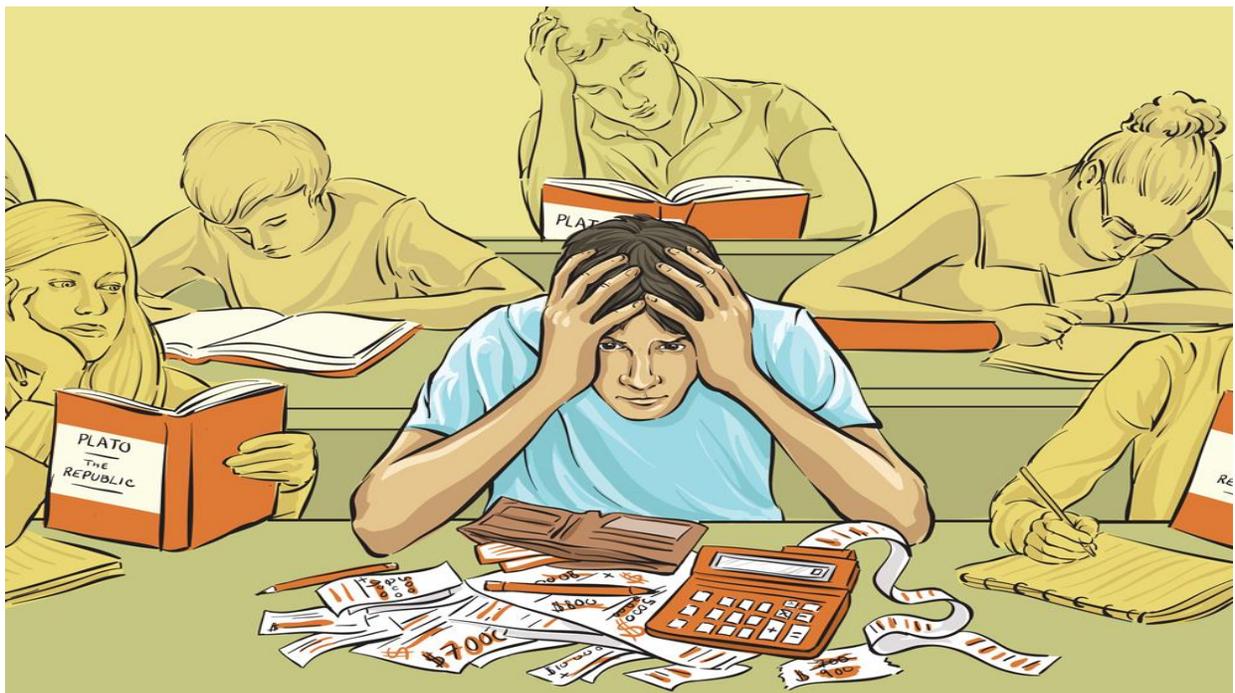


FINANCIAL POST

Use your tuition tax credits as soon as you can, or risk losing them

A bizarre technical rule requires students to first use tuition credits to reduce tax payable to zero before carrying forward and/or choosing to transfer any unused amounts



The tuition tax credit for post-secondary education allows students to get a non-refundable federal (and provincial) credit for the cost of tuition fees paid for post-secondary level education. But there's a catch. *Illustration by Chloe Cushman/National Post files*



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Tax season is officially upon us. March is when Canadians hunker down and begin the arduous process of gathering the various T-slips, donations receipts and other documentation that may be necessary to complete your 2017 tax return. The information gathering is necessary whether you attempt to prepare your own return or simply hand over all this information to a professional tax preparer or accountant.

One of the primary reasons we need to gather all these receipts and other paperwork is due to the extensive number of tax credits, deductions and other special preferences, collectively referred to as “tax expenditures.” We have credits for political donations, volunteer fire fighters and buying your first home. The problem with these credits is not only the tracking of the necessary receipts and administrative burden of filling in extra forms on the return but some of the highly complex rules governing how the credits are to be applied.

Take, for example, the tuition tax credit for post-secondary education. The basic rule allows students to get a non-refundable federal (and provincial) credit for the cost of tuition fees paid for post-secondary level education. (Tax credits for education and textbook amounts were discontinued for 2017.) Some students may find they don’t need to claim all of their credits to reduce their income tax to zero and as a result, students can transfer the unused amounts to a spouse or partner or (grand)parent, or carry forward unclaimed amounts (including former education and textbook amounts) indefinitely. The individual claiming the transferred credit, such as a parent (which includes a natural parent, a step-parent, an adoptive parent or even a spouse’s or partner’s parent), need not be the one who paid the tuition.

The maximum amount that can be transferred is \$5,000 less the amount of tuition for the current year that is claimed on the student’s return. In addition,

amounts carried forward from previous years must be used by the student before the current year's amounts, and any carried-forward amounts that are not completely used by the student in the current year can only be claimed by the student in a subsequent year and cannot be transferred.

A bizarre technical rule, however, requires the student to first use her tuition credits to reduce her tax payable to zero before carrying forward and/or choosing to transfer any unused amounts. This rule was the subject of a recent Tax Court of Canada case involving a Vancouver dentist.

From 2009 to 2012, while a dental student, the taxpayer accumulated significant tuition and education tax credits. She used some of those credits to reduce her 2013 tax payable; however, by the end of 2013, she still had \$52,040 in tuition and education tax credits available to be carried forward to her 2014 tax year.

The dentist earned Canadian dividend income in 2014 and when she filed her 2014 tax return, she claimed a dividend tax credit. She did not use any of her tuition and education tax credits that were available to be carried forward from 2013 and as a result, she logically assumed that she had the full amount of \$52,040 in tuition and education tax credits that could be carried forward to 2015.

Much to her surprise, however, when the dentist filed her 2015 tax return and tried to claim those credits carried forward, her claim was denied by the Canada Revenue Agency on the basis that she had no credits available in 2015 as all of those credits had been applied by the CRA to her 2014 tax year.

The law requires a taxpayer's unused tuition, textbook and education credits to be reduced by the amount that the taxpayer 'may deduct ... for the year'

The issue before the Tax Court was whether a taxpayer's tuition and education tax credits available to be carried forward at the end of a tax year are reduced by the amount of any of these tuition and/or education credits that the taxpayer could have claimed in the year but chose not to claim. In this case, the taxpayer chose to claim the dividend tax credit (which must be used in the year dividends are received) to reduce her tax to zero, when she could have instead used the tuition/education credits. In other cases I've come across, this can also occur when a taxpayer chooses to claim a foreign tax credit on foreign income earned in a year.

The judge carefully reviewed the legislative wording in the *Income Tax Act* governing the carryforward rules. The law requires a taxpayer's unused tuition, textbook and education credits to be reduced by the amount that the taxpayer "may deduct ... for the year."

In other words, it's irrelevant whether the taxpayer chooses to deduct her tuition, textbook and education credits in a year to reduce her tax to zero. Because she was *permitted* to claim the amounts, her credits available to be carried forward are simply reduced whether she actually chose to claim the amounts or not. To support this conclusion, the judge referred both to the Department of Finance Technical Note that accompanied the enactment of rule along with the 1996 Budget Plan, which states that to "permit all students to take full advantage of the tuition and education credits, the budget proposes to allow the student to carry forward these credits indefinitely until they have sufficient tax liability to make use of them."

As the judge explained, "(t)he ... phrase above indicates that a student will be forced to use the credit once he or she has income against which the credit could

be applied.” Accordingly, the dentist’s claim for the tuition and education tax credit was denied.

This result, while technically correct, is harsh and seems to punish students needlessly by denying them a tuition credit for no substantive reason. An individual who receives dividend income gets a dividend tax credit to compensate them for corporate tax paid by the company. Similarly, a taxpayer who receives foreign income is entitled to a foreign tax credit to take into consideration foreign taxes paid and to avoid double taxation. Being denied your tuition carryforward in these situations simply makes no sense.

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