

[OFFICIAL ENGLISH TRANSLATION]

2001-3819(IT)I

BETWEEN:

DANIEL MICHAUD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on July 30, 2002, at Montréal, Quebec, by

the Honourable Judge Lucie Lamarre

Appearances

For the Appellant: The Appellant himself

Agent for the Respondent: Yacine Agnaou (student-at-law)

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 1999 taxation year is dismissed.

Signed at Ottawa, Canada, this 18th day of September 2002.

"Lucie Lamarre"

J.T.C.C.

Translation certified true
on this 19th day of December 2003.

Sophie Debbané, Revisor

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Date: 20020918
Docket: 2001-3819(IT)I

BETWEEN:

DANIEL MICHAUD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Lamarre, J.T.C.C.

[1] This is an appeal under the informal procedure from an assessment made by the Minister of National Revenue ("Minister") under the *Income Tax Act* ("Act") whereby an amount of \$3,114 was added to the appellant's net income for the 1999 taxation year in accordance with subparagraph 56(1)(r)(iii) of the *Act*.

[2] That amount of \$3,114 consists of amounts paid to the appellant by the Ministère de l'Emploi et de la Solidarité sociale du Québec during the period from February to July 1999 under an occupational training program funded by both the Fonds de formation de l'industrie de la construction du Québec (which is administered by the Commission de la construction du Québec) and the Fonds de développement du marché du travail established by Emploi-Québec.

[3] Specifically, the appellant took a 22-week "Industrial Automation Technology" course at the Institut de chimie et pétrochimie of the Collège Maisonneuve in Montréal during the aforementioned period.

[4] During that period, the appellant received employment insurance benefits since the course he took was given under an agreement negotiated between the Government of Canada and the Government of Quebec to implement "Québec's active employment measures funded by the Employment Insurance Account" (see *Canada-Québec Labour Market Agreement in Principle*, signed April 21, 1997, Exhibit I-5, article 1.1).

[5] Furthermore, the tuition fees payable in order to register for the course taken by the appellant were paid in full by the Fonds de formation de l'industrie de la construction du Québec. However, since the appellant was an employment insurance claimant, he was also eligible for the "Soutien individuel à la formation" ("SIFO") [Individual Training Support] provided for in article 13 of the *Modalités d'application des mesures actives d'Emploi-Québec financées par le Fonds de développement du marché du travail* ("Modalités") (Exhibit I-6). The purposes of this measure (SIFO) is to help people acquire the skills needed to enter or re-enter the job market through adequate training (article 13.1, Exhibit I-6). Since the tuition fees were paid by the Commission de la construction du Québec and the appellant was entitled to employment insurance benefits, the financial assistance from Emploi-Québec was limited to the additional expenses associated with the appellant's participation in this active measure, which expenses were paid under articles 13.8 and 4.1 and paragraph 7.3.2.2(a) of Exhibit I-6. Those provisions are cited in paragraphs 13 to 15 of these Reasons for Judgment.

[6] Thus, for additional expenses, Emploi-Québec paid the appellant an allowance of \$135 a week for a period of 22 weeks, that is, an amount of \$2,970, in addition to an amount of \$144 covering transportation expenses between the appellant's place of residence in Val D'Or and the place where the course was given in Montréal. The appellant thus received a total amount of \$3,114 to cover his additional expenses associated with his taking an occupational course, in accordance with the terms of paragraph 7.3.2.2(a) of Exhibit I-6.

[7] According to the testimony of Lynn Hastings, an advisor at the Ministère de l'Emploi et de la Solidarité sociale du Québec, those amounts were paid out of the employment insurance account, which finances a portion of the costs generated by the Fonds de développement du marché du travail. Emploi-Québec issued a T4A slip to the appellant establishing a taxable amount received in respect of financial support of \$3,114.

[8] The appellant disputes the taxation of that amount. In his view, the amount of \$3,114 constitutes reimbursement for expenses he had to incur in order to take the course in Montréal. He considers that the sum does not constitute an amount received in respect of financial support for a program contemplated in paragraph 56(1)(r) of the *Act*, but rather that it is tax-exempt by the application of subparagraph 56(1)(a)(iv) of the *Act*.

[9] Subparagraph 56(1)(a)(iv) and paragraph 56(1)(r) read as follows:

ARTICLE 56: Amounts to be included in income for year.

(1) Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,

▶ 56(1)(a) ◀

(a) **Pension benefits, unemployment insurance benefits, etc.** – any amount received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of,

...

(iv) a benefit under the *Unemployment Insurance Act*, other than a payment relating to a course or program designed to facilitate the re-entry into the labour force of a claimant under that Act, or a benefit under Part I, VIII or VIII.1 of the *Employment Insurance Act*,

▶ 56(1)(r) ◀

(r) **Financial assistance** – amounts received in the year by the taxpayer as

(i) earnings supplements provided under a project sponsored by a government or government agency in Canada to encourage individuals to obtain or keep employment,

(ii) financial assistance under a program established by the Canada Employment Insurance Commission under Part II of the *Employment Insurance Act*, or

(iii) financial assistance under a program that is

(A) established by a government or government agency in Canada or by an organization,

(B) similar to a program established under Part II of that Act, and

(C) the subject of an agreement between the government, government agency or organization and the Canada Employment Insurance Commission because of section 63 of that Act;

[10] According to Ms. Hastings's testimony, the *Canada-Québec Labour Market Agreement in Principle* (Exhibit I-5) was entered into under section 63, which is included in Part II of the *Employment Insurance Act* ("EIA").

[11] Section 63 reads as follows:

The Commission may, with the approval of the Minister, enter into an agreement with a government or government agency in Canada or any other public or private organization to provide for the payment of contributions for all or a portion of

(a) any costs of benefits or measures provided by the government, government agency or organization that are similar to employment benefits or support measures under this Part and are consistent with the purpose and guidelines of this Part; and

(b) any administration costs that the government, government agency or organization incurs in providing the benefits or measures.

[12] The agreement signed between the Government of Canada, which was represented *inter alia* by the Canada Employment Insurance Commission, and the Government of Quebec (Exhibit I-5) concerns the transfer of funds from the Employment Insurance Account to the Government of Quebec to fund Quebec's active employment measures.

[13] Pursuant to that agreement (Exhibit I-5), Emploi-Québec was put in place in 1998 and the *Modalités* (Exhibit I-6) were developed. Those measures provide *inter alia* for individual training support, including income support to which the appellant was entitled under article 13.8 of the *Modalités* (Exhibit I-6), which reads as follows:

[TRANSLATION]

13.8 Income Support

As part of their participation in the *Individual Training Support Measure*, participants shall receive income support determined in accordance with the policy stated in section 7.

[14] "Individual Income Support" is defined in article 4.1 of the *Modalités* (Exhibit I-6) as follows:

[TRANSLATION]

4.1 Individual Income Support

Income support covers living expenses and additional expenses associated with taking part in an active measure or with taking steps provided for in the Individual Integration, Training and Employment Plan.

[15] The income support policy is set out in article 7 of the *Modalités* (Exhibit I-6), which reads in part as follows:

[TRANSLATION]

7. Income Support Policy

7.1 General Principles

...

As of April 1, 1998, and until a more elaborate harmonization policy has been put in place, Emploi-Québec's decisions in granting income support to persons who take part in active measures shall be based on a set of principles consistent with the following objectives:

- (a) the pursuit of job entry objectives shall be the first consideration in decision making;
- (b) the person who participates in an active measure must be ensured of receiving assistance enabling him or her to participate in and complete the measure which he or she undertook when an action plan was established;
- (c) assistance granted for living expenses shall be determined on the basis of the person, and the financial assistance granted for additional expenses shall cover only costs directly associated with participation in or carrying out the steps provided for in an Individual Integration, Training and Employment Plan;
- (d) for active employment insurance claimants, financial assistance may not be less than the amount of their benefits;

- (e) the amount of income support awarded to income security claimants may not be less than the amounts provided for under the income security plan;
- (f) the person responsible for deciding on financial assistance granted shall have the necessary flexibility so that assistance provided is adapted to the person's needs;
- (g) income support granted to a participant should never exceed the salary paid in the employment involved in the process undertaken.

...

7.3 Policy for Persons Registered for a Measure Starting April 1

7.3.1 Living Expenses

7.3.1.1 Eligibility

Financial assistance for living expenses is available to employment insurance and income security claimants. Persons who are unemployed and have no financial support are not eligible for financial assistance for living expenses, except for activities in which that assistance is already available.

7.3.1.2 For Persons Participating in an Employment Preparation Measure

- Consistent with the decision-making framework existing prior to April 1998, employment insurance claimants shall receive individual income support for their living expenses determined on the basis of the principle that the person shall be granted the income support necessary to enable him or her to take training on a full-time basis and thus to promote the success of the measure.

...

- The measures involved are: Employment Preparation Projects, Individual Training Support, . . .

...

7.3.2 Additional Expenses

7.3.2.1 Eligibility

- Assistance for additional expenses is available to employment insurance and income security claimants and to persons who are unemployed and who have no financial support, as defined in section 3.

7.3.2.2 General Aspects

- (a) Additional expenses include the expenses directly associated with and necessary for participation in a measure such as child care expenses, education expenses, transportation expenses, etc.
- (b) All additional expenses payable to participants in active measures are determined and paid by Emploi-Québec.
- (c) Emploi-Québec shall implement a harmonized childcare expense reimbursement policy with the assistance granted by the Ministère de la Famille;
- (d) For persons taking part in a measure granting entitlement to income support, the reimbursement of additional expenses other than childcare expenses shall be determined in accordance with needs established as part of the management of the Plans.

[16] The appellant was entitled to payment of additional expenses of \$3,114 under these individual training support measures, as provided for in paragraph 7.3.2.2(a) of the *Modalités*. It is clear in my mind that the amounts paid are part of the income support as defined in article 4.1 of the *Modalités*.

[17] It also seems to me that the amounts received by the appellant meet each of the requirements set out in subparagraph 56(1)(r)(iii) of the *Act*. They are amounts received as financial assistance under a program that is (1) established by a government (Quebec); (2) is similar to a program established under Part II of the *EIA* (to maintain a sustainable employment insurance system through the establishment of, among other things, employment benefits and support measures for participants, as stated in sections 56 and 57 of the *EIA*); and (3) is the subject of an agreement between the government (Quebec) and the Canada Employment Insurance Commission (Exhibit I-5) because of section 63 (Part II) of the *EIA*.

[18] Although the appellant contends that, in his view, the amount was a reimbursement for expenses incurred to enable him to take an occupational training course, those expenses were reimbursed under active measures adopted by Emploi-Québec and funded by the Employment Insurance Act. Furthermore, they are specifically included in the definition of "Individual Income Support" in article 4.1 of the *Modalités* (Exhibit I-6).

[19] In view of the specific terms used in paragraph 56(1)(r) of the *Act*, the amounts received are taxable in my view. Furthermore, I note that the appellant

received \$135 a week to cover his additional expenses other than transportation expenses. However, he submitted no supporting documentation except for the rent expense of \$100 a week (Exhibit I-4). The appellant testified that the difference corresponded to an additional amount that Emploi-Québec had granted him for surplus expenses, which he purportedly had to incur during the period in issue. No supporting documentation was filed to establish that surplus. Ms. Hastings testified that it is not Emploi-Québec's policy to pay additional amounts without supporting documents. Furthermore, a letter sent to the appellant by an Emploi-Québec officer on March 12, 1999, (Exhibit A-4) states:

[TRANSLATION]

March 12, 1999

Mr. Daniel Michaud
414 Rachel Est
MONTRÉAL, Quebec
H2J 2G7

Subject : Living Expenses

Dear Sir,

In response to your request, we are providing you with additional information on living expenses.

You are currently taking part in an individual training service and have been granted amounts of additional assistance.

You will continue to receive your employment insurance benefits during your training. In addition, our service (Emploi-Québec) is paying you a gross amount of \$135 a week, \$100 net, for living expenses. That amount is considered as covering normal expenses for the person's welfare, such as food, housing and other expenses. You are also granted \$72 at the start and end of training to cover transportation expenses.

These amounts are not training allowances but in fact amounts to cover living expenses.

I hope the above is to your satisfaction.

Sincerely,

René Jacob
Employment Assistance Officer

[20] It seems clear to me from reading this letter that the appellant received a net amount of \$100 a week to cover additional expenses. It therefore appears that the tax-payable component was included in the \$135 amount paid per week.

[21] The appellant also contended that the federal budget of December 10, 2001, made it possible to deduct the taxable amounts under subparagraphs 56(1)(r)(ii) and (iii) for the 1997 and subsequent taxation years under paragraph 110(1)(g) of the *Act*, as amended. I note that the deduction applies solely where the financial assistance received is financial assistance for the payment of tuition fees and does not apply to the other types of assistance that the student may receive in the context of his or her training (see Explanatory Notes following paragraph 110(1)(g), as amended by the budget of December 10, 2001, Exhibit A-7). The amounts received in dispute in this case did not cover tuition fees, which were nevertheless paid by the Fonds de formation de l'industrie de la construction du Québec (see Exhibit A-1). Nor did the evidence show that the appellant had included the amount of those tuition fees in his income for the 1999 taxation year, which is another condition that must be met under the new paragraph 110(1)(g) in order to be entitled to that deduction. Lastly, I share the view of the respondent's agent that the appellant may not claim a tuition credit under section 118.5 of the *Act* since he paid nothing in that respect.

[22] Lastly, the appellant contended that the amounts received should be tax-exempt under subparagraph 56(1)(a)(iv) of the *Act*. Since June 30, 1996, only regular employment insurance benefits (following a job loss) have been taxable under that subparagraph. However, every sum received as financial assistance under Part II of the *EIA* or similar programs is now taxable under paragraph 56(1)(r). The exemption of payments in respect of a course or program designed to facilitate a claimant's re-entry into the labour force applies solely to amounts received under the old *Unemployment Insurance Act*.

[23] The *EIA* came into effect on June 30, 1996, and subparagraphs 56(1)(r)(ii) and (iii) became effective on July 1 of that year. To the extent that all conditions

are met, paragraph 56(1)(r) takes precedence with respect to amounts received as financial support under Part II of the *EIA*, and this is the case here.

[24] In closing, the appellant cited paragraph 56(1)(n) of the *Act* in an attempt to reduce the taxable amount of the exemption provided for scholarships and bursaries. That paragraph clearly does not apply in the instant case since the appellant benefited from active reemployment measures, which are specifically addressed by paragraph 56(1)(r). Rather, paragraph 56(1)(n) concerns amounts specifically granted as a scholarship, fellowship or bursary or a prize for achievement in a field of endeavour ordinarily carried on by the taxpayer, which is not the case here.

[25] As a result of the foregoing, the appeal is dismissed.

Signed at Ottawa, Canada, this 18th day of September 2002.

"Lucie Lamarre"

J.T.C.C.

Translation certified true
on this 19th day of December 2003.

Sophie Debbané, Revisor