

Recent Tax Developments

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Recap of Two Cases of Interest

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In *Every Woman's Health Centre Society (1988) v. Her Majesty the Queen*, the issue centred on whether this organization, which operated an abortion clinic, could qualify for registration as a charitable organization. The Minister of National Revenue failed to accept the organization's application for registration as a charitable organization within the time prescribed in subsection 127(4) of the *Income Tax Act* ("the *Act*"), i.e., 180 days. The appellant was successful as the Federal Court of Appeal ordered the Minister of National Revenue to reconsider the organization's request for registration as a charitable organization under the *Act* as it appeared to the judges that the proposed activities of this organization fell within the word "charity", based upon jurisprudence; it appeared that the services offered by this organization were beneficial to the community. [For a Case Comment see also (1992), 11 *Philanthrop*. No. 1, pp. 3-14.]

In *Her Majesty the Queen v. Alfred D. Friedberg* one of the issues was the amount of the deductions claimed by the taxpayer on account of donations consisting of two collections of ancient textiles (certified by the Cultural Property Export Review Board) to the Royal Ontario Museum. The Minister of National Revenue argued that the charitable donation deductions should be limited to the amounts that the taxpayer paid for the purchases and not the fair market value of them. In the decision of the Federal Court – Trial Division, the taxpayer was successful in arguing for the higher amounts. On appeal to the Federal Court of Appeal, the Crown was successful in arguing that the documentation relating to the donations in question did not prove that the taxpayer had legal title to the collections in question and therefore the only deduction that could be claimed was the amount paid by the taxpayer to fund the ROM's direct purchase. Where the donor did acquire the textiles before giving them to the Museum, the appraised fair market value was accepted rather than the purchase price. [For a more detailed discussion of this case see also Harry

Erlichman, "Case Comment: Profitable Donations—What Price Culture?", (1992), 11 *Philanthrop.* No. 2, pp. 3-10.]

Interpretations

A technical interpretation has been obtained under the *Income Tax Act* by a hospital foundation. The issue was whether, if a particular transaction was entered into, there was a risk that Revenue Canada, Taxation would have reason for revoking the registration of a hospital foundation that was classified as a charitable organization under the *Act*. The concerns raised in the request included whether Revenue Canada would consider that the charitable foundations was carrying on a business unrelated to the charity if it carried on some proposed real estate operations or whether the hospital foundation could be considered to have acquired control of a corporation which would act as a bare trustee in this particular situation.

Briefly, the hospital foundation was attempting to amass various residential properties for the purpose of expanding the hospital facilities and proposed to do so by using a corporation that would act as a bare trustee which would hold the properties for the benefit of the hospital foundation. As well, until the expansion of the foundation was proceeded with, the properties would be managed by a real estate management corporation. On both accounts, Revenue Canada indicated that, based upon the facts, there did not appear to be any reason for Revenue Canada to consider revocation of the charitable registration of the entity. Firstly, the rental of the real estate properties appears to be only incidental property income; secondly, Revenue Canada expressed the view that for purposes of control, the corporation (acting as bare trustee) could be ignored. Revenue Canada also indicated that it would not attempt to use the General Anti-Avoidance Rule in section 245 of the *Act*, given the particular facts.

News Release, September 23, 1992

In a news release dated September 23, 1992, Revenue Canada outlined its position with respect to registered charities being involved in the Referendum question. In short, Revenue Canada indicated that a charity's registration would not be affected if such an organization took a position on the matter as well as making public its views, provided that funds raised for charitable purposes were not expended for these activities.