

BETWEEN:

GREGORY A. LOWRY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 10, 2011 at Windsor, Ontario

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant: The Appellant Himself
Counsel for the Respondent: Joanna Hill

JUDGMENT

The Appellant's appeal from the reassessment of his tax liability for 2008 which resulted in a denial of his claims for a tuition credit as provided in section 118.5 of the *Income Tax Act* (the "Act") and the credits as provided in section 118.6 of the *Act* is dismissed, without costs.

Signed at Toronto, Ontario, this 5th day of July 2011.

“Wyman W. Webb”

Webb, J.

Citation: 2011TCC329

Date: 20110705

Docket: 2011-66(IT)I

BETWEEN:

GREGORY A. LOWRY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb, J.

[1] The Appellant's appeal was heard immediately following the appeal in *Abdalla v. The Queen*, 2011 TCC 328. While the issue in both cases was whether the fees paid for courses provided by a university in the United States that were taken online would qualify for the tuition credit, the facts were not the same. The Appellant in this case claimed a tuition credit pursuant to section 118.5 of the *Income Tax Act* (the "Act") and the credits pursuant to section 118.6 of the *Act* (which are referred to as the education and textbook credits). The Appellant was enrolled as a student at Walden University which is located in Phoenix, Arizona. The Appellant was taking courses, online, that would lead to a Masters degree.

[2] Subsection 118.5(1) of the *Act* provides for a tuition credit and this subsection provides in part as follows:

118.5 (1) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted,

...

(b) where the individual was during the year a student in full-time attendance at a university outside Canada in a course leading to a degree, an amount equal to the product obtained when the appropriate percentage for the year is multiplied by the amount of any fees for the individual's tuition paid in respect of the year to the university, except any such fees

(i) paid in respect of a course of less than 13 consecutive weeks duration,

[3] Subsection 118.6(2) of the *Act* provides for education and textbook credits and this subsection provides in part as follows:

(2) There may be deducted in computing an individual's tax payable under this Part for a taxation year the amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the total of the products obtained when

(a) \$400 is multiplied by the number of months in the year during which the individual is enrolled in a qualifying educational program as a full-time student at a designated educational institution, and

(b) \$120 is multiplied by the number of months in the year (other than months described in paragraph (a)), each of which is a month during which the individual is enrolled at a designated educational institution in a specified educational program that provides that each student in the program spend not less than 12 hours in the month on courses in the program,

if the enrolment is proven by filing with the Minister a certificate in prescribed form issued by the designated educational institution and containing prescribed information and, in respect of a designated educational institution described in subparagraph (a)(ii) of the definition "designated educational institution" in subsection (1), the individual has attained the age of 16 years before the end of the year and is enrolled in the program to obtain skills for, or improve the individual's skills in, an occupation.

(2.1) If an amount may be deducted under subsection (2) in computing the individual's tax payable for a taxation year, there may be deducted in computing the individual's tax payable under this Part for the year the amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year; and

B is the total of the products obtained when

(a) \$65 is multiplied by the number of months referred to in paragraph (a) of the description of B in subsection (2), and

(b) \$20 is multiplied by the number of months referred to in paragraph (b) of that description.

[4] Whether the individual is a full-time student (and entitled to the credit as provided in paragraph 118.6(2)(a) of the *Act*) or a part-time student (and entitled to the credit as provided in paragraph 118.6(2)(b) of the *Act*), the student must be enrolled at a designated educational institution. A designated educational institution is defined in subsection 118.6(1) of the *Act*, for a university outside Canada, as follows:

“designated educational institution” means

...

(b) a university outside Canada at which the individual referred to in subsection (2) was enrolled in a course, of not less than 13 consecutive weeks duration, leading to a degree, or

[5] For both the tuition credit as provided in section 118.5 of the *Act* and the education and textbook credits as provided in section 118.6 of the *Act*, the Appellant must be enrolled in a course of not less than 13 consecutive weeks duration.

[6] In this case the Appellant was taking courses for 12 weeks and then following a break for a week, he would take another course or courses for 12 weeks. There was no consecutive period of 13 or more weeks during which he was taking a course or courses. This distinguishes this case from *Abdalla*. It seems to me that the requirement that the duration must be 13 *consecutive* weeks is clearly stated in subparagraph 118.5(1)(b)(i) of the *Act* (for the tuition credit) and in the definition of designated educational institution in subsection 118.6(1) of the *Act* (for the education and textbook credits). Since the courses were not 13 *consecutive* weeks in duration, the courses fail to satisfy this requirement.

[7] In *Ali v. The Queen*, 2004 TCC 726, [2005] 1 C.T.C. 2230, Justice Bowie dealt with this issue. He stated in this case as follows:

4 It is therefore a requirement in respect of each of these credits that the course in which the taxpayer was enrolled be of at least 13 consecutive weeks duration. In the Appellant's case the winter term qualifies, but the fall term does not. Counsel for the

Respondent conceded at the hearing of the appeal that the Appellant is entitled to credits based on the fees for the winter term and the one month of the winter term that took place in 2002, based upon the Appellant's uncontradicted evidence as to the duration of the winter term. The appeal will be allowed, to that extent.

5 This may well be a case in which the Respondent would consider a remission of the taxes involved. Mr. Ali testified that Midland University, like many U.S. universities, operates on a quarterly rather than a trimester system, with the result that a student may attend on a full-year basis, and yet not be enrolled for more than 11 or 12 weeks in one term, and so be unable for that reason alone to qualify for the tax credits. The apparent intention of the 13-consecutive week requirement is to ensure that the credit is available only to students who are studying on a full-time basis. However, those students like Mr. Ali, who attend universities that operate on a quarterly basis, are placed at what seems to be an unintended disadvantage, even though they attend throughout the year. That, however, is a matter for the executive, not the Court, to decide.

[8] I agree with the comments of Justice Bowie. It is unfortunate that the Appellant is disadvantaged because the term is one week short of the required 13 consecutive weeks, but since the legislation is clear with respect to the requirement for 13 consecutive weeks, his appeal cannot succeed. This requirement can only be changed by an amendment to the *Act*.

[9] As a result the Appellant's appeal from the reassessment of his tax liability for 2008 which resulted in a denial of his claims for a tuition credit as provided in section 118.5 of the *Act* and the credits as provided in section 118.6 of the *Act* is dismissed, without costs.

Signed at Toronto, Ontario, this 5th day of July 2011.

“Wyman W. Webb”

Webb, J.

CITATION: 2011TCC329

COURT FILE NO.: 2011-66(IT)I

STYLE OF CAUSE: GREGORY A. LOWRY AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Windsor, Ontario

DATE OF HEARING: June 10, 2011

REASONS FOR JUDGMENT BY: The Honourable Justice Wyman W. Webb

DATE OF JUDGMENT: July 5, 2011

APPEARANCES:

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|-----------------------------|-----------------------|
| For the Appellant: | The Appellant Himself |
| Counsel for the Respondent: | Joanna Hill |

COUNSEL OF RECORD:

For the Appellant:

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