Tax Court takes things literally

VERN KRISHNA | August 9, 2011 | Last Updated: Aug 9 4:57 PM ET
More from Vern Krishna

Seeking a remission order from the Treasury Board is a long shot. You might as well buy a Lotto 649 ticket, Vern Krishna says.

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Taxpayers embroiled in tax disputes with the Canada Revenue Agency (CRA) often hope the Tax Court will throw in a dollop of "equity" and "fairness" in their judgments.

Nothing could be further from reality. Tax courts usually adhere to literalist interpretation, regardless of the purpose or policy of the provision. The theory is that Parliament writes the law; the courts merely interpret them. As Charles Dickens said: "It was as true … as taxes is. And nothing's truer than them."

Thus, individuals often find themselves caught in the quagmire of literalism, where equity seldom treads.

The treatment of student tuition fees illustrates the tension between literalism and purpose. Students enrolled in Canadian post-secondary institutions can take a tax credit for their tuition fees. The credit facilitates access to higher education, which Parliament considers a socially desirable national policy. Full-time attendance at a Canadian university is about 30 weeks per year.

Canadians who study in foreign institutions must meet additional tests. To get the tax credit, the student must enrol in a program that runs at least 13 consecutive weeks in a degree-granting university. Anything less and they cannot claim the deduction. This rule applies to all Canadian taxpayers, diplomats and their offspring, who can deduct tuition fees paid outside Canada as if they were domestic students.

The policy underlying both sets of rules is the same: Promote access to higher education by reducing the cost of tuition fees for students and their parents. However, the rules can trap Canadians who seek higher education abroad. Some American universities,

for example, operate on the basis of quarterly semesters of 12 weeks, with one-week breaks in between semesters. Thus, a student can attend for 48 weeks in a year and qualify with a degree in three years instead of the normal four in Canada.

However, a foreign university qualifies as a designated educational institution only if the student enrols in a course of not less than 13 consecutive weeks leading to the degree. The word “consecutive” is quite clear. Twelve weeks followed by a break of one week followed by another 12 weeks is not 13 consecutive weeks. Thus, a student who attends for four semesters for 48 weeks does not qualify for the tax credit.

The purpose of the tuition tax credit is to provide students with financial relief for their educational expenses.
Although education is a personal expenditure, we consider it to be a worthwhile activity and assist students who may not otherwise be able to afford post-secondary education. A literal interpretation of the relevant provision sideswipes its underlying purpose.

In *Lowry v. The Queen*, for example, the Tax Court denied the student a tuition credit because of the minimum 13-consecutive-week requirement for foreign universities. The Tax Court was sympathetic to the taxpayer, but did not consider it within its mandate to interpret law based on the purpose of the rule. It applied the literal meaning of “consecutive” and denied the taxpayer his tax credit.

The Tax Court suggested the taxpayer might consider applying for a special remission of his taxes in the circumstances. A taxpayer can apply for a remission order to the Treasury Board, which would consult the CRA as to whether it was appropriate to grant the relief sought. Thus, one would be seeking relief from the tax collector, which assessed the taxes in the first place and insisted upon litigating the matter in the Tax Court of Canada. The student would be better off buying a Lotto 649 ticket.

The doctrine of parliamentary supremacy in statutory interpretation is Canadian law, regardless of the purpose of the provision. Seeking equity in tax law is like a blind person looking for a black cat in a dark room. We may find it by accident, but not too often.