

Docket: 2012-4922(IT)I

BETWEEN:

PING KAM,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on July 15, 2013, at Edmonton, Alberta

Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant:                   The Appellant himself  
Counsel for the Respondent:       Jeff Watson

---

**JUDGMENT**

The appeals from the reassessments dated January 23, 2012 made under the *Income Tax Act* in respect of the Appellant's 2007, 2008 and 2009 taxation years are dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 28th day of August 2013.

“Réal Favreau”

---

Favreau J.

Citation: 2013 TCC 266  
Date: 20130828  
Docket: 2012-4922(IT)I

BETWEEN:

PING KAM,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Favreau J.

[1] The Appellant claimed tuition credits in relation to examination fees and tuition fees that were paid in 2004 and in 2006 to 2009 for piano lessons that were taken by the Appellant's son with Dr. Boris Konovalov. The credits were transferred to the Appellant under section 118.9 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended (the "Act").

[2] In computing his non-refundable tax credits and tax payable for the 2004 and 2006 to 2009 taxation years, the Appellant did not claim any amounts for the transfer of examination and tuition fees from his son.

[3] In 2011, the Appellant filed T-1 adjustment requests for the 2004 and for the 2006 to 2009 taxation years to claim the tuition credits from his son as follows:

Year	Exam Fees	Tuition Fees	Total
2004	\$113	\$0	\$113
2006	\$394	\$1,035	\$1,429
2007	\$178	\$2,160	\$2,338

2008	\$206	\$2,445	\$2,651
2009	\$627	\$2,940	\$3,567

[4] By reassessments dated January 23, 2012, the Minister of National Revenue (the “Minister”) allowed only the transfer of examination fees from the Appellant’s son in the amounts of \$178 in 2007, \$206 in 2008 and \$627 in 2009.

[5] The Appellant’s 2004 and 2006 income tax returns were initially assessed on April 18, 2005 and October 22, 2007 (the “Assessments”). The Appellant did not file with the Minister a Notice of Objection in respect of the Assessments within the time prescribed by section 165 of the *Act*, being on or before April 30, 2006 and April 30, 2008 respectively, nor an application for an extension of time to file a Notice of Objection in respect of the Assessments within the time prescribed by paragraph 166.1(7)(a) of the *Act*, being on or before April 30, 2007 and April 30 2009 respectively.

[6] The Appellant filed with the Minister a Notice of Objection in respect of the Assessments on March 16, 2012 which was beyond the one-year time limit for serving a Notice of Objection.

[7] At the commencement of the hearing, the Respondent brought a motion to quash the Appellant’s appeal with respect to the 2004 and 2006 taxation years and the Court allowed the motion and quashed the Appellant’s appeal for the 2004 and 2006 taxation years on the basis that the Appellant’s appeal was not properly introduced before the Court as the Notice of Objection was not filed within the time prescribed by the *Act*.

[8] The Appellant’s appeals concern only the tuition fees paid to Dr. Boris Konovalov in 2007, 2008 and 2009.

[9] The issue in this case is whether the tuition fees paid were in relation to a post-secondary school level course taken at an education institution that provided courses at this level.

[10] Subsection 118.5(1) of the *Act* provides in part as follows:

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

(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,

[11] To be entitled to the tuition credits, the Appellant's son would have to have been enrolled at an educational institution in Canada that was providing courses at a post-secondary level and the amounts paid would have to have been paid for these courses.

[12] The Appellant testified at the hearing and he explained that his son was taking private piano lessons (normally one hour per week) provided by Dr. Boris Konovalov at his piano studio. Dr. Konovalov was referred to the Appellant's son by his previous piano teacher because he was one of the best piano teachers of Edmonton. The music lessons that the Appellant's son was taking with Dr. Konovalov were at the Grade 10 Piano level. The levels are established by the Royal Conservatory of Music.

[13] During his testimony, the Appellant also confirmed that Dr. Konovalov was not providing courses at a university, college or other educational institution providing courses at a post-secondary school level and that he was not affiliated nor associated with any university, college or other educational institution.

[14] The Appellant raised two main issues in relation to this matter. The first issue is whether the piano lessons taken by the Appellant's son were at the post-secondary school level and the second issue is whether Dr. Boris Konovalov's piano studio was an educational institution for the purposes of subsection 118.5(1) of the *Act*.

[15] The Appellant's position is based on the decision rendered by Webb. J (as he then was) in *Marek D. Tarkowski v. Her Majesty the Queen*, 2007 D.T.C. 1555. In that case, Mateusz Tarkowski was enrolled as a student at the Mississauga School of

Music where he was taking Grade 3 and Grade 4 Harmony and Grade 9 Piano lessons at the school's premises. He was tutored at the school by a teacher.

[16] In order to determine whether the Mississauga School of Music was an educational institution under subsection 118.5(1) of the *Act*, at paragraph 10 of his decision, Webb. J. referred to the following comments made by Rip J. (as he then was) in *Hillman v. The Queen*, 2006 TCC 578:

[12] Although I have already determined that BAR/BRI is not an educational institution in Canada, it may serve some purpose to consider whether it is an education institution. In *Friedland v. R.*, Rowe D.J.T.C.C., after noting that there does not appear to be a universal definition of "educational institution", attempted to establish the parameters of the definition as it pertains to the Act:

The Oxford English Dictionary defines "education" as:

3. the systematic instruction, schooling or training given to the young in preparation for the work of life; by extension similar instruction or training obtained in adult age. Also, the whole course of scholastic instruction which a person has received. Often with limiting words denoting the nature or the predominant subject of the instruction or kind of life for which it prepares, as classical, legal, medical, technical, commercial, art education.

and "institution" as:

7. an establishment, organization, or association, instituted for the promotion of some object, esp. one of public or general utility, religious, charitable, educational, etc., e.g. a church, school, college, hospital, asylum, reformatory, mission or the like; [...] The name is often popularly applied to the building of the appropriated to the work of a benevolent or educational institution.

[13] Black's Law Dictionary, 6th Edition, defines "educational institution" as follows:

A school, seminary, college, university, or other educational establishment, not necessarily a chartered institution. As used in zoning ordinance, the term may include not only buildings, but also all grounds necessary for the accomplishment of the full scope of educational instruction, including those things essential to mental, moral, and physical development.

[17] Webb J. determined that the Mississauga School of Music was an educational institution as it was providing Mateusz Tarkowski with an education in music. The fact that the method of teaching was by tutoring and the fact that the Mississauga School of Music itself did not have examinations did not mean that it was not providing Mateusz Tarkowski with an education or that he was not taking courses.

[18] In paragraph 15, Webb J. determined that the Mississauga School of Music was providing courses at the post-secondary school level for the following reasons:

[15] In this case however the Grade 9 Piano and Grades 3 and 4 Harmony courses that Mateusz Tarkowski was taking did require the completion of the secondary school level of music. Since these courses required the completion of the high school level music courses these courses were at the post-secondary school level. [ . . . ]

[19] The Appellant alleged here that the piano lessons that Dr. Boris Konovalov provided to his son from 2006 to 2009 meet all the same conditions as those that the Mississauga School of Music provided to Mateusz Tarkowski. Since the Grade 10 piano lessons provided to the Appellant's son were higher in level than the Grade 9 lessons that the Mississauga School of Music provided to Mateusz Tarkowski. They also qualify as post-secondary level music lessons. The Appellant sees no reason why the Mississauga School of Music meets the criteria for an educational institution described in subparagraph 118.5(1)(a)(i) of the Act, but Dr. Boris Konovalov's piano studio doesn't.

[20] The Respondent's counsel alleged that an individual cannot be considered to be an educational institution for the purpose of subparagraph 118.5(1)(a)(i) of the *Act* and he distinguished the *Tarkowski* decision by pointing out that the Mississauga School of Music was a school that was teaching the music courses and that Mateusz Tarkowski was tutored at the school by a teacher.

[21] The Appellant did not produce much evidence showing that Dr. Konovalov's piano studio was in fact a school of music or an education institution and was organized and operated as such even if it may not have been a chartered institution or school. No website information, no business card, no invoice and no receipt were tabled as documentary evidence. The only information provided by the Appellant on that point was that Dr. Konovalov's spouse was also providing music lessons at the studio.

[22] I do not think that one-hour piano lesson per week is sufficient for the Appellant's son to be considered as being enrolled at an university, college or other educational institution providing courses at a post-secondary level.

[23] In any event, I am not bound by the *Tarkowski's* decision because it was decided under the informal procedure and I doubt that Parliament ever intended to allow tuition credits in a situation like this one in relation to tuition fees paid to a piano teacher providing private piano lessons from home.

[24] For these reasons, the Appellant's appeals are dismissed.

Signed at Ottawa, Canada, this 28th day of August 2013.

“Réal Favreau”

---

Favreau J.

CITATION: 2013 TCC 266

COURT FILE NO.: 2012-4922(IT)I

STYLE OF CAUSE: PING KAM AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: July 15, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice R al Favreau

DATE OF JUDGMENT: August 28, 2013

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Jeff Watson

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: William F. Pentney  
Deputy Attorney General of Canada  
Ottawa, Canada