

Docket: 2005-2155(IT)I

BETWEEN:

BRENDA KLASSEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 31, 2005, at Saskatoon, Saskatchewan

Before: The Honourable Justice D.W. Beaubier

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Brooke Sittler

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2003 taxation years is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 9th day of November 2005.

"D.W. Beaubier"

Beaubier, J.

Citation: 2005TCC736
Date: 20051109
Docket: 2005-2155(IT)I

BETWEEN:

BRENDA KLASSEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Beaubier, J.

[1] This appeal pursuant to the Informal Procedure was heard at Saskatoon, Saskatchewan on October 31, 2005. The Appellant testified. The Respondent called an appeals officer, Yvonne Provost.

[2] The matters in dispute are set out in paragraphs 7 to 15 inclusive of the Reply to the Notice of Appeal. They read:

7. In computing her tax liability for the 2003 taxation year, the Appellant claimed, in the computation of her non-refundable tax credits and payable, an amount of \$5,000.00 for tuition and education amounts transferred from a child (the "Transferred Amount").
8. By letter dated December 1, 2004 from the CCRA, the Appellant was requested to provide documentation to support her claim for other deductions and was also informed that an adjustment would be made to delete the non-refundable tax credit claim for the Transferred Amount.
9. The Minister of National Revenue (the "Minister") reassessed the Appellant for the 2003 taxation year to

disallow the claim for the Transferred Amount as the University, which is located outside of Canada, is not a qualifying educational institution. The Notice of Reassessment was dated March 14, 2005.

10. The Appellant filed a Notice of Objection to the reassessment, dated April 6, 2005.
11. The Minister confirmed the reassessment by means of a Notice of Confirmation dated May 20, 2005, as the Transferred Amount is not allowable as the University, which is located outside of Canada, is not a qualifying education institution.
12. In so reassessing the Appellant for the 2003 taxation year and in so confirming that reassessment, the Minister made the same assumptions of fact, as follows:
 - (a) the Appellant claimed the Transferred Amount of \$5,000.00 from Trevor;
 - (b) Trevor, the Appellant's son, attended the University during the 2003 taxation year for 10 months on a full time basis from January through May and August through December;
 - (c) Trevor attended the University on a baseball scholarship;
 - (d) the University is located in Bottineau, North Dakota, USA;
 - (e) Trevor was not enrolled in a course leading to a degree at a Bachelor's level;
 - (f) the University does not grant degrees at the bachelor level or higher;
 - (g) the University of Minot is a qualified educational institution;
 - (h) the University is not an extension of and is a separate educational institution from the University of Minot;
 - (i) Trevor's tuition fees for the 2003 taxation year were \$1,924.36US;

- (j) Trevor's eligible tuition fees and education amounts in respect of the University were nil; and
- (k) the Appellant was not allowed the Transferred Amount for the University.

B. ISSUES TO BE DECIDED

- 13. The issue is whether the Appellant was entitled to the Transferred Amount under sections 118.81 and 118.9 of the *Income Tax Act* (the "*Act*") in the computation of her non-refundable tax credits for the 2003 taxation year.

C. STATUTORY PROVISIONS, GROUNDS RELIED ON AND RELIEF SOUGHT

- 14. He relies on section 118.5, 118.6, 118.81 and 118.9 and subsection 248(1) of the *Act* as amended for the 2003 taxation year.
- 15. He submits that as the University attended by Trevor is not a designated educational institution, as defined in subsection 118.6(1) of the *Act*, Trevor is not entitled to the tuition amount under subsection 118.5(1) of the *Act* or the education amount under subsection 118.6(2) of the *Act* in respect of the University. Therefore, the Appellant was not entitled to the Transferred Amount under sections 118.81 and 118.9 of the *Act* in the computation of her non-refundable tax credits for the 2003 taxation year.

[3] Assumptions 12(a), (b), (c), (d), (g), (i) and (k) were not refuted. The remaining assumptions are in dispute.

[4] In the Reply, the Respondent describes as the "university", the corporate body that Trevor attended namely, Minot State University-Bottineau Campus. But the Respondent states that it is not a degree granting institution, that is a "designated educational institution" within the *Income Tax Act* ("*Act*"). Minot State University is a properly designated education institution within the meaning of the *Act* as set out in Exhibit R-1 "Accredited Institutions of Post Secondary Education" published by the American Council in Education.

[5] As the Appellant pointed out, Minot State University–Bottineau Campus

- (a) has a Dean, whereas Minot State University has a President.

- (b) The North Dakota University system procedure sheet (Exhibit A-2) describes the two as “Minot State University” and “Minot State University – Bottineau Campus” (hereafter “MSU-Bottineau”).
- (c) Each grants an “associate degree or equivalent” which the evidence indicates is a certificate indicating the successful completion of two university class years. Minot State University grants additional four year B.A.s and post-graduate degrees.
- (d) The Appellant’s position is that MSU-Bottineau is merely a branch of Minot State University. (In the Court’s phrase, merely a separate campus in Bottineau, a one and a half-hour drive from Minot.) The Appellant is confirmed by Exhibit A-3, a letter from the Associate Dean at Bottineau who states that they are a “branch campus”, report directly to the president of Minot State University and “could not function as a separate university”.

[6] Respondent’s counsel argued that MSU-Bottineau is a separate institution and pointed out that Appellant’s Exhibit A-3, the second page, states that MSU-Bottineau “provides traditional curriculum that transfer to baccalaureate programs”.

[7] The second page also states that in 1996 “the name of the school was changed to Minot State University-Bottineau Campus”. From this last statement it appears that it remained a separate corporate body and was not part of the Minot State University corporation. This confirms Exhibit A-1 published by MSU-Bottineau titled “Transfer Programs” which suggests attending “your first two years at MSU-Bottineau...then you will be ready to transfer to a four-year university”. From this it is clear that a student does not simply go on in Minot State University from MSU-Bottineau; rather one must transfer to a separate institution – Minot State University.

[8] Therefore, the Court finds that Minot State University-Bottineau Campus is not a degree granting institution and in particular it is not a “designated educational institution” within the meaning contained in the *Act*. In particular, the evidence is that it is a completely separate corporate body from Minot State University.

[9] For these reasons the appeal is dismissed.

Signed at Ottawa, Canada, this 9th day of November 2005.

"D.W. Beaubier"

Beaubier, J.

CITATION: 2005TCC736

COURT FILE NO.: 2005-2155(IT)I

STYLE OF CAUSE: BRENDA KLASSEN AND HER MAJESTY
THE QUEEN

PLACE OF HEARING: Saskatoon, Saskatchewan

DATE OF HEARING: October 31, 2005

REASONS FOR JUDGEMENT BY: The Honourable Justice D.W. Beaubier

DATE OF JUDGMENT: November 9, 2005

APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Brooke Sittler

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
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