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F I L E D	FEDERAL COURT COUR FÉDÉRALE May 27, 2024 27 mai 2024
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FORM 301- Rule 301
NOTICE OF APPLICATION
FEDERAL COURT

BETWEEN

KALEIDESCAPE CANADA, INC.
Applicant

and

ATTORNEY GENERAL OF CANADA / THE MINISTER OF NATIONAL REVENUE
Respondent

APPLICATION UNDER Section 18.1 of the Federal Courts Act (Canada)
for judicial review of a decision by the Minister of National Revenue

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at (place where Federal Court of Appeal (or Federal Court) ordinarily sits).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

May 27, 2024

Issued by: _____
(Registry Officer)

Address of local office:

Registries of the Federal Courts
Toronto Local Office
180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

TO:

The Attorney General of Canada
The Honourable Arif Virani
Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8

AND TO:

The Honourable Diane Lebouthillier
Minister of National Revenue
7th Floor
555 MacKenzie Avenue
Ottawa, ON, K1A 0L5

APPLICATION

This is an application for judicial review in respect of a decision of the Minister of National Revenue (the “**Minister**”), finalized via "Notice of Confirmation" dated April 25, 2024 (the “**Notice of Confirmation**”) addressed to the Applicant and denying, *inter alia*, the Applicant’s request to adjust the Minister’s calculations/adjustments in respect of certain scientific research and experimental development (“**SRED**”) credits/refunds, to allow certain SRED refunds/credits, and to reverse various provincial SRED clawbacks, all as applicable to and/or relevant to the 2011-2013 tax years (the “**Minister’s Decision**”).

The Applicant makes application for an order pursuant to section 18.1(3) of the *Federal Courts Act* (Canada) (the “**FCA**”), declaring the Minister’s Decision invalid or unlawful (in whole or in part), quashing the Minister’s Decision (in whole or in part), and/or setting aside the Minister’s Decision (in whole or in part) and referring this matter back for determination in accordance with such directions as it considers to be appropriate, and awarding the Applicant its costs of this application.

BACKGROUND:

1. The Applicant, Kaleidescape Canada, Inc., was reassessed in respect of the following tax years on the following dates:
 - (a) 2011 tax year on July 11, 2018 (the “**2011 Subject Reassessment**”).
 - (b) 2012 tax year on March 12, 2019 (the “**2012 Subject Reassessment**”).
 - (c) 2013 tax year on March 12, 2019 (the “**2013 Subject Reassessment**”).

2. The 2011 Subject Reassessment, 2012 Subject Reassessment, 2013 Subject Reassessment are collectively referred to herein as the “**Subject Reassessments**”.
3. Per the Minister (via Canada Revenue Agency (the “**CRA**”)) (hereinafter, the “**Minister**”), the 2012 and 2013 Subject Reassessments were issued by the CRA as “consequential assessments” via section 152(4.3) of the *Income Tax Act* (Canada) (the “**ITA**”).
4. The Applicant objected to the Subject Reassessments via Notice of Objection dated June 7, 2019 (the “**Objection**”).
5. The Applicant requested various adjustments to the Subject Reassessments via the Objection, as further detailed in the Objection.
6. By letter dated August 13, 2019, the Minister acknowledged the Objection.
7. By letter dated August 20, 2021 (and, the Applicant understands, following consultation with the Tax and Charities Appeals Directorate (TCAD) in Appeals Headquarters (“**CRA Headquarters**”)), the Minister (via CRA Appeals Division) proposed to allow some of the requested adjustments requested by the Applicant in its Objection, but refused to allow other requested adjustments. The Minister invited further submissions from the Applicant.
8. By letter dated November 30, 2021, the Applicant made further submissions in response to the Minister’s August 20, 2021 letter.
9. By letter dated January 31, 2024, and following further consultation with CRA Headquarters, the Minister (via CRA Appeals Division) advised that it was proposing to revise its previous decision, as follows: to reverse its earlier decision to allow some of the adjustments requested by the Applicant and to

maintain its earlier decision to refuse other adjustments requested by the Applicant.

10. By letter dated April 25, 2024, the Minister (via CRA Appeals Division) confirmed its decision via Notice of Confirmation (as aforesaid, the Minister's Decision herein).
11. Via the April 25, 2024 Notice of Confirmation, the Minister advised that the Applicant can appeal the 2011 tax year decision to the Tax Court, but omitted to state that the Applicant had any federal appeal rights (via the ITA or otherwise) in respect of its decision for/in respect of the 2012 and 2013 tax years.
12. In discussions with the Minister (via CRA Appeals) following the April 25, 2024 Decision, the CRA appeals officer rendering the Decision advised that the issue of whether or not the Applicant has federal appeal rights for/in respect of 2012 and 2013 tax years in this context was somewhat complicated.
13. The Applicant believes that it has federal appeal rights under the ITA for/in respect of the Minister's Decision as it relates to the 2012 and 2013 tax years (as well as the 2011 tax year), and intends to file such appeal with the Tax Court of Canada (but, in light of the omitted references in the Notice of Confirmation to 2012/2013 appeal federal rights, anticipates that the Minister may attempt to resist standing and/or jurisdiction for all or part of such appeal).
14. If it is determined that the Applicant does not have federal appeal rights in respect of all or part of the Decision, then the Applicant should have the right of judicial review in respect of the Minister's Decision and/or parts thereof.
15. As such, the Applicant is filing this application for judicial review accordingly.
16. For certainty, this application for judicial review is filed without prejudice to the

Applicant's position on any federal and/or provincial appeal to be filed in respect of the Minister's Decision.

GROUND FOR THIS APPLICATION:

The grounds for the application are as follows:

17. The Minister acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction in respect of the Minister's Decision.
18. The Minister failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe in respect of the Minister's Decision.
19. The Minister erred in law in rendering the Minister's Decision.
20. The Minister based the Minister's Decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.
21. The Minister acted contrary to law in respect of the Minister's Decision.
22. The Minister's Decision was unreasonable.
23. As such, the Minister's Decision was unlawful and invalid and should be quashed accordingly.
24. The Applicant relies on, without limitation, section 18.1 of the FCA and Rules 317 and 318 of the Federal Court Rules.
25. The Applicant relies on such further and other grounds as counsel may advise and this Court may permit.

26. This application will/may be supported by the following material:
- (a) documents (to be determined) contained within the Minister's files relating to the Minister's Decision/Notice of Confirmation; and
 - (b) such further and other material as this Court may permit.
27. Per Rule 317 of the Federal Court Rules, the Applicant requests the Minister to send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Minister to the Applicant and the Registry: → **The Minister's complete internal file relating to the Minister's Decision and the Objection as a whole, including (without limitation) any internal CRA and/or Minister communications and/or notes relating in any way to the Minister's Decision/Notice of Confirmation/Objection (including communications to/from CRA Appeals and CRA Headquarters in respect of same).**

ALL OF WHICH BEING RESPECTFULLY SUBMITTED.

Date: May 27, 2024

*Per: Domenic Marciano**

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