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MARK HIGGINS RALLYING (A FIRM) V. THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS — A GUIDE TO MANAGEMENT AND CONTROL

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Since the decision of the Supreme Court of Canada in *St. Michael Trust Corp., as Trustee of the Fundy Settlement v. Her Majesty the Queen.*,[1] the tax community has been abuzz with the fact that trusts are now subject to the same "central management and control" test applicable to corporations when determining the residence of a trust. In *Mark Higgins Rallying (a firm) v. The Commissioners for Her Majesty's Revenue and Customs*,[2] the First-Tier Tribunal (Tax Chamber) concluded that the "management and control" test applicable to corporations was also applicable to partnerships. That case conducted an excellent analysis of what this phrase really means from a UK context. In a nutshell, the Tribunal concluded that the case law has identified the following principles:

(1) The residence of a company is where the directors meet and transact their business and exercise the powers conferred upon them;

(2) The determination of management and control is a question of fact and, consequently, there is no presumption that management and control will be found where the directors meet;

(3) In considering the facts, it must be determined (a) who was managing the business by making high-level decisions, and (b) where those persons were making such decisions.

Background

In the *Mark Higgins Rallying* case, Mark Higgins, a motor rally driver, and Roy Dixon, a former rally driver, were both residents of the Isle of Man. Upon discovering Mr. Higgins' immense driving talents, Mr. Dixon saw a business opportunity and agreed to mentor, manage, and sponsor Mr. Higgins' rally career. In addition to being an astute businessman, Mr. Dixon was also a qualified solicitor in the United Kingdom with extensive experience drafting partnership agreements and business contracts.

In 1991, Mr. Dixon and Mr. Higgins entered into a partnership agreement,[3] pursuant to which the two men agreed to combine Mr. Dixon's management and commercial experience with Mr. Higgins' driving skills (the "Partnership"). Mr. Dixon's plan was for Mr. Higgins to compete on the world rally scene and, consequently, the Partnership carried on business throughout the world and not just in the United Kingdom.

In 1993, Mr. Higgins moved his family to the United Kingdom to commence the running of a rally school, while he continued to compete in worldwide rally racing. In 1997, the first year in which the Partnership became profitable, Mr. Higgins and Mr. Dixon agreed

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to vary the terms of the partnership agreement with the primary purpose being to change the profit-sharing structure. As a result of the new structure, Mr. Dixon was precluded from receiving any UK sourced income from the Partnership.

Despite Mr. Higgins' move to the United Kingdom, the working basis of the Partnership was always that Mr. Higgins concentrated on fulfilling his passion for driving while Mr. Dixon contributed commercial and management experience. Mr. Dixon reviewed all contracts to determine whether they were appropriate. All major contracts of the Partnership, except for one, were executed outside of the United Kingdom. Due to Mr. Higgins' involvement in rally racing, most opportunities arose through his personal contacts and communications generally occurred by email or telephone. All major decisions were made by Mr. Dixon in the Isle of Man, where he continued to live throughout the life of the Partnership.

For the purposes of UK tax law,[4] a partnership that is managed and controlled outside of the United Kingdom will be treated as a separate person and, therefore, non-UK sourced profits are not taxable in the United Kingdom until they are paid out to a UK resident partner. Conversely, a partnership that is at least partially managed and controlled inside the United Kingdom will not be treated as a separate person, and, therefore, a UK resident partner's non-UK sourced profits are immediately taxable in the United Kingdom at the time they are earned.

The Commissioners for her Majesty's Revenue and Customs ("HMRC") in the United Kingdom took issue with the Partnership, arguing that management and control of the Partnership took place in the United Kingdom, and, therefore, all income earned by Mr. Higgins through the Partnership should be taxed as it arose. In support of its position, HMRC argued that while Mr. Higgins relied on Mr. Dixon at the inception of the Partnership, Mr. Higgins became an established professional able to make business decisions for himself. While Mr. Dixon brought his legal background in reviewing contracts to the table, this was the extent of his contribution to the Partnership. Conversely, the rallying, teaching, and seeking sponsorship opportunities, all of which were carried out by Mr. Higgins, constituted the substantive decision making part of the business. HMRC argued that the place where contracts were signed was irrelevant because the decisions to enter into such contracts were made well before they were signed. HMRC concluded that because the activities of the Partnership were carried on in the United Kingdom by Mr. Higgins, management and control resided, at least partially, in the United Kingdom.

The Partnership took the position that it was wholly managed and controlled outside the United Kingdom because all decision making, partnership meetings, and contracts were made outside of the United Kingdom, and thus Mr. Higgins was only taxable once the Partnership distributed income to him. The Partnership further argued that the occasional act of high-level management performed in the United Kingdom did not affect management and control of the Partnership.

Relying on the UK Court of Appeal's decision in *Padmore v. IRC,*[5] the Partnership argued that the determination of where a partnership is managed and controlled depends on the place where the highest level of decision making takes place and not where the day-to-day business operations are carried out. That case involved a partnership of 110 chartered patent agents that were active as trademark agents, the majority of which were resident in the United Kingdom. The Court of Appeal had no trouble finding, however, that despite the fact that the majority of partners were resident in the United Kingdom, the partnership was managed and controlled in Jersey because the business operations had always been carried on in Jersey, the two general partners were residents of Jersey, general meetings of the partners were held in Jersey four times a year, all policy matters and decisions were dealt with at these meetings, and the Jersey-resident managing partners implemented all of the policy matters and decisions.

Findings of the Tribunal

Once the Tribunal had concluded that the corporate test for management and control was applicable to partnerships, it was simply a matter of applying the test to the facts.

The corporate test requires a determination of where central management and control is situated by looking to where high-level decisions are made. The Tribunal concluded that while the determination must be made for each disputed tax year, residence of the Partnership will not fluctuate from year to year merely by reason of individual acts of management and control taking place in different territories. Consequently, it is necessary to apply the facts to take a picture as a whole to determine who was managing the Partnership by making high-level decisions and where such decisions were being made.[6]

There is no presumption that a company will be resident where contracts (including important ones) are signed or in the place where directors meetings are held. While both may be evidence towards where decisions were being made, they are not the determining factors. What is relevant, however, is where the decision making in relation to those contracts and the directors' meetings actually takes place.

Taking a look at the picture as a whole, the Tribunal found that the basis of the formation of the Partnership and the continuing purpose of the Partnership was to combine Mr. Higgins' driving skills with Mr. Dixon's business acumen and expertise. Throughout the existence of the Partnership, Mr. Higgins relied on Mr. Dixon's commercial expertise and did not enter into any significant commercial commitments without referring them to Mr. Dixon for a decision. The Tribunal concluded that management and control of the Partnership in the relevant years was situated wholly outside the United Kingdom because Mr. Dixon, as the commercial brains of the Partnership, made all the high-level decisions of the Partnership from his office in the Isle of Man.

From a Canadian Perspective

Although *Mark Higgins Rallying* dealt with partnerships, the fact that the corporate test for management and control was appropriate for determining residency makes the case relevant for Canadian tax purposes. The management and control test has been adopted in Canada for determining the residency of both corporations[7] and trusts.[8] The law in Canada has not developed to the same level as that in the United Kingdom and, consequently, little guidance exists for applying the test.[9] In *St. Michael Trust*,[10] the Supreme Court of Canada explained that a fact-based review of central management and control of a corporation (or trust) is determinative, but did not explain how to apply the facts to make the determination. In *Mark Higgins Rallying*, it is clear that it was necessary to take a high-level picture of the operation by determining who was managing the business by making high-level decisions and where those persons were when they made those high-level decisions. Due to the lack of guidance in Canada, it is possible that the Canadian courts could consider this approach in the future.

A number of tax lawyers from Fraser Milner Casgrain LLP write commentary for CCH's Canadian Tax Reporter *and sit on its Editorial Board as well as on the Editorial Board for CCH's Canadian* Income Tax Act with Regulations, Annotated. *Fraser Milner Casgrain lawyers also write the commentary for CCH's* Federal Tax Practice *reporter and the summaries for CCH's* Window on Canadian Tax. *Fraser Milner Casgrain lawyers wrote the commentary for* Canada–U.S. Tax Treaty: A Practical Interpretation *and have authored other books published by CCH:* Canadian Transfer Pricing *(2nd Edition, 2011);* Federal Tax Practice; Charities, Non-Profits, and Philanthropy Under the Income Tax Act; *and* Corporation Capital Tax in Canada. *Tony Schweitzer, a Tax Partner with the Toronto office of Fraser Milner Casgrain LLP, and a member of the Editorial Board of CCH's* Canadian Tax Reporter*, is the editor of the firm's regular monthly feature articles appearing in* Tax Topics.

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Notes:

[1] 2012 DTC 5063.

[2] [2011] UKFTT 340 (TC).

[3] While not stated in the case, the facts suggest that the Partnership was formed in the Isle of Man.

[4] As set out in sections 111 and 112 of the *Income and Corporations Taxes Act 1988* (UK).

[5] [1989] STC 493 at 495.

[6] This approach is similar to the Court of Appeal's decision in *De Beers Consolidated Mines Ltd. v. Howe (Surveyor of Taxes)*, 5 TC 198 at 212-213 where that Court concluded that one looks to the place where the high-level decisions are made, as distinct from the place where day-to-day business operations are carried out.

[7] *British Columbia Electric Railway v. R.*, 2 DTC 692 (1945); *Crossley Carpets (Canada) Ltd. v. MNR*, 67 DTC 522 (1967); and *1143132 Ontario Ltd. v. R.*, 2009 DTC 1312 (T.C.C.).

[8] *St. Michael Trust*, *supra* note 1.

[9] See, for example, *British Columbia Electric Railway*, *Crossley Carpets*, and *1143132 Ontario Ltd.*, *supra* note 7.

[10] *St. Michael Trust* also relied on *De Beers*, *supra* note 6, as authority for corporate residency being based on where management and control is exercised. *St. Michael Trust* did not, however, consider the distinction between where high-level decisions are made as compared to where day-to-day business operations are carried out.

PARLIAMENT RETURNS FROM SUMMER RECESS

The House of Commons returned from the summer recess on September 17, 2012 and the Senate returned on September 18, 2012. There is a great deal of draft income tax legislation that is currently outstanding, including most of the remaining 2012 Budget proposals.

A summary of income tax legislative proposals that have been released and are still in draft form is listed below in reverse order by date of release.

- August 14, 2012 — Draft Legislation to implement most of the remaining 2012 Budget proposals. Resolution 16, Life Insurance Policy Exemption Test, was not included in the release (CCH *Special Report* 066H);
- July 25, 2012 — Draft legislation regarding stapled securities; the instalment rules for SIFT trusts and SIFT partnerships; and withholding tax on amounts that are payable from a Canadian resident trust to a non-resident beneficiary, which are paid after the trust ceases to be a Canadian resident (*Tax Topics* No. 2108);
- June 8, 2012 — Draft legislation regarding changes required to improve the caseload management of the Tax Court of Canada (*Tax Topics* No. 2101);
- December 14, 2011 — Draft legislation regarding pooled registered pension plans (CCH *Special Report* 063H);
- October 31, 2011 — Draft legislation regarding technical amendments, including technical changes relating to trusts, investment corporations, mortgage investment corporations, mutual fund corporations, and agricultural cooperative corporations; the treatment of non-residents with Canadian service providers; and corporations that carry on an insurance business (CCH *Special Report* 062H);
- August 19, 2011 — Draft legislation regarding foreign affiliates, including reorganization, distribution, and surplus rules; replaces the remaining provisions from the foreign affiliate proposals that were released on February 27, 2004 (CCH *Special Report* 060H);
- March 16, 2011 — Draft legislation concerning three recent court decisions regarding contingent amounts, withholding tax on payment to a non-resident, and life insurance corporations' policy reserves (*Tax Topics* No. 2037);
- December 16, 2010 — Draft income tax legislation to amend the provisions relating to the tax treatment of real estate investment trusts (*Tax Topics* No. 2025);
- November 5, 2010 — Draft legislation for technical amendments to the *Income Tax Act,* including those relating to partnerships, pensions, labour-sponsored venture capital corporations, and the lifetime capital gains exemption (CCH *Special Report* 056H);
- August 27, 2010 — Draft legislation to implement certain 2010 federal Budget proposals and other previously released proposals. Proposals contained in the August 27, 2010 release that were not picked up in Bill C-47 (S.C. 2010, c. 25) include the legislation relating to foreign affiliates (updated from the release of December 18, 2009), non-resident trusts, foreign investment entities, reporting of tax avoidance transactions, foreign tax credit generators, and loss trading re SIFT conversions (CCH *Special Report* 054H);
- July 16, 2010 — Draft legislation to implement most of the technical and bijuralism amendments that were in Parts 2 and 3 of former Bill C-10, which ceased to exist when Parliament was dissolved on September 7, 2008 (CCH *Special Report* 052H);
- November 9, 2006 — The amendments from former Bill C-10 Part 2 relating to the Canadian Video Production Tax Credit were not included in the July 16, 2010 draft legislation, but the Department of Finance announced that they would be reintroduced at a later date (CCH *Special Report* 021H); and
- October 31, 2003 — Draft legislation concerning the deductibility of interest and other expenses related to a source (CCH *Special Report* 006H).

PRESCRIBED INTEREST RATES — FOURTH QUARTER OF 2012

The prescribed interest rates for the fourth quarter of 2012 were released by the Canada Revenue Agency on September 11, 2012. They are unchanged from the first three quarters of 2012 and are noted below.

- 1% to calculate a deemed interest taxable benefit on subsidized employee and shareholder loans;
- 1% on refunds of income tax overpayments paid to corporate taxpayers;
- 3% on refunds of income tax overpayments paid to non-corporate taxpayers; and
- 5% on payments of overdue income taxes, insufficient income tax instalments, unremitted employee source deductions, CPP contributions or EI premiums, and unpaid penalties.

These rates will be in effect from October 1, 2012 to December 31, 2012.

A listing of the prescribed interest rates for each quarter, dating back to 1994, is reproduced in Volume 1 at ¶300 and under "Quick Links" in the *Canadian Tax Reporter* on DVD and online.

JOINT COMMITTEE ON TAXATION — SUBMISSION TO DEPARTMENT OF FINANCE REGARDING AUGUST 14, 2012 DRAFT LEGISLATION

The CBA-CICA Joint Committee on Taxation has released its submission to the Department of Finance, dated September 13, 2012, regarding the provisions in the August 14, 2012 draft legislation (CCH *Special Report* 066H). The submission is reproduced on CCH's federal income tax News Tracker and will be added to the collection in the *Canadian Tax Reporter* (online and DVD).

The submission focuses mainly on the proposed rules relating to foreign affiliate dumping and recommends several changes. The Committee expressed concerns about the foreign affiliate dumping rules and stated that they are "extremely mechanical and, quite simply, are far too broad". The Committee noted that the rules apply to both debt dumping and surplus stripping, which, in its view, are different transactions. As well, it is concerned that the indirect acquisition rule is likely to have unintended effects and should be reconsidered. The submission also contains some recommendations on the proposed changes with respect to thin capitalization, employee profit sharing plans, and partnerships.

TAXPAYERS' OMBUDSMAN REPORT REGARDING MISALLOCATION OF PAYMENTS

On September 13, 2012, the Taxpayers' Ombudsman released its report on a review that looked at complaints regarding the misallocation of payments by the Canada Revenue Agency. The complaints had indicated that misallocations had resulted in interest and penalty charges as well as considerable time and effort on the part of the taxpayers to resolve the issue. The report describes two specific cases of misallocation that affected two taxpayers, sets out the impact of misallocations, looks at the several causes of the misallocations, and provides some recommendations. The Ombudsman recommends that the CRA review its standards and procedures for processing payments to reduce processing errors. It also recommends that the CRA determine the optimal size of payment batches that are subject to review in order to make sure they are being processed correctly. As well, the Ombudsman recommends that the CRA inform and educate taxpayers on how they can avoid misallocations and what to do should misallocations occur. The Ombudsman's report is posted on CCH's federal income tax News Tracker.

RECENT CASES

Capital gains realized by Austrian foundation on sale of private shares not attributable to Canadian beneficiary

The taxpayer was reassessed under subsection 75(2) of the *Income Tax Act* to include capital gains realized by an Austrian private foundation (the "Foundation") on the sale of corporate shares that the Foundation had purchased from the taxpayer. The Foundation was settled by the taxpayer's father. It purchased a number of shares from the taxpayer that were later sold to third parties for substantial capital gains. The Minister took the position that capital gains realized by the Foundation on the sale of those shares were properly attributable to the taxpayer under subsection 75(2). The Minister reassessed the taxpayer for the years 1996 to 2000 to include those amounts as income. Those reassessments were successfully appealed to the Tax Court of Canada (2011 DTC 1162). The Minister appealed that ruling.

The Minister's appeal was dismissed. The premise that subsection 75(2) can apply to a beneficiary of a trust (i.e., taxpayer) who transfers property to the trust by means of a genuine sale was incorrect. The Foundation purchased shares from the taxpayer using money from the original endowment by the taxpayer's father, and was not endowed with any money or property by the taxpayer. Accordingly, subsection 75(2) cannot apply to attribute any income or gains of the Foundation to the taxpayer. There was no error of law or principle in the conclusion of the lower court that Article XIII(5) of the Canada–Austria Treaty would apply to preclude Canada from taxing the taxpayer on capital gains realized by the Foundation.

¶48,183, *Sommerer*, 2012 DTC 5126

CRA's seizure of taxpayers' business records during an electronic records evaluation program violated taxpayers' Charter rights

The accused taxpayers operated a restaurant (the "Sushi Man") through a corporation (the "New BM"). In the course of an electronic records evaluation program (the "ERE"), the Canada Revenue Agency (the "CRA") asked 20 restaurants, including the Sushi Man, to participate voluntarily in the ERE by allowing CRA officials to make a limited review of their recordkeeping programs. In a letter from the CRA to New BM dated August 28, 2006, the CRA mentioned that the ERE was not an audit but a limited review of New BM's current recordkeeping practices, although the result could be an audit, depending on the CRA's findings. Reference was also made to the recordkeeping requirements in subsection 230(1) of the *Income Tax Act* ("ITA") and subsection 286(1) of the *Excise Tax Act* ("ETA"). During visits to the taxpayers' premises, however, CRA officials left the taxpayers with the impression that, despite their unwillingness to participate in the ERE, they were compelled to do so, and to provide the CRA with certain electronic data (14 diskettes of which the CRA seized and copied) in addition to filling out a questionnaire. The questionnaire contained many questions that had little or nothing to do with the evaluation of New BM's records or recordkeeping. The CRA's analysis of the information obtained led to the conclusion that Sushi Man had deleted or suppressed sales data and had underreported its sales revenues. As a result, the CRA subsequently laid charges in the British Columbia Provincial Court against the taxpayers under the ITA and the ETA, involving the suppression of income, tax evasion, and the alteration and destruction of tax records. In acquitting the taxpayers, the Provincial Court applied the principles that the Supreme Court of Canada set out in *James Richardson & Sons v. M.N.R.* (84 DTC 6325), and concluded that: (a) the taxpayers had not consented to allowing Sushi Man's records to be taken and copied, which was compounded by the fact that one taxpayer involved was interviewed in English without the assistance of a qualified interpreter; (b) during the CRA's meetings with the taxpayers, there was no "genuine and serious inquiry" into the tax liability of a specific person or persons as mandated in the *Richardson* case; (c) the inspection provisions of section 231.1 of the ITA and section 288 of the ETA were therefore not available to the CRA to justify its examination and ultimate seizure of New BM's records; (d) nor could any Requirement for Information be issued, despite the fact that the CRA officials mistreated their letter of August 28, 2006 as a legally binding Requirement for Information issued under section 231.2 of the ITA and section 289 of the ETA; (e) in so doing, the CRA officials lacked the lawful authority to enforce compliance with the ERE and to seize the taxpayers' records, and hence, breached the taxpayers' sections 7 and 8 rights under the *Canadian Charter of Rights and Freedoms* (the "Charter"); and (f) the CRA officials' conduct was serious

"Charter-infringing state conduct", which was detrimental to the taxpayers, and therefore rendered the information obtained from the taxpayers' business inadmissible under subsection 24(2) of the Charter. In dismissing the Crown's appeal to the British Columbia Supreme Court (2011 DTC 5067), the appeal judge concluded that the Provincial Court was correct in its finding that the taxpayers' rights under section 8 of the Charter had been breached, and he considered the proper factors in determining that the evidence the CRA officials obtained should be excluded under subsection 24(2) of the Charter. The Provincial Court's decision was therefore accorded deference. On its appeal to the British Columbia Court of Appeal, the Crown argued, in part, that: (a) both the Provincial Court trial judge and the appeal judge erred in extending the "genuine and serious inquiry test" to section 231.1 of the ITA beyond the circumstances discussed in *Richardson* and subsequent cases; (b) the appeal judge erred in agreeing with the trial judge that the CRA's examination of New BM's books and records was not authorized by section 231.1 of the ITA or the parallel provision of the ETA; and (c) because of the number of reviewable errors in the trial judge's decision, it was not entitled to the deference it received from the appeal judge.

The Crown's appeal was dismissed. Subsection 231.2(1) of the ITA permits the Minister to issue requirements for information, and subsection 231.1(1) permits the Minister to enter a premises without notice and to inspect, audit, or examine a taxpayer's records, and to interview a taxpayer. However, both of those provisions limit the Minister's activities to "any purpose related to the administration or enforcement of the Act". In *AGT Limited v. A.G. of Canada* (97 DTC 5189), the Federal Court of Appeal held that a requirement for information issued by the Minister under section 231.2 of the ITA constituted, in essence, an "impermissible fishing expedition" which could not be permitted because of the reasoning in the *Richardson* case. Therefore, to avoid that type of abuse, the *Richardson* reasoning must be applied to section 231.1 and section 288 of the ETA, as both the trial judge and the appeal judge concluded. As a result, both the trial judge and the appeal judge were correct in finding that the CRA's examination of the taxpayers' records in this case was not authorized under section 231.1 of the ITA. The trial judge also found that: (a) the CRA's true purpose for the ERE was not to review the books and records of the participating businesses chosen, nor to audit them, but to gather information concerning the suspected use of an electronic sales suppression system by these businesses; (b) the letter of August 28, 2006 to the taxpayers was deceptive; and (c) the taxpayers' acquittal constituted a cost to society, which was outweighed by the importance of maintaining Charter standards. There was an evidentiary basis for these findings, which therefore merited the deference the appeal judge gave to them.

¶48,186, *Regina*, 2012 DTC 5129

Consequential reassessments of taxpayer's subsequent years did not meet requirements

At issue was whether reassessments for the years 2000 and 2005 were properly issued as consequential reassessments under subsection 152(4.3). The provision gives the Minister one year to reassess a subsequent tax year beyond the normal reassessment period where tax payable for a particular tax year has been affected by a change in a balance to an earlier tax year. The Minister submitted that consequential reassessments in this case were issued within one year of changes arising from a 1999 reassessment. The taxpayer argued that the 1999 reassessment was statute-barred and could not be used to start the one-year clock. Alternatively, the taxpayer argued that a reassessment of 1999 did not result in a change in a balance as required by subsection 152(4.3).

The taxpayer's appeal was allowed with costs. The Minister did not have the authority to issue the 1999 reassessment, as it was statute-barred by virtue of subsection 152(4). Furthermore, a reassessment 1999 did not change the balance for that year and, additionally, the reassessments of 2000 and 2005 did not meet the requirements of subsection 152(4.3).

¶48,188, *Blackburn Radio Inc.*, 2012 DTC 1213

Taxpayer could not deduct amounts received from UK pension plan where she made additional contributions to top-up plan

The taxpayer received pension payments from the United Kingdom (the "UK pension"), where she was resident for many years before moving to Canada with her spouse. In 2008, the taxpayer included $2,406 as pension income and an offsetting deduction of $2,406. The taxpayer also argued that voluntary payments made toward the pension plan

with after-tax dollars were merely to top-up the plan and would be a return of capital, and therefore excluded from income. The Minister denied that amount as a deduction and included it as income under paragraph 56(1)(*a*).

The taxpayer's appeal was dismissed. The pension was a benefit that was paid to the taxpayer and there is no basis to argue that no part of the UK pension should be included in her income. Furthermore, there is no provision that would exclude return of contribution from pension income.

¶48,192, *Ruparel*, 2012 DTC 1218

Taxpayer denied public transit tax credit

The taxpayer lived in Whitby, Ontario and commuted to work in downtown Toronto every day by way of GO transit for 2009. He claimed a public transit tax credit for a 10-ride pass he purchased in the amount of $64.25, and for a second 10-ride pass in the amount of $66.75. The Minister denied his claim on basis that it did not qualify for the credit.

The taxpayer's appeal was dismissed. To qualify for the credit, an individual must either purchase an "eligible public transit pass" or use an "eligible electronic payment card", as defined under subsection 118.02(1). As the taxpayer purchased paper tickets, and did not have an unlimited monthly pass, his purchase was not eligible for the credit under either of the definitions.

¶48,194, *Taino*, 2012 DTC 1221

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