

2025-1080811C6 -- 2025 CTF—Q.10—Gross Negligence Penalty and Labour Requirements

Date: December 2, 2025

Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA.

Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES

Whether the gross negligence penalty under subsection 127.46(9) applies where an incentive claimant is unable to substantiate having met the compensation requirement under subparagraph 127.46(3)(b)(i) in respect of covered workers employed by others and having taken reasonable steps to ensure compliance for such workers.

POSITION

The determination of whether an incentive claimant has, knowingly or in circumstances amounting to gross negligence, failed to meet the LR is a question of fact that can only be determined after an examination of all the relevant facts and circumstances. In general, the fact that an incentive claimant is unable to substantiate having met the compensation requirement under subparagraph 127.46(3)(b)(i) in respect of covered workers employed by others should not, in and of itself, result in the Minister determining that the incentive claimant, knowingly or in circumstances amounting to gross negligence, failed to meet the LR. Where no reasonable steps have been taken, the incentive claimant should limit their claim to the reduced tax credit rate by refraining from making the election and attestation. Doing otherwise may support a determination by the Minister that the incentive claimant, knowingly or in circumstances amounting to gross negligence, failed to meet the Labour Requirements. In such cases, the gross negligence penalty under subsection 127.46(9) should generally apply.

REASONS

Textual, contextual, and purposive analysis of the relevant provisions.

2025 CTF Annual Tax Conference

CRA Roundtable

Question 10: Gross Negligence Penalty and Labour Requirements

Section 127.46 sets out the labour requirements applicable to certain clean economy investment tax credits (each a "specified tax credit"). When the applicable conditions are met, an incentive claimant can avail itself of the "regular tax credit rate," which is 10 percentage points higher than the "reduced tax credit rate." More precisely, subsection 127.46(2) provides that the applicable rate for each specified tax credit of an incentive claimant is the "reduced tax credit rate," unless the incentive claimant elects in prescribed form and manner to meet the "prevailing wage requirements" under subsection 127.46(3) and the "apprenticeship requirements" under subsection 127.46(5) (together

referred to as “the Labour Requirements”) for each installation taxation year in respect of the specified tax credit.

As part of the prevailing wage requirements for an incentive claimant for an installation taxation year, subparagraph 127.46(3)(b)(i) provides that “covered workers” must be compensated either in accordance with the terms of an “eligible collective agreement” or at a level at least equivalent to the value of compensation (including benefits) provided to similar workers under such an agreement (“the Compensation Requirement”). Pursuant to subparagraph 127.46(3)(b)(ii), the incentive claimant must also attest in prescribed form and manner that it has met the Compensation Requirement for its own employees at the designated work site(s) of the incentive claimant, and that it has taken reasonable steps to ensure that covered workers employed by others at the designated work site(s) of the incentive claimant are so compensated.

An incentive claimant may outsource the preparation or installation of a specified property to a third party (“a Contractor”). For various reasons, the incentive claimant may not have sufficient information to support that the subparagraph 127.46(3)(b)(i) requirement has been met in respect of covered workers employed by such Contractor.

Where an incentive claimant has elected to meet the Labour Requirements in accordance with subsection 127.46(2), has attested to having met the Labour Requirements in accordance with subparagraph 127.46(3)(b)(i) and paragraph 127.46(5)(a) or (b), and has therefore claimed a specified tax credit at the regular tax credit rate, but is unable to substantiate having met the Compensation Requirement in respect of those covered workers employed by others, such as a Contractor, would the CRA seek to apply the gross negligence penalty under subsection 127.46(9)?

CRA Response

Subsection 127.46(9) applies where an incentive claimant has claimed a specified tax credit at the regular tax credit rate in a taxation year, has failed to meet the Labour Requirements for an installation taxation year in respect of a specified tax credit, and the Minister determines that the incentive claimant, knowingly or in circumstances amounting to gross negligence, failed to meet those requirements. The determination of whether an incentive claimant has, knowingly or in circumstances amounting to gross negligence, failed to meet the Labour Requirements is a question of fact that can only be determined after an examination of all the relevant facts and circumstances.

In general, an incentive claimant’s inability to substantiate that covered workers employed by others were compensated in accordance with subparagraph 127.46(3)(b)(i) should not, in and of itself, lead the Minister to determine that the claimant, knowingly or with gross negligence, failed to meet the Labour Requirements.

To access the regular tax credit rate, the incentive claimant dealing with a Contractor must be in a position to demonstrate that reasonable steps were taken to ensure compliance with the Compensation Requirement in subparagraph 127.46(3)(b)(i). Where no reasonable steps have been taken, the incentive claimant should limit their claim to the reduced tax credit rate by refraining from making the election and attestation. Doing otherwise may support a determination by the Minister that the incentive claimant, knowingly or in circumstances amounting to gross negligence, failed to meet the Labour Requirements. In such cases, the gross negligence penalty under subsection 127.46(9) should generally apply.

Our view equally applies to the apprenticeship requirements, such that the CRA should apply the gross negligence penalty under subsection 127.46(9) where an incentive claimant has attested to having made reasonable efforts in respect of the proportion of total hours worked by apprentices registered in a Red Seal trade in accordance with paragraph 127.46(5)(c), despite not having done so.

This interpretation respects the deterrent purpose of the attestation mechanism, which goes beyond a mere implicit assertion. The attestation imposes an express obligation that, if knowingly false, may support a finding of culpable non-compliance under subsection 127.46(9), and stands in contrast to the additions to tax under subsections 127.46(6) and (7) and the corrective measures under subsections 127.46(11) to (13), which apply where the Labour Requirements are not met, but there is no finding that the incentive claimant, knowingly or in circumstances amounting to gross negligence, failed to meet the Labour Requirements.

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2025-108081

December 2, 2025