

Docket: 2011-3106(IT)I

BETWEEN:

ANTONIO LUIS TAINO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on July 19, 2012, at Toronto, Ontario

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant: The Appellant Himself
Counsel for the Respondent: Jasmeen Mann

JUDGMENT

The Appellant's appeal is dismissed, without costs.

Signed at Ottawa, Canada, this 25th day of July, 2012.

“Wyman W. Webb”

Webb J.

Citation: 2012TCC272
Date: 20120725
Docket: 2011-3106(IT)I

BETWEEN:

ANTONIO LUIS TAINO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb J.

[1] The Appellant lived in Whitby, Ontario and commuted to work in downtown Toronto each day by taking the GO train in 2009. The Appellant purchased tickets that were each valid for ten rides for \$64.25 (for the first part of 2009) and \$66.75 (for those purchased on March 27, 2009 and thereafter). The issue in this appeal is whether the amounts expended by the Appellant for these tickets in 2009 will qualify for the public transit tax credit as provided in the *Income Tax Act* (the “Act”).

[2] In The Budget Plan 2007 tabled in the House of Commons on March 19, 2007, the public transit tax credit and then proposed changes to this credit were described as follows:

Strengthening Our Commitment to Promoting Public Transit

Canada’s New Government is acting to deliver real reductions in air pollutants, greenhouse gas emissions and harmful substances in our communities.

Budget 2006 introduced the public transit tax credit to encourage individuals to make a sustained commitment to public transit use by providing a credit for the purchase cost of monthly public transit passes, or passes of a longer duration. This measure, widely welcomed by Canadians, will be strengthened under Budget

2007 as a means to continue to reward those who make a sustained commitment to public transit.

Some transit authorities are planning to replace their monthly passes with user-friendly and innovative cost-per-trip fare products that will help improve accessibility to transit. To ensure that individuals continue to be encouraged to use public transit, Budget 2007 proposes to extend the public transit tax credit to include electronic fare cards that are used for at least 32 one-way trips in a monthly period. Transit authorities will need to track and certify usage and cost.

Further, the public transit tax credit will be provided where four weekly passes are purchased consecutively. This change will also help low-income individuals who may not be able to afford the financial commitment of a monthly pass to take advantage of the credit.

[3] While the Appellant did make a sustained commitment to public transit throughout 2009 as he took the GO train from his home in Whitby, Ontario to his place of work in downtown Toronto every working day, the Appellant's entitlement to the public transit tax credit for the amounts he expended on the tickets he purchased in 2009 must be determined based on the wording of the applicable provisions of the *Act* in 2009.

[4] The public transit tax credit is provided in section 118.02 of the *Act*. Subsection 118.02(2) of the *Act* provides as follows:

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

$$A \times B$$

where

A is the appropriate percentage for the taxation year; and

B is the amount determined by the formula

$$C - D$$

where

C is the total of all amounts each of which is the portion of the cost of an eligible public transit pass or of an eligible electronic payment card, attributable to the use of public commuter transit services in the taxation year by the individual or by a person who is in the taxation year a qualifying relation of the individual, and

D is the total of all amounts each of which is the amount of a reimbursement, allowance or any other form of assistance that any person is or was entitled to receive in respect of an amount included in computing the value of C (other than an amount that is included in computing the income for any taxation year of that person and that is not deductible in computing the taxable income of that person).

[5] In order to qualify for the credit, an individual must either purchase an “eligible public transit pass” or use an “eligible electronic payment card”, which are defined in subsection 118.02(1) as follows:

“eligible electronic payment card” means an electronic payment card that is

- (a) used by an individual for at least 32 one-way trips, between the place of origin of the trip and its termination, during an uninterrupted period not exceeding 31 days, and
- (b) issued by or on behalf of a qualified Canadian transit organization, which organization records and receipts the cost and usage of the electronic payment card and identifies the right, of the individual who is the holder or owner of such a card, to use public commuter transit services of that qualified Canadian transit organization.

“eligible public transit pass” means a document

- (a) issued by or on behalf of a qualified Canadian transit organization; and
- (b) identifying the right of an individual who is the holder or owner of the document to use public commuter transit services of that qualified Canadian transit organization
 - (i) on an unlimited number of occasions and on any day on which the public commuter transit services are offered during an uninterrupted period of at least 28 days, or
 - (ii) on an unlimited number of occasions during an uninterrupted period of at least 5 consecutive days, if the combination of that document and one or more other such documents gives the right to the individual to use those public commuter transit services on at least 20 days in a 28-day period.

[6] The tickets that were purchased by the Appellant were paper tickets and therefore would not be an electronic payment card. While an electronic device would read his ticket and validate it for each trip that he took, an “eligible electronic payment card” for the purposes of the *Act*, is an electronic (not a paper) payment card

that is used by the individual. The Appellant used a paper ticket to access the GO train and therefore he did not use an electronic payment card.

[7] Each week he would have to buy another ticket that was valid for ten rides for the following week. The Appellant would use the tickets for at least 32 one-way trips during an uninterrupted period of at least 31 days as he would use the tickets for two one-way trips per day – one from his home to work and one from his work to home. While counsel for the Respondent argued that the trip from home to work in the morning and from work to home in the evening would only be a single one-way trip, this argument is without merit. In the morning the place of origin was the Appellant's home and the termination of the trip would be downtown, where he was working. This is a one-way trip. In the evening he would take another one-way trip from downtown Toronto to Whitby, Ontario. This would be on average 40 one-way trips every month. While the Appellant did use public transit for at least 32 one-way trips during an uninterrupted period not exceeding 31 days several times in 2009, because the paper ticket was not an electronic payment card, the amount that he spent to purchase the tickets cannot qualify as the cost of an "eligible electronic payment card".

[8] Since the tickets were only valid for ten rides, they did not allow the Appellant to use the GO Transit system an unlimited number of times and therefore would not be an "eligible public transit pass". The Appellant acknowledged that he could have purchased a monthly pass but he indicated that he found it easier to finance the weekly cost of the tickets than the cost of a monthly pass.

[9] Unfortunately for the Appellant, by buying each week tickets that were valid for ten rides the amounts that the Appellant spent on these tickets in 2009 do not qualify for the public transit tax credit and his appeal is dismissed, without costs.

Signed at Ottawa, Canada, this 25th day of July, 2012.

"Wyman W. Webb"

Webb J.

CITATION: 2012TCC272

COURT FILE NO.: 2011-3106(IT)I

STYLE OF CAUSE: ANTONIO LUIS TAINO AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Canada

DATE OF HEARING: July 19, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice Wyman W. Webb

DATE OF JUDGMENT: July 25, 2012

APPEARANCES:

Agent for the Appellant: The Appellant Himself
Counsel for the Respondent: Jasmeen Mann

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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