

Docket: 2011-3835(IT)I

BETWEEN:

MARK ZOCHOWSKI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on July 20, 2012 at Toronto, Ontario

By: The Honourable Justice J.M. Woods

Appearances:

Agent for the Appellant: Ludwik Zochowski

Counsel for the Respondent: Rita Araujo
Jaya Gandhi (Student)

JUDGMENT

The appeal with respect to an assessment made under the *Income Tax Act* for the 2009 taxation year is dismissed.

Signed at Toronto, Ontario this 26th day of July 2012.

“J. M. Woods”

Woods J.

Citation: 2012 TCC 277
Date: 20120726
Docket: 2011-3835(IT)I

BETWEEN:

MARK ZOCHOWSKI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] The appellant, Mark Zochowski, was enrolled in a masters of science and education program at Capella University in 2009. The issue is whether he is entitled to claim credits under the *Income Tax Act* relating to this program. Three credits are at issue: the tuition tax credit, the education credit and the textbook credit.

[2] The appellant also claimed expenses for Humber College in Toronto but this claim was withdrawn at the hearing because the course was taken in a prior taxation year.

[3] Capella University is based in the United States and offers online educational programs. The appellant lives in Ontario and took the masters program over the internet.

[4] In 2009, the appellant completed four semesters of ten weeks each. A break of a few weeks was provided between each semester. Three of the semesters were full-time and one was part-time.

[5] Capella University refused to provide the appellant with the CRA form required for the education credit because the courses were not of 13 weeks consecutive duration.

[6] It is clear that the appellant does not qualify for any of the three credits that are at issue because the program did not involve a course of at least 13 consecutive weeks duration.

[7] Excerpts from the relevant legislation are set out below, with the applicable parts underlined.

[8] The relevant provision for the tuition credit is paragraph 118.5(1)(b) of the *Act*.

118.5 (1) – Tuition credit - For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted,

[...]

(b) **[university outside Canada]** - 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,

(ii) paid on the individual's behalf by the individual's employer to the extent that the amount of the fees is not included in computing the individual's income, or

(iii) paid on the individual's behalf by the employer of the individual's parent, to the extent that the amount of the fees is not included in

computing the income of the parent by reason of subparagraph 6(1)(b)(ix); and [...]

[9] As for the education credit, the relevant references are the definition of “designated educational institution” in s. 118.6(1) and clause B of the formula in s. 118.6(2).

118.6 (1) [Education credit -] Definitions - For the purposes of sections 63 and 64 and this subdivision,

“designated educational institution” means

[...]

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

(2) Education credit - 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 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 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.

[10] The appellant submits that a “qualifying educational program” for purposes of the above provision only requires a program of three consecutive weeks. This is true but it does not assist the appellant because the formula in s. 118.6(2) also requires that the program be at a “designated educational institution.” It is this term that has the 13 week requirement.

[11] As for the textbook credit, the applicable provision is subsection 118.6(2.1). It requires as a condition that the taxpayer be entitled to the education credit in s. 118.6(2). This imports the 13 week requirement into the textbook credit.

118.6 (2.1) Post-secondary textbook credit - If an amount may be deducted under subsection (2) in computing the individual's tax payable for a taxation year, there may be deducted in computing the individual's tax payable under this Part for the 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) \$65 is multiplied by the number of months referred to in paragraph (a) of the description of B in subsection (2), and

(b) \$20 is multiplied by the number of months referred to in paragraph (b) of that description.

[12] Given the clear statutory language, the relief that the appellant seeks cannot be provided.

[13] The appellant also raised arguments based on fairness but relief cannot be granted on this ground alone. The appellant further submits that the Canada Revenue Agency administers the provisions based on courses of three weeks duration. This submission is also not of assistance because the legislation has since been amended to reduce the course requirement to three weeks. The amendments were not effective in 2009.

[14] The appeal will be dismissed.

Signed at Toronto, Ontario this 26th day of July 2012.

“J. M. Woods”

Woods J.

CITATION: 2012 TCC 277

COURT FILE NO.: 2011-3835(IT)I

STYLE OF CAUSE: MARK ZOCHOWSKI v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 20, 2012

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

DATE OF JUDGMENT: July 26, 2012

APPEARANCES:

Agent for the Appellant: Ludwik Zochowski

Counsel for the Respondent: Rita Araujo
Jaya Gandhi (Student)

COUNSEL OF RECORD:

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Firm:

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