

Citation: 2010TCC297
Date: 20100608
Docket: 2009-1583(IT)I

BETWEEN:

KWOK WAI N CHEUNG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2009-2750(IT)I

BETWEEN:

TONY CHEUNG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Delivered orally from the bench on April 28, 2010, in Vancouver, British Columbia.)

V.A. Miller, J.

[1] Kwok Wai N Cheung and Tony Cheung have appealed the reassessments of their 2007 taxation year. The issue in each appeal is whether the Appellants are each entitled to claim a Child Tax Credit (the “Credit”) in accordance with paragraph 118(1)(b.1) of the *Income Tax Act* (the “Act”). The appeals were heard on common evidence.

[2] The Appellants are brothers. They reside at 6571 Juniper Drive, Richmond, BC (the “Home”) with their spouses, children, parents and sister. In total, fourteen individuals live at the Home.

[3] The Home is a single family dwelling which has not been converted into apartments. The Appellants did not have separate living quarters in the Home.

[4] Kwok Wai N Cheung and his spouse have three children. Tony Cheung and his spouse have three children. Their sister, Samantha, has one child.

[5] Each Appellant and their sister claimed a Credit for their own children.

[6] The relevant provisions of the Act are as follows:

118. (1) **Personal Credits** -For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year, and

B is the total of,

(*b.1*) **child amount [Child Tax Credit]** where

(i) a child of the individual ordinarily resides throughout the taxation year with the individual together with another parent of the child, \$2,000 for each such child who is under the age of 18 years at the end of the taxation year,

(4) For the purposes of subsection 118(1), the following rules apply:

(*b*) not more than one individual is entitled to a deduction under subsection (1) because of paragraph (*b*) or (*b.1*) of the description of B in that subsection for a taxation year in respect of the same person or the same domestic establishment and where two or more individuals otherwise entitled to such a deduction fail to agree as to the individual by whom the deduction may be made, no such deduction for the year shall be allowed to either or any of them;

[7] It is the Appellants' position that the limitation in subsection 118(4) refers to paragraph 118(1)(*b.1*) which is the definition of the Credit. Further, a Credit is

claimed on an individual child basis. They stated that only one claim was made for each child in the domestic establishment.

[8] I disagree with the Appellants' interpretation. In this particular case, B, in the formula for the calculation of the personal credits, is the total of the Credits claimed. Subsection 118(4)(b) limits the deduction under subsection 118(1)(b.1), in respect of the calculation of B in that subsection, to one individual in respect of the same domestic establishment for a taxation year.

[9] The Appellants have agreed that they resided in the same domestic establishment.

[10] Unfortunately, only one individual in the Home is entitled to claim a child tax credit for the 2007 taxation year. As the Appellants failed to agree which one of them could deduct the Credit, none of them is allowed to deduct it.

[11] The appeals are dismissed.

Signed at Ottawa, Canada, this 8th day of June, 2010.

“V.A. Miller”

V.A. Miller, J.

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COURT FILE NO.: 2009-1583(IT)I

STYLE OF CAUSE: KWOK WAI N CHEUNG AND
THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: April 28, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller

DATE OF JUDGMENT: May 4, 2010

DATE OF WRITTEN REASONS: June 8, 2010

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Matthew Turnell

COUNSEL OF RECORD:

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