Docket: 2011-2906(IT)I

BETWEEN:

RHETT LARSEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 2, 2012, at Calgary, Alberta

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant:	The Appellant Himself
Counsel for the Respondent:	Adam Gotfried

JUDGMENT

The Appellant's appeal is dismissed, without costs.

Signed at Ottawa, Canada, this 7th day of March 2012.

"Wyman W. Webb"

Webb J.

Citation: 2012TCC74
Date: 20120307
Docket: 2011-2906(IT)I

BETWEEN:

RHETT LARSEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb J.

[1] The issue in this appeal is whether the amount in excess of $500 that the Appellant received as a bursary to assist him in paying for the costs of taking a course in Spanish at a university in Spain must be included in the Appellant's income. There is also a related issue of whether the Appellant is entitled to claim a credit based on the amount that he paid for tuition for this course.

[2] The Appellant is a high school Spanish teacher. To improve his skills as a Spanish teacher, the Appellant, from July 6, 2009 to August 14, 2009, took a course offered at Universidad of Salamanca in Spain. The course was originally four weeks but the Appellant chose to continue his studies for an additional two weeks (six weeks in total). The Appellant incurred tuition costs of 1.105,00 €. The Appellant applied for and received a bursary in the amount of $5,000 from the Language Teacher Bursary Program of the Government of Alberta to assist him in paying for the costs of taking this course. The Appellant did not include any portion of the amount received as a bursary in his income for 2009. He was reassessed to increase his income by the amount of $4,500 in relation to the bursary. He was also denied the credit that he claimed based on tuition fees of $2,575.

[3] Paragraph 56(1)(n) of the *Income Tax Act* (the "*Act*") provides, in part, as follows:

56. (1) Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,

…

(n) the amount, if any, by which

(i) the total of all amounts … received by the taxpayer in the year, each of which is an amount received by the taxpayer as or on account of a scholarship, fellowship or bursary, …,

exceeds

(ii) the taxpayer's scholarship exemption for the year computed under subsection (3);

[4] Therefore the Appellant will be required to include in his income the amount by which $5,000 (the amount of the bursary) exceeds his scholarship exemption for the year. The scholarship exemption is set out in subsection 56(3) of the *Act*:

56 (3) For the purpose of subparagraph (1)(n)(ii), a taxpayer's scholarship exemption for a taxation year is the total of

(a) the total of all amounts each of which is the amount included under subparagraph (1)(n)(i) in computing the taxpayer's income for the taxation year in respect of a scholarship, fellowship or bursary received in connection with the taxpayer's enrolment

(i) in an educational program in respect of which an amount may be deducted under subsection 118.6(2) in computing the taxpayer's tax payable under this Part for the taxation year, for the immediately preceding taxation year or for the following taxation year, or

(ii) in an elementary or secondary school educational program,

(b) the total of all amounts each of which is the lesser of

(i) the amount included under subparagraph (1)(n)(i) in computing the taxpayer's income for the taxation year in respect of a scholarship, fellowship, bursary or prize that is to be used by the taxpayer in the production of a literary, dramatic, musical or artistic work, and

(ii) the total of all amounts each of which is an expense incurred by the taxpayer in the taxation year for the purpose of fulfilling the conditions under which the amount described in subparagraph (i) was received, other than

> (A) personal or living expenses of the taxpayer (except expenses in respect of travel, meals and lodging incurred by the taxpayer in the course of fulfilling those conditions and while absent from the taxpayer's usual place of residence for the period to which the scholarship, fellowship, bursary or prize, as the case may be, relates),
>
> (B) expenses for which the taxpayer is entitled to be reimbursed, and
>
> (C) expenses that are otherwise deductible in computing the taxpayer's income, and
>
> (c) the lesser of $500 and the amount by which the total described in subparagraph (1)(n)(i) for the taxation year exceeds the total of the amounts determined under paragraphs (a) and (b).

[5] As a result of the provisions of paragraph (c), the minimum amount of the scholarship exemption in this case would be $500, which is the amount that was allowed as the scholarship exemption. The scholarship exemption of the Appellant will only be an amount greater than the $500 amount that was allowed if the conditions as set out in either paragraph (a) or (b) above are satisfied.

[6] Since the Appellant was not producing any literary, dramatic, musical or artistic work, the amount that would be determined for the purposes of subparagraph 56(3)(b)(i) of the *Act* will be nil. Therefore no amount would be included under paragraph (b) above.

[7] An amount will only be included for the purposes of paragraph 56(3)(a) of the *Act* if the Appellant was enrolled in an educational program that would permit the Appellant to deduct an amount under subsection 118.6(2) in computing his tax payable for 2009. Therefore there is a direct link between the scholarship exemption and the education credit.

[8] Subsection 118.6(2) of the *Act* provides as follows:

> 118.6 (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.

(emphasis added)

[9] Whether the Appellant was a full-time student or only a part-time student is not relevant in this case as for both full-time students and part-time students, a credit is only available if the person is enrolled at a designated educational institution. In 2009, the definition of "designated educational institution" provided, in part, as follows:

118.6 (1) For the purposes of sections 63 and 64 and this subdivision,

"designated educational institution" means

(a) an educational institution in Canada that is

(i) a university, college or other educational institution designated by the Lieutenant Governor in Council of a province as a specified educational institution under the *Canada Student Loans Act*, designated by an appropriate authority under the *Canada Student Financial Assistance Act*, or designated by the Minister of Higher Education and Science of the Province of Quebec for the purposes of *An Act respecting financial assistance for students* of the Province of Quebec, or

(ii) certified by the Minister of Human Resources and Skills Development to be an educational institution providing courses, other than courses designed for university credit, that furnish a person with skills for, or improve a person's skills in, an occupation,

> (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
>
> (c) if the individual referred to in subsection (2) resided, throughout the year referred to in that subsection, in Canada near the boundary between Canada and the United States, an educational institution in the United States to which the individual commuted that is a university, college or other educational institution providing courses at a post-secondary school level;

[10] There are three possible situations contemplated by this subsection:

(a) where the educational institution is located in Canada;

(b) where the university is outside Canada; and

(c) where the individual resided near the border between Canada and the United States, the educational institution was in the United States and provided courses at the post-secondary school level and the individual commuted to such institution.

[11] If either (a) or (c) is applicable, there is no restriction on the duration of the courses that must be taken. If (b) is applicable, then, in 2009, the individual must have been enrolled in a course that led to a degree and that was not less than 13 consecutive weeks duration in order for the university to qualify as a designated educational institution.

[12] Therefore, in 2009, for any university that was outside Canada (with an exception for universities in the United States to which the individual commuted), there was a condition that the university would only qualify as a designated educational institution if the individual was enrolled in a course of not than 13 consecutive weeks duration. Since the course that the Appellant took at Universidad of Salamanca in Spain was only six weeks in duration, the Universidad of Salamanca was not a designated educational institution in 2009. Although this requirement for courses taken at a university outside Canada has been changed to reduce the number of weeks for the course from 13 consecutive weeks to three consecutive weeks, this amendment only applies for tuition fees paid for 2011 or later. The amendment does not assist the Appellant.

[13] There is a similar restriction in relation to a claim for a tax credit based on the tuition paid by the Appellant. Subsection 118.5(1) of the *Act* 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,
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> (*a*) where the individual was during the year a student enrolled at an educational institution in Canada that is
>
> (i) a university, college or other educational institution providing courses at a post-secondary school level, or
>
> …
>
> 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 educational institution if the total of those fees exceeds $100, except to the extent that those fees
>
> (ii.1) are paid to an educational institution described in subparagraph (i) in respect of courses that are not at the post-secondary school level,
>
> …
>
> (*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,
>
> …and
>
> (*c*) where the individual resided throughout the year in Canada near the boundary between Canada and the United States if the individual
>
> (i) was at any time in the year a student enrolled at an educational institution in the United States that is a university, college or other educational institution providing courses at a post-secondary school level, and
>
> (ii) commuted to that educational institution in the United States,

> 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 educational institution if the total of those fees exceed $100, except to the extent that those fees
>
> (iii) are paid on the individual's behalf by the individual's employer and are not included in computing the individual's income, or
>
> (iv) were included as part of an allowance received by the individual's parent on the individual's behalf from an employer and are not included in computing the income of the parent by reason of subparagraph 6(1)(*b*)(ix).

[14] If either paragraph (a) or (c) above is applicable, there is no restriction on the duration of the courses that must be taken. Since the Universidad of Salamanca is in Spain, neither paragraph (a) nor paragraph (c) is applicable in this case. If paragraph (b) is applicable, then subparagraph 118.5(1)(*b*)(i) of the *Act* provides that the fees paid will not include the fees "paid in respect of a course of less than 13 consecutive weeks duration". Since the course that the Appellant took was only six weeks in duration, even if the Appellant was a student in full time attendance at the Universidad of Salamanca, the Appellant is not entitled to claim a tax credit based on the tuition that he paid for the course that he took at this university in 2009. The duration of the courses taken at a university outside Canada (other than for individuals to whom paragraph (c) above is applicable) for the purposes of the tuition credit has been changed from at least 13 weeks duration to at least three weeks duration but, as noted above, this only applies to tuition fees paid for 2011 or later.

[15] The Appellant had expressed his concerns that no one from the Government of Alberta had indicated that he would be subject to tax as a result of receiving the bursary in 2009 and it was his understanding from what he was told and what he had read that the bursary would not be subject to tax. However, I must apply the *Act* as it is written and in 2009 the *Act* did provide that the scholarship exemption would not fully exempt a bursary amount for a course taken at a university in Spain, if the course was less than 13 consecutive weeks in duration.

[16] As a result the Appellant's appeal is dismissed, without costs.

Signed at Ottawa, Canada, this 7th day of March 2012.

"Wyman W. Webb"

Webb J.

CITATION:	2012TCC74
COURT FILE NO.:	2011-2906(IT)I
STYLE OF CAUSE:	RHETT LARSEN AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Calgary, Alberta
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APPEARANCES:

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Counsel for the Respondent:	Adam Gotfried

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Firm:

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