEWS” \$), “as filed”, for the following Relevant Qualifying Periods, (P16), (P17) and (P21); and
 - c) denies that the Appellant was entitled to the CEWS amounts claimed in Appendix A and puts the Appellant to the strict proof thereof.

15. With respect to paragraph 28 at page 6, the AGC:
- a) admits that the Appellant applied for the CEWS in a timely manner for the Relevant Qualifying Periods; and
 - b) has no knowledge of, and puts in issue, whether the Appellant accurately
16. With respect to paragraph 28 at page 7, the AGC:
- a) states for clarity that the audit of the CEWS claims was for the period of March 15, 2020, to February 13, 2021; and
 - b) has no knowledge of, and puts in issue, the facts alleged in the remainder of the paragraph.
17. The remainder of the Notice of Appeal is administrative in nature or consists of argument or reasons for the appeal. However, insofar as the remainder of the Notice of Appeal does contain any additional allegations of fact, they are denied.

Chronology

18. The Appellant submitted CEWS applications for each of the Relevant Qualifying Periods on the following dates and received the following amounts:

Relevant Qualifying Period	CEWS - total eligible remuneration paid	CEWS Subsidy Amount
P1	\$47,726.43	\$35,559.63
P2	\$44,295.43	\$32,659.28
P3	\$48,875.68	\$36,018.63
P4	\$45,071.88	\$33,592.03
P5	\$26,418.68	\$18,999.96
P6	\$27,609.54	\$22,448.32
P7	\$47,857.11	\$23,236.41
P8	\$48,473.27	\$30,648.87
P9	\$49,288.50	\$2,867.29
P10	\$49,660.73	\$13,013.01

P11	\$39,778.31	\$3,818.79
P12	\$49,531.87	\$4,787.32
P14	\$44,594.38	\$4,876.89
P15	\$49,301.28	\$8,887.14
P16	\$51,602.20	\$9,159.89
P17	\$48,015.75	\$13,135.25
P18	\$26,905.83	\$15,052.01
P19	\$28,543.65	\$10,689.80
P20	\$50,715.46	\$18,629.50
P21	\$48,168.90	\$8,689.73
TOTAL:	\$872,424.88	\$346,769.75

19. On March 1, 2022, the Minister determined that the Appellant was not entitled to the CEWS for P1 to P12 and P14 to P21 and accordingly issued a Determination to this effect.
20. On March 3, 2022, the Minister issued the Determinations to the Appellant for each of the Relevant Qualifying Periods.
21. On May 30, 2022, the Minister was served a Notice of Objection to the Determinations.
22. On December 1, 2023, the Minister confirmed the Determinations, and issued a Notice of Confirmation to this effect.

Assumptions

23. In determining the Appellant's entitlement to the CEWS for the Relevant Qualifying Periods, the Minister made the following assumptions of fact:
 - a) the Appellant was registered as a non-profit corporation under *The Non-profit Corporations Act* (Saskatchewan), on October 20, 1993, and filed articles of amendment on October 2, 1996;
 - b) the Appellant was registered as a charitable corporation on October 2, 1996;

- c) associate schools, means an independent school that has an agreement with a board of education to operate in association with that board;
- d) the Appellant signed the Agreement with the Board of Education of the Prairie South School Division No. 210 Saskatchewan (the “Board of Education”);
- e) the Appellant is an associate school established in Prairie South School Division in accordance with *The Education Act, 1995* and the *Independent Schools Regulations, Reg. 11*;
- f) the Appellant is deemed to be registered under subsection 7(1)(a) of *The Registered Independent Schools Regulations, RSS c E-0.2 REG 27*;
- g) the Appellant is required to conform with the Saskatchewan provincial curriculum, to subscribe to the goals of education for Saskatchewan, and to provide approved programs and courses for approval by the Board of Education;
- h) the Appellant receives funding through the Board of Education;
- i) the Appellant’s teaching staff are employees of the Board of Education and governed by the Board of Education’s policies and procedures;
- j) the Board of Education holds back 4% of the basic rate grant money received on behalf of the Appellant, as administration fees;
- k) the Board of Education is accountable to the residents of the division and to the province for public funds expended on the associate school;
- l) the Appellant shares the responsibility with the Board of Education, for recruiting, selecting, and hiring teaching staff for the associate school;

- m) in the event of teacher redundancies, if there is a redundant teacher at another school operated by the Board of Education, the teacher could be placed in the associate school;
- n) the Appellant's board of Directors' duties include, "providing leadership and vision for the Cornerstone Christian School according to governance policy, as adopted by the Board of Education;
- o) the Appellant's board of Director's can select the Principal for the school, in cooperation with the Board of Education;
- p) the Appellant operates the Cornerstone Christian school under the Board of Education, a public school division;
- q) the Appellant receives a substantial portion of its funding from the Saskatchewan Ministry of Education, including grants from the Board of Education;
- r) the Appellant claimed CEWS for the purpose of assisting with the wages for its employees the non-teaching staff at the school;

B. ISSUES TO BE DECIDED

24. The issues to be decided are:

- a) whether the Appellant is an eligible entity in respect of the CEWS for the Relevant Qualifying Periods, more specifically, whether the Appellant is a public institution.

C. STATUTORY PROVISIONS RELIED ON

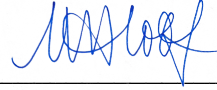
25. The AGC relies on subsections 125.7(1), 125.7(2), 149(1)(a) to (d.6), 248(1) and 152(3.4) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) (the Act), paragraph 8901.1(1)(f) of the *Income Tax Regulations* (CRC, c 945); section 2(1) of *The Education Act, 1995*, SS 1995, c E-0.2, as amended, and sections 2, 3, 6 & 7 of *The Registered Independent Schools Regulations, RSS c. E-0.2 REG 27*, as amended.

D. GROUNDS RELIED ON AND RELIEF SOUGHT

26. The AGC submits that the Appellant is not entitled to CEWS in respect of the Relevant Qualifying periods pursuant to subsections 125.7(2) of the Act because the Appellant is a public school.
27. The AGC submits that only an “eligible entity” as defined in subsection 125.7(1) of the Act is eligible for CEWS, which definition excludes public institutions. Pursuant to subsection 125.7(1) of the Act, “public institution” means, among other things, a “school or a school board”. A person operating a private school is included in the definition of an eligible entity, as prescribed by section 8901.1 of the Income Tax Regulations.
28. The AGC submits that as the Appellant is not an “eligible entity”, during the Relevant Qualifying Periods, then it could not meet the definition of “qualifying entity” found at subsection 125.7(1) and therefore, not entitled to CEWS under subsection 125.7(2).
29. The AGC submits that the Appellant is an associate school, as defined in the Registered Independent Schools Policy and Procedure Manual, 2019 (the “Policy and Procedures Manual”):
- a) the Policy and Procedures Manual, recognizes five categories of independent schools in the province of Saskatchewan:

1. registered independent schools
 2. alternative independent schools
 3. associate schools
 4. historical high schools
 5. qualified independent schools
- b) “Registered independent schools meet basic eligibility criteria and do not receive funding from the Minister of Education.”
- c) “Associate schools have a voluntary operating agreement with a school division. The arrangement involves the school division employing the teachers and the registered independent school board providing the building, maintenance and course materials beyond those associated with provincial curricula. Funding is provided through the school division.
30. The AGC submits that the Appellant is not a prescribed organization under category (f) of the meaning of “eligible entity” within subsection 125.7(1). The Appellant is also not a private school or private college under 8901.1(1)(f) of the *Income Tax Regulations* (CRC, c 945).
31. The AGC submits that the Appellant is an associate school, under the board of education, and it is deemed to be registered under section 7(1)(a), and 7(1)(b) under *The Registered Independent Schools Regulations*.
32. The Appellant is an associate school under the board of education, following the Saskatchewan provincial curriculum, to provide courses and programs to the board of education for approval for grades 1-9; and to share the responsibility of hiring teaching staff with the board of education.
33. The AGC requests that the appeal be dismissed, with costs.

DATED at the City of Saskatoon, in the Province of Saskatchewan, on this 26 day of July, 2024.



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