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Give Me Shelter

A legitimate tax shelter should be a good investment first.

FROM: [MAR-APR 2007 ISSUE](#) | BY [DON GOODISON](#)

The Canada Revenue Agency (CRA) looks at most tax shelters with a jaundiced eye and will attack those it feels are not legitimate. In *Grant McPherson v. Her Majesty the Queen, 2006*, the appellant taxpayer sought relief in the Tax Court of Canada when a charitable donation of \$100,000 he claimed in 1996 was disallowed.

In 1996, McPherson made payments totalling \$125,000 (\$25,000 in June and \$100,000 in December) to an organization called the Association for the Betterment of Literacy and Education (ABLE), a registered charity set up to promote literacy and education by giving out speed-reading kits. In return for his generosity, the appellant was eligible to receive 75 per cent of his investment as a gift from the Publishers' Philanthropic Fund of Bermuda (PPF). The PPF, a group of wealthy individuals who had made their money through publishing, royalty rights, and intellectual property production, had decided "to give some of this wealth back to society." To this end, they gave selected taxpayers an "educational gift" equal to 75 per cent of the amount of the contribution.

The Minister disallowed McPherson's claim on the grounds that he had received the 75 per cent "kickback" and that the donation was a sham. McPherson testified that he did not expect to get 75 per cent of his investment back and that he had not, in fact, received the kickback. He stated that he thought the educational gift would be something like a set of golf clubs or hockey tickets. The Minister's counsel admitted that there was no direct proof McPherson had received the gift for the \$25,000 payment in June, but submitted that one of two wire payments of \$75,000 on December 24, 1996, to a bank in Switzerland was the kickback for McPherson's December payment. However, no direct evidence was produced to substantiate the Minister's contention. The Minister had determined wire transfers were the method used by ABLE to remit the kickbacks in the case of 10 of 101 contributors in 1996, with 91 contributors receiving cheques directly. The tax auditor described the "wire transfer people" as contributors who made larger donations and were considered more sophisticated, because, in McPherson's case, he was employed as a licenced investment advisor.

After a careful analysis of the appellant's testimony and review of the relevant documents, the court concluded that on the balance of probabilities, the appellant knew he could receive the 75 per cent kickback. Therefore, the court decided that the amounts donated to ABLE were not gifts. The judge stated:

" It is trite law (and common sense) that the anticipation and receipt of a cash kickback equal to 75% of the donation vitiates the gift. (See The Queen v. Friedberg)."

In the court's view, McPherson's testimony lacked credibility. Even though he acknowledged that he knew many of the key players involved in the scheme, he continued to deny knowing he could receive the kickback. Still, the donation was disallowed and the appeal dismissed.

It is worth noting that the speed-reading scheme had been around in one form or another for many years and the same person had been the promoter in each of its various forms. It had been the subject of earlier scrutiny by the CRA, and the court even cited eight separate cases in which courts had shot down bogus tax shelters this person was promoting. In his reasons for judgment, Judge Little stated:

" Each of the above Court decisions concerned various tax shelter schemes which were promoted by [promoter]. The overall impression that one derives from the above Court decisions is that each of the "tax schemes" was poorly designed and improperly operated and the various "investors, partners or donors" were always unsuccessful.

McPherson had testified that he had carried out due diligence on the scheme, to which the court stated that he should have obtained information on the many unsuccessful tax shelter promotions carried out by the promoter.

When a client requests my opinion about a tax shelter, I always point out that a good tax shelter should be a good investment first and a tax shelter second. It should also be one that will stand up to the scrutiny of the CRA. A legitimate tax shelter will provide, within its promotional materials, a tax opinion from a respected and knowledgeable firm, and investors should consider contacting the author of the opinion to determine that it is indeed legitimate.

[[TOP](#)]

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