

Docket: 2010-3399(IT)I

BETWEEN:

JAMES BETTS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on June 6, 2012, at Edmonton, Alberta

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant:                      The Appellant Himself  
Counsel for the Respondent:        Gergely Hegedus

---

**JUDGMENT**

The Appellant's appeal in relation to the reassessment issued for the Appellant's 2007 taxation year is dismissed, without costs.

Signed at Toronto, Ontario, this 21<sup>st</sup> day of June 2012.

“Wyman W. Webb”

---

Webb J.

Citation: 2012TCC224  
Date: 20120621  
Docket: 2010-3399(IT)I

BETWEEN:

JAMES BETTS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Webb J.

[1] This appeal in relation to the reassessment of the Appellant's 2007 taxation year arises as a result of the claim by the Appellant for a tax credit as provided in paragraphs 118(1)(b) and 118(1)(b.1) of the *Income Tax Act* (the "Act") in relation to his son. The Appellant's claim was denied on the basis that the Appellant was required to pay child support in 2007.

[2] Subsections 118(5) and (5.1) of the *Act* provide that:

(5) No amount may be deducted under subsection (1) in computing an individual's tax payable under this Part for a taxation year in respect of a person where the individual is required to pay a support amount (within the meaning assigned by subsection 56.1(4)) to the individual's spouse or common-law partner or former spouse or common-law partner in respect of the person and the individual

(a) lives separate and apart from the spouse or common-law partner or former spouse or common-law partner throughout the year because of the breakdown of their marriage or common-law partnership; or

(b) claims a deduction for the year because of section 60 in respect of a support amount paid to the spouse or common-law partner or former spouse or common-law partner.

(5.1) Where, if this Act were read without reference to this subsection, solely because of the application of subsection (5), no individual is entitled to a deduction under paragraph (b) or (b.1) of the description of B in subsection (1) for a taxation year in respect of a child, subsection (5) shall not apply in respect of that child for that taxation year.

[3] Subsection 56.1(4) of the *Act* provides that:

“support amount” means an amount payable or receivable as an allowance on a periodic basis for the maintenance of the recipient, children of the recipient or both the recipient and children of the recipient, if the recipient has discretion as to the use of the amount, and

(a) the recipient is the spouse or common-law partner or former spouse or common-law partner of the payer, the recipient and payer are living separate and apart because of the breakdown of their marriage or common-law partnership and the amount is receivable under an order of a competent tribunal or under a written agreement; or

(b) the payer is a legal parent of a child of the recipient and the amount is receivable under an order made by a competent tribunal in accordance with the laws of a province.

[4] As a result of these provisions, if the Appellant was required to pay an amount as an allowance on a periodic basis for the support of his son in 2007 and his former spouse was not required to also pay an amount as an allowance on a periodic basis for the support of their son in 2007, the Appellant will not be entitled to claim the tax credit as provided in paragraphs 118(1)(b) and 118(1)(b.1) of the *Act*.

[5] The Appellant and his spouse started living separate and apart in 2004. There are two children of the marriage – a son and a daughter. The daughter was living with Julie Betts and the son was living with the Appellant. They were all living in Ontario. Pursuant to the Order of the Ontario Superior Court of Justice dated June 21, 2006 (the “First Order”), the Appellant was required to pay child support for their daughter (who was living with Julie Betts) but Julie Betts (who was the Applicant under that Order) was not ordered to pay child support for their son who was living with the Appellant. Paragraph 8 of that Order stated as follows:

The Applicant [Julie Betts] shall not pay child support to the Respondent [the Appellant] for [their son] based on the Applicant not having any income presently.

[6] In 2007 the Appellant received an offer of employment in British Columbia. However, the Appellant did not want to move his son to British Columbia as he was entering his last year of high school. As a result, the Appellant moved to British Columbia and his son moved in with Julie Betts. By an Order of the Ontario Superior Court of Justice dated November 1, 2007, paragraph 7 of the First Order was varied to provide that the Appellant would, commencing September 1, 2007, be paying child support for both his daughter and his son. Paragraph 8 of the First Order was also rescinded.

[7] While the Appellant clearly was required to pay child support in respect of his son for 2007 (commencing September 1, 2007), the Appellant's argument was that his former spouse would have been required to also pay child support in respect of their son for the first eight months of 2007 if she would have had any income (other than the spousal and child support amounts he was paying her). The Appellant stated that it was his understanding that his former spouse was choosing to not work so that she could continue to receive the support amounts he was paying her and would not have to pay child support for their son.

[8] Unfortunately for the Appellant the provisions of subsection 118(5.1) of the *Act* will only be applicable to remove the application of subsection 118(5) of the *Act* if Julie Betts was *required* to pay a support amount in respect of their son. Julie Betts was not *required* to pay any amount as an allowance on a periodic basis for the maintenance and support of their son in 2007. Even though she may have been required to pay such an amount if she would have had other income, since she did not have any income (other than the spousal and child support amounts he was paying her) she was not required to pay a support amount in respect of their son in 2007.

[9] As well, the provisions of subsection 118(5) of the *Act* do not provide for a pro-ration based on the portion of the year for which a support amount was required to be paid. Subsection 118(5) of the *Act* provides that no amount may be claimed as a tax credit under subsection 118(1) of the *Act* by an individual in respect of another person if that individual is required to pay a support amount to the individual's spouse (or former spouse) in respect of that other person. Since the Appellant was required to pay to his former spouse a support amount in respect of their son in 2007 (albeit for the last four months of 2007), the Appellant cannot claim any tax credit under subsection 118(1) of the *Act* in respect of his son for 2007.

[10] As a result the Appellant's appeal in relation to the reassessment issued for the Appellant's 2007 taxation year is dismissed, without costs.

Signed at Toronto, Ontario, this 21<sup>st</sup> day of June 2012.

“Wyman W. Webb”

---

Webb J.

CITATION: 2012TCC224

COURT FILE NO.: 2010-3399(IT)I

STYLE OF CAUSE: JAMES BETTS AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: June 6, 2012

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

DATE OF JUDGMENT: June 21, 2012

APPEARANCES:

For the Appellant:	The Appellant Himself
Counsel for the Respondent:	Gergely Hegedus

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Myles J. Kirvan  
Deputy Attorney General of Canada  
Ottawa, Canada