

Docket: 2013-3687(IT)I

BETWEEN:

BAREND G. VAN HELDEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 11, 2014, at Calgary, Alberta

Before: The Honourable Justice Valerie Miller

Appearances:

Agent for the Appellant: Susan Savage
Counsel for the Respondent: Adam Gotfried

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2011 taxation year is dismissed.

Signed at Ottawa, Canada, this 13th day of June 2014.

“V.A. Miller”

V.A. Miller J.

Citation: 2014TCC196
Date: 20140613
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BETWEEN:

BAREND G. VAN HELDEN,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

V.A. Miller J.

[1] The issue in this appeal is whether the Appellant can claim tuition credits of \$8,095 in 2011 for fees paid to private instructors for piano lessons for his two children. The children transferred the tuition credits to the Appellant under section 118.9 of the *Income Tax Act* (“ITA”).

[2] The only witness was Susan Savage, the Appellant’s spouse.

[3] In 2011, the Appellant claimed \$10,000 as tuition or education amounts transferred to him from his children. His daughters, “D” and “G”, were both enrolled in a music class at the Academy of Music at Mount Royal University in Calgary. The Appellant was allowed a credit of \$1,095 for tuition fees for these music classes and for examination fees paid to the Royal Conservatory of Music, (“RCM”).

[4] Subsection 118.5(1) of the *ITA* provides that an individual may claim a credit for tuition fees under certain conditions. It reads in part:

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

(a) **[institution in Canada]** – subject to subsection (1.1), 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

[5] In order to receive the credit under subsection 118.5(1), the Appellant's daughters must have been (1) enrolled at an educational institution in Canada; (2) that educational institution had to be a university, college or "other educational institution"; and, (3) the educational institution provided courses at a post-secondary school level.

[6] In 2011, the Appellant paid fees for his daughters to take piano lessons from private instructors. According to Ms. Savage, each of her daughters had three hours of private piano lessons and a one hour theory lesson each week. The piano instructors were Linda Kundert-Stoll and Dr. Lana Henschell. The lessons were given at the private residences of the instructors.

[7] In 2011, the Appellant's daughter "D" completed her grade 10 level in piano and started to prepare for her examinations to receive her ARCT in Performance Diploma. His daughter "G" completed her grade 9 level in piano.

[8] The Appellant presented evidence to show that the grade levels in piano are set by the RCM and many school systems in Canada give a high school credit for achievement in RCM examinations. In Alberta, the Ministry of Education gives a grade 12 credit to students who successfully complete their RCM grade 8 piano examinations. Relying on this evidence and W.W. Webb J.'s decision in *Tarkowski v R*, 2007 TCC 632, it was the Appellant's position that his daughters, who had completed grade 9 and grade 10 levels in piano, had completed courses at the post-secondary school level in 2011.

[9] The Appellant further relied on *Tarkowski* to argue that the private instructors who taught his daughters were "educational institutions". The relevant passage in *Tarkowski* is the following where W.W. Webb J., as he then was, found that the facility where the taxpayer's son in that case was taking music lessons was an "educational institution" for the purposes of subsection 118.5(1). He stated:

10 The Mississauga School of Music was a school that was teaching the courses referred to above. In *Hillman v. R*, 2006 TCC 578 (T.T.C. [Informal Procedure]) Rip J. (as he then was) made the following comments:

[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.

11 Mateusz Tarkowski was taking Grade 3 and Grade 4 Harmony and Grade 9 Piano lessons at the Mississauga School of Music at the school’s premises. He was tutored at the school by a teacher.

12 Therefore it seems clear that the Mississauga School of Music was an educational institution as it was providing Mateusz Tarkowski with an education in music. The method of teaching was by tutoring but this is simply the method by which the courses were taught. The fact that the Mississauga School of Music itself did not have examinations did not mean that they were not providing him with an education or that he was not taking courses.

13 In the Canadian Oxford Dictionary, second edition, “course” is defined as “a series of lectures, lessons, etc., in a particular subject”. Courses can be taught that do not have examinations at the end. There can still be “systematic instruction, schooling or training”, without examinations. As a result I find that the Mississauga School of Music is an educational institution.

[10] The Appellant further submitted that just as the Mississauga Music School was found to be an “educational institution” in *Tarkowski*, the private instructors in this case should be found to be educational institutions. Here, the private instructors were extremely well qualified and to demonstrate this point, the Appellant gave the resumés of each instructor. Ms. Savage made the following argument on behalf of the Appellant:

The Mississauga Music School was determined to be an educational institution without regard to its incorporated status. As a result of the analysis performed by the judge, the tuition fees paid were deductible under *ITA* 118.5(1)(i). As the incorporated status of the educational institution would have no impact on the quality of the post-secondary education received, it follows that self-employed teachers would also be deemed to be educational institutions for providing the same educational experience as an incorporated entity.

[11] The Respondent did not dispute whether the Appellant’s daughters took courses at the post secondary level in 2011. However, counsel for the Respondent did dispute the amount of fees actually paid to the private instructors and whether piano teachers who give instructions from their home are “educational institutions” under subsection 118.5(1) of the *ITA*.

The Fees and Hours

[12] The Appellant presented no documentary evidence to support his position that \$8,095 of fees was paid to the private instructors. Instead, Ms. Savage gave evidence of the 2013/2014 fees charged by Linda Kundert-Stoll and the 2011/2012 fees charged by Dr. Lana Henschell but she did not submit any receipts for the fees actually paid to these instructors in 2011. Ms. Savage stated that the fees charged by Linda Kundert-Stoll in 2011 were similar to those she charged in 2013/2014. Ms. Savage also referred to fees paid to Kathy Dornian for accompanist services

and to Babette Jenson for music theory lessons. Ms. Savage also did not provide any documentary evidence to support these fees.

[13] Whereas, Respondent's counsel tendered two receipts which totalled \$3,117.50. One receipt showed that \$1,865 was paid by "D" to Dr. Lana Henschell for piano lessons in preparation for the RCM ARCT piano exam and the other receipt showed that \$1,252.50 was paid by "G" for piano lessons for the RCM grade 9 piano exam. These receipts also showed that "D" received approximately 26.6 one-hour piano lessons in 2011 while "G" had 17.9 one-hour piano lessons with Dr. Lana Henschell in 2011.

Educational Institution

[14] It is my view that Webb J. was over-reaching in *Tarkowski* when he found that the Mississauga School of Music was an educational institution under subsection 118.5(1). However, even using the definitions he relied on, the private instructors in this appeal are not an "educational institution". They are not a "school, seminary, college, university, or other establishment...".

[15] The facts in *Kam v R*, 2013 TCC 266 were very similar to those in the present situation. There Mr. Kam claimed tuition credits for the fees paid for his son's private piano lessons. Mr. Kam also relied on the decision in *Tarkowski*. In dismissing the appeal, Favreau J. made the following comments:

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.

[16] I agree with his comments. A review of the debates which took place in the House of Commons when the predecessor to subsection 118.5(1) was first proposed confirms that the term "educational institution" was not intended to apply to situations as in the present appeal.

[17] In the 24th Parliament, 4th Session, the discussion concerning the deductibility of tuition fees focused on assisting students to attend university by reducing their financial burden. The measure, as part of a bill to amend the *ITA* was proposed as follows:

That the 1961 and subsequent taxation years a student in full-time attendance at a university in a course leading to a degree be permitted to deduct in computing his

income the tuition fees paid by him in the year to the university, and that the said tuition fees also be deducted in computing the income of the student for purposes of determining whether the student is a dependent.¹

[18] This resolution was later struck and the provision was broadened to include the phrase “college or other educational institution” so that a greater number of people would benefit from the resolution. It then read as follows:

That for the 1961 and subsequent taxation years a student in full-time attendance at a university in a course leading to a degree, or in full-time attendance at a college or other educational institution in Canada in a course at a post-secondary school level, be permitted to deduct in computing his income for the year, fees for his tuition paid to the university, college or other educational institution in respect of a period not exceeding 12 months commencing in the year and not included in the calculation of a deduction for such fees for a previous year (except any such fees paid in respect of a course that did not require his full-time attendance for a period of at least three consecutive months), and that the said tuition fees also be deducted in computing the income of the student for purposes of determining whether the student is a dependent.² (*emphasis added*)

[19] The Minister of Finance, at the time, was asked to explain how the resolution would work and his response was:

Mr. Fleming (Eglinton): Mr. Chairman, there have been resolutions received from time to time broadly relating to this subject. Sometimes they have come from student organizations. Since the introduction of the supplementary budget on December 20, I have received a number of communications from student organizations and educational bodies expressing most cordial approval of the recommendations. Some of them proposed extensions such as those that are now put forward in the amendment.

There are some colleges that are not affiliated with any university but which are well-recognized educational institutions at post-secondary level. Their case was very carefully considered and it seemed to my colleagues and myself that it was a fair case they had put forward. Representations of that kind led to the broadening of the resolution. (*emphasis added*)

There were some representations received from individual students. In every case these have been carefully studied and I think that the resolution in its amended and broadened form will cover and accede to practically all the representations in this field that we have received.³

[20] In conclusion, the original intent of the tuition credit was to make post secondary education more accessible to students by lessening their financial burden. Although subsection 118.5(1) should be interpreted broadly, it is clear that

Parliament did not intend that the provision should apply to fees which students paid for private piano lessons at an instructor's home.

[21] The appeal is dismissed.

Signed at Ottawa, Canada, this 13th day of June 2014.

“V.A. Miller”

V.A. Miller J.

¹ House of Commons Debates, 24th Parliament, 4th Session; Volume 1 at page 1016.

² House of Commons Debates, 24th Parliament, 4th Session; Volume 3 at page 2614.

³ House of Commons Debates, 24th Parliament, 4th Session; Volume 3 at page 2615.

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REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller

DATE OF JUDGMENT: June 13, 2014

APPEARANCES:

Agent for the Appellant: Susan Savage
Counsel for the Respondent: Adam Gotfried

COUNSEL OF RECORD:

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