

Docket: 2009-404(IT)I  
2009-2858(IT)I  
2010-671(IT)I

BETWEEN:

EDWARD A. FERRE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on August 23, 2010, at Vancouver, British Columbia

By: The Honourable Justice Brent Paris

Appearances:

Counsel for the Appellant: Harmon C. Hayden  
Counsel for the Respondent: Max Matas

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**JUDGMENT**

The appeals from a reassessment and assessments made under the *Income Tax Act* for the 2006, 2007 and 2008 taxation years are dismissed.

Signed at Ottawa, Canada, this 18th day of November, 2010.

“Brent Paris”

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Paris J.

Citation: 2010 TCC 593  
Date: 20101118  
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### **REASONS FOR JUDGMENT**

#### **Paris J.**

[1] These appeals are from a reassessment of the Appellant's 2006 taxation year and from assessments of his 2007 and 2008 taxation years. In those years, the Appellant claimed the following education and tuition credits in respect of an online MBA program he took from the University of Liverpool (the University), located in Amsterdam, in the Netherlands:

|      | <u>Tuition credit</u> | <u>Education credit</u> |
|------|-----------------------|-------------------------|
| 2006 | \$10,818              | \$1680                  |
| 2007 | 10,252                | 5,580                   |
| 2008 | 10,168                | 5,580                   |

The Minister of National Revenue (Minister) disallowed the credits entirely for 2006 and 2007, and allowed an education credit of \$1,690 for 2008.

[2] The issue in these appeals is whether the Appellant met the conditions for the tuition and education credits set out in sections 118.5(1) and 118.6(2) of the *Income Tax Act* (the “Act”), and, in particular, whether he was in “full-time attendance” at the University in 2006, 2007 and 2008, and whether the courses he took at the University in 2006 and 2007 were at least 13 weeks in duration.

### Facts

[3] In the years under appeal, Mr. Ferre worked full-time as an Organ Donation Specialist with the BC Transplant Society. His regular office hours were from 8:00 a.m. to 4:00 p.m. daily from Monday to Friday, and he was on call part of the remainder of his time. In 2008, he said that he was on call 65% of the time he was not at the office.

[4] In April 2006, in order to further his career, he enrolled in the online MBA program offered by the University of Liverpool. He chose an online program of studies because he said that his work schedule was “inconsistent” and, therefore, he needed a flexible study arrangement.

[5] The online MBA program consisted of a series of what the University referred to as “modules”, followed by a written dissertation. The University provided the following description of a module:<sup>1</sup>

Modules contain a variety of components. At the beginning of each class, you will be provided with a syllabus outlining what you are required to do. Tasks include: responding to ‘discussion question’; participating in class discussions; reading lectures; writing personal assignments; conducting research; group work; etc.

The initial module lasted a little over seven weeks, and seven subsequent modules, each lasting six weeks, were taken consecutively. The initial module was longer because it included orientation material. Five of the modules were core modules and three were electives.

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<sup>1</sup> Exhibit A-6 (9<sup>th</sup> page).

[6] The Appellant said he completed four modules per year in 2006 and 2007, with one week off between modules. He wrote his dissertation in 2008, completing it in September of that year, and was awarded his MBA in December 2009. No reason was given for the delay in being awarded his degree.

[7] Two Tuition, Education and Textbook Amounts Certificates (Form TL11A) were filed by the Appellant with his tax returns for 2006, 2007 and 2008. The University of Liverpool certified on the forms that the Appellant was registered in a university course for part-time credit at the University during nine months in 2006 and during 12 months in each of 2007 and 2008. The Appellant stated that when he enquired about the information provided, an unspecified person at the University told him that the program was marked as part-time because it was offered online.

[8] The Appellant testified that he worked 40 hours per week on the modules and his dissertation and that it was necessary to spend this amount of time in order to do a good job. The Appellant also said that during the one-week breaks between modules, he read, planned and did research in preparation for his dissertation. The Respondent did not challenge this evidence.

[9] The Appellant produced a letter he had received from the University, addressed to prospective students,<sup>2</sup> which set out some of the fundamental points about the program. The letter stated that students would be required to spend an average of 20 hours per week to complete the work in the program. Paragraph 4 of the letter reads as follows:

Average of 20 hours per week - As this is a challenging programme, you will be expected to contribute, read, answer discussion questions, liaise with other students and undertake projects that will require an average of 20 hours a week to complete, The time you will need to spend per week in each module depends partly on your previous experience in that subject area. Again, there are no set times to be online for the work and you can fit your study and your schedule, but you should plan your academic, professional and personal commitments in order to meet the criteria for participation and achieve the deadlines.

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<sup>2</sup> Exhibit A-6 (7<sup>th</sup> to 9<sup>th</sup> pages).

[10] The University also sent the Appellant an information sheet entitled “A week in the life of an MBA student” with a schedule of the required work, by day of the week.<sup>3</sup> According to that material, the program required about 20 to 25 hours of study each week,

[11] The Appellant paid fees of \$2,384US for each module, and a total of \$9,538US for the dissertation. He paid in advance for each module, and paid the dissertation fees in four installments in 2008.

[12] Legislation

Tuition Credit

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,

(a) ...

(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,

...

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

“designated educational institution” means

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<sup>3</sup> Also included in Exhibit A-6.

- (b) a university outside Canada at which the individual referred to in subsection 118.6(2) was enrolled in a course, of not less than 13 consecutive weeks duration, leading to a degree

### Education Credit

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<sup>1</sup> 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<sup>2</sup> 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.

### Position of the parties

[13] The Respondent takes the position that the information provided by the University on the TL11A forms and in the program description shows that the online MBA program at the University was a part-time course, and that he was therefore enrolled in and attended the University on a part-time basis. The Respondent said that the evidence showed that the Appellant was “enrolled on a part-time basis but worked on a full-time basis.

[14] The Appellant’s counsel submitted that, although the University considered the online MBA program a part-time program, this was not determinative. Counsel said that based on the evidence of the Appellant as to the number of hours he devoted to his studies, the Court should accept that he was in full-time attendance at the University, and enrolled as a full-time student.

### Analysis

[15] A credit for tuition paid by an individual to a university outside Canada is available when the conditions set out in paragraph 118.5(1)(b) of the *Act* are met. The conditions relevant to this appeal are, firstly, that the individual be in full-time attendance at the university, and, secondly, that the courses in respect of which the tuition is paid be at least 13 consecutive weeks in duration.

[16] An education credit is available under subsection 118.6(2) of the *Act*. Paragraph 118.6(1)(a) provides that an individual is entitled to a credit based on a monthly amount of \$400 for every month in which he or she is enrolled as a full-time student in a “qualifying educational program” at a “designated educational institution”. I will refer to this as the “full-time education credit”. Paragraph 118.6(2)(b) provides for a credit based on a monthly amount of \$120 for every month in which an individual is enrolled at a “designated educational institution” in a “specified educational program” requiring at least 12 hours per month of work on courses. I will refer to this as the “part-time education credit”.

[17] A university outside of Canada will qualify as a “designated educational institution” if the individual claiming the education credit was enrolled at the university in a course, of not less than 13 weeks duration, leading to a degree.

[18] I will deal firstly with the question of whether the courses taken by the Appellant in 2006 and 2007 were less than 13 consecutive weeks duration. As set

out above, a tuition credit and a full-time education credit are only available if the courses taken by the individual are at least 13 weeks long.

[19] Counsel for the Appellant argued that the meaning of the word “course” in the phrase “except any such fees paid in respect of a course of less than 13 consecutive weeks duration” in paragraph 118.5(1)(b) is ambiguous. He said it is unclear whether “course” should be taken to mean a course of studies or a single course within a larger course of studies. He asked that the ambiguity be resolved in favour of the Appellant by “applying the legislation in a fair and liberal fashion as required.” He said that the MBA program at the University was of almost three years duration.

[20] The Respondent’s position was that the word “course” in paragraph 118.5(1)(b) refers to a single course, and that in this case, each module was a course since the modules were all less than 13 weeks duration, the Appellant would not be entitled to the credit.

[21] It appears that there is some basis for the Appellant’s contention that the meaning of the word “course” in paragraph 118.5(1)(b) is ambiguous. According to Webster’s Ninth New Collegiate Dictionary the word “course” may mean either “a number of lectures or other matters dealing with a subject” or “a series of such courses constituting a curriculum.” Therefore, it is arguable that “course” could in this case refer either to the individual modules taken by the Appellant, or his entire MBA program. I note, though, that the relevant portion of the definition of the word “course” in the Canadian Oxford Dictionary (2001) offers only the following meaning: “a series of lectures, lessons, etc., in a particular subject.” This definition does not appear to encompass the notion of a program of studies such as the Appellant’s MBA course.

[22] Any ambiguity, however, is resolved by reference to the French version of paragraph 118.5(1)(b). The relevant parts of the French version read as follows:

118.5 (1) Les montants suivants sont déductibles dans le calcul de l'impôt payable par un particulier en vertu de la présente partie pour une année d'imposition :

[...]



- b) si, au cours de l'année, le particulier fréquente comme étudiant à plein temps une université située à l'étranger, **où il suit des cours conduisant à un diplôme**, le produit de la multiplication du taux de base pour l'année par le total des frais de scolarité payés à l'université pour l'année, à l'exception des frais qui ont été :
- (i) soit payés **pour des cours** d'une durée inférieure à 13 semaines consécutives,

(emphasis added)

[23] The French version uses the wording “des cours conduisant à un diplôme” to translate the English wording “a course leading to a degree” and the wording “des cours d’une durée inférieure à 13 semaines consécutives” to translate the English wording “a course of less than 13 consecutive weeks duration”. The use of the plural form of the word “cours” in the French version demonstrates that Parliament intended to refer to the individual courses within a program of studies, rather than to the entire program itself, since an entire program of study would only be referred to in the singular. In my view, the French version is free from the ambiguity present in the English version, and the meaning common to both versions must be applied.<sup>4</sup>

[24] In this case, the individual courses or “modules” taken by the Appellant in 2006 and 2007 were less than 13 weeks in length, and therefore, the fees paid in respect of those modules are not eligible for the tuition credit. Since the Appellant was not enrolled in a course at least 13 weeks in duration, the University was not a “designated educational institution” and the Appellant would not be entitled to an education credit for those years either. This finding is sufficient to dispose of the appeal for 2006 and 2007.

[25] For the 2008 taxation year, it was not disputed that the dissertation course in which the Appellant was enrolled was more than 13 weeks in duration. The tuition credit was denied on the basis that the Appellant was not in full-time attendance at the university during 2008 and the full-time education credit for 2008 was denied on the basis that the Appellant was not enrolled as a full-time student at the University.

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<sup>4</sup> R.S.C. 1952, c.158, now R.S.C. 1985, c. I-21 s. 12.

[26] It seems to me that the question of whether an individual is enrolled as a full-time student and is in full-time attendance is a matter that is determined by the institution the individual is attending. The institution controls its enrollment and determines the status of its students as either full or part-time according to the course load that is undertaken. Here, the University certified on the TL11A form that the Appellant was registered for part-time credit during 2008, and the Appellant has not shown that this information is incorrect. I place no weight on his testimony that an unnamed person at the University told him that his courses were treated as part-time courses by the University only because they were taken online. This is hearsay, and furthermore it was not established what position the unnamed person occupied at the University or how he or she would have knowledge of why the Appellant's courses were treated as part-time. Also, the written materials from the University show that the course work was expected to take between 20 and 25 hours per week, which is consistent with part-time status.

[27] The meaning of the phrase "full-time attendance" in paragraph 118.5(1)(b) and previous versions of that provision has been the subject of several Court decisions. In *R. v. Gaudet*,<sup>5</sup> the Federal Court of Appeal said that the phrase "full-time" was "a difficult expression and one which it may be impossible to define exactly." However, the Court went on to find that the taxpayer's wife, who had taken a night course which involved seven hours of classes and 10 hours of study per week was not a student in full-time attendance for the purpose of what was then paragraph 110(1)(h) of the *Act*.

[28] In *Reddam v. The Minister of National Revenue*,<sup>6</sup> the Tax Appeal Board held that it was only possible to have one full-time job or "full-time attendance" and therefore a taxpayer who was employed full-time and had taken university courses in the evening and on weekends was not in full-time attendance at the university. Assistant Chairman Fordham said, at paragraph 5:

What is the meaning of "in full-time attendance"? First of all, there are no degrees of "fullness". "Full", without more, signifies filled to the utmost capacity and the employment of such terms as "fuller" and "fullest" is a misuse of the English language. I fancy that reference to any school text-book on English grammar would make the truth of this proposition clear. Strictly speaking, there are no such words. If

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<sup>5</sup> 78 DTC 6556.

<sup>6</sup> 64 D.T.C. 382

something is full, that is the end of it and there can be room for nothing more while the state of being full prevails. Hence, when a person is a full-time employee somewhere, how can he also be a full-time student elsewhere within the same twenty-four hours? To my mind, such a position is not supportable and when an individual has full-time status in respect of one regular activity throughout a working day, as in the present instance, any other activity indulged in during that same twenty-four hour day must necessarily be only a part-time activity, or so I venture to believe.

This interpretation of the phrase “full-time attendance” was accepted by the Federal Court in *M.N.R. v. Ritchie*.<sup>7</sup>

[29] However, in *Hunt v. M.N.R.*,<sup>8</sup> the Tax Review Board held that even though the taxpayer worked full-time as a high school vice principal, he was also in full-time attendance in a doctoral program. He based this conclusion on the evidence given by the Appellant that he worked 10 hours a day on his courses and thesis and that his studies were his primary preoccupation. The Board stated that there was no reasonable way his attendance could have been more full-time.

[30] While I agree with the Tax Review Board that it may be possible for a person to carry on more than one full-time activity at a time, I do not think that the question of whether a student is in full-time attendance at a university can be answered simply by looking at the time spent by a taxpayer on courses or other related activities. If so, a person who took only one course but spent the equivalent of a full work week on course work could be said to be in full-time attendance, while a person who took a full course load but only spent a few hours a day on them would not be. I do not believe that this is the intent of the tuition and education credit provisions of the *Act* since it would make it extremely difficult to administer. It is necessary in my view to look at objective criteria in determining full-time attendance. The best indicator would be the university’s expectation of the student and the amount of time the program is designed to take. The evidence in this case shows that the University expected the online MBA program to take between 20 and 25 hours per week to complete. It is not clear whether this was applicable to the Appellant’s work on his dissertation, but the fact that that the TL11A form showed that he was registered for part-time credit in 2008 would

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<sup>7</sup> 71 D.T.C. 5503.

<sup>8</sup> 77 D.T.C. 79.

suggest that the time requirements of the dissertation was similar to what was required for his course work. Therefore, I find that the Appellant was not in full-time attendance and was not enrolled as a full-time student at the University in 2008, and is not eligible for the tuition or full-time education credit.

[31] For these reasons, the appeals are dismissed.

Signed at Ottawa, Canada, this 18th day of November, 2010.

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Paris J.

CITATION: 2010 TCC 593

COURT FILE NO.: 2009-404(IT)I, 2009-2858(IT)I  
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PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: August 23, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice Brent Paris

DATE OF JUDGMENT: November 18, 2010

APPEARANCES:

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