

Docket: 2012-1507(IT)I

BETWEEN:

DARLENE STEWART,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on December 4, 2012 at Toronto, Ontario

By: The Honourable Justice J.M. Woods

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Kathleen Beahen

JUDGMENT

The appeal with respect to an assessment made under the *Income Tax Act* for the 2010 taxation year is dismissed.

Signed at Ottawa, Ontario this 12th day of December 2012.

“J. M. Woods”

Woods J.

Citation: 2012 TCC 435
Date: 20121212
Docket: 2012-1507(IT)I

BETWEEN:

DARLENE STEWART,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] This appeal concerns the public transit tax credit that was introduced in the *Income Tax Act* in 2006.

[2] In 2010, Darlene Stewart used the GO transit system in the Toronto area to commute to and from work five times a week. She usually purchased monthly passes but when she took vacation she purchased passes that were unrestricted as to time but were limited to 10 rides. This was the most cost-effective way to purchase tickets during this period.

[3] In Ms. Stewart's income tax return for the 2010 taxation year, she claimed a tax credit with respect to both the monthly passes and the 10-ride passes. The Minister allowed the credit for the monthly passes only.

[4] The question in this appeal is whether the Minister properly disallowed the tax credit for the 10-ride passes.

[5] The 10-ride passes were not electronic and were purchased for a total of \$841.

Analysis

[6] In order for this Court to provide the relief that Ms. Stewart seeks, the 10-ride passes must satisfy the requirements of the applicable legislation which is set out in section 118.02 of the *Income Tax Act*. Unfortunately for Ms. Stewart, the 10-ride passes do not satisfy these requirements because they do not permit an unlimited number of rides for a period of time.

[7] The relevant provision is the definition of “eligible public transit pass” in s. 118.02(1) of the *Act*. It is reproduced below.

"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.

(Emphasis added.)

[8] The 10-ride passes that were purchased by Ms. Stewart did not provide unlimited rides for any particular period of time. This is fatal to her claim because this is a requirement of the legislation as shown by the underlined parts above.

[9] Ms. Stewart places reliance on a letter provided to her by the Canada Revenue Agency during the review of her claim (Ex. A-1). The relevant part of the letter is reproduced below.

To support passes for a period of less than a month, the pass must show it is valid for at least 5 consecutive days and the combination of one or more passes allow the use of the transit services for at least 20 days in a 28-day period.

[10] It is understandable that Ms. Stewart would seek to rely on this letter as it can be interpreted to support her claim. However, this Court must apply the relevant provisions of the *Act*, even if they conflict with what a taxpayer has been told by the

CRA.

[11] I would also comment that Ms. Stewart's notice of appeal suggests that this Court wrote the above letter. That is not the case. This Court is independent of the Canada Revenue Agency.

[12] Ms. Stewart's notice of appeal also mentions that she is aware of another rider whose claim for 10-ride passes was audited and allowed. Unfortunately for Ms. Stewart, it is not possible to provide relief to her on the ground that the Canada Revenue Agency provided relief to another taxpayer. This Court must apply the applicable legislation.

[13] Ms. Stewart submits in her notice of appeal that the "letter of the law" needs to include the 10-ride passes. This type of relief also cannot be provided by this Court. It is a policy matter that is within the sole purview of Parliament.

[14] Ms. Stewart further submits that monthly passes are also not "unlimited" and therefore 10-ride passes should be treated in the same manner. This submission also does not assist this appeal. The 10-ride passes clearly do not qualify under the wording of the applicable legislation.

[15] Finally, I would note this Court has previously decided that 10-ride GO passes do not qualify for the credit: *Taino v The Queen*, 2012 TCC 272.

[16] For all these reasons, the appeal will be dismissed.

Signed at Ottawa, Ontario this 12th day of December 2012.

"J. M. Woods"

Woods J.

CITATION: 2012 TCC 435

COURT FILE NO.: 2012-1507(IT)I

STYLE OF CAUSE: DARLENE STEWART v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 4, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice J.M. Woods

DATE OF JUDGMENT: December 12, 2012

APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Kathleen Beahen

COUNSEL OF RECORD:

For the Appellant:

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Firm:

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