

TAX COURT OF CANADA

BETWEEN:

LUZMINDO NAVATO

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent



NOTICE OF APPEAL

A. NAME AND ADDRESS OF THE APPELLANT

1. Luzmindo Navato (hereinafter referred to as the "Appellant") resides in the City of Toronto in the Province of Ontario. The home address of the Appellant is 132 Carsbrooke Road, Etobicoke, Ontario, M9C 3C8. The Appellant's Social Insurance Number is 450 183 629.

B. ASSESSMENT APPEALED FROM

2. The Appellant appeals from a Notice of Reassessment dated July 16, 2007 in respect of the Appellant's 2006 taxation year (the "Reassessment") which was confirmed by a Notification of Confirmation by the Minister of National .

C. STATEMENT OF FACTS

3. At all material times, the Appellant was a Canadian resident.

CASH DONATION

4. During the 2006 taxation year (“Taxation Year”), the Appellant made a cash donation of \$2,000.00 (the “Cash Donation”) to the Millennium Charitable Foundation (“MCF”).
5. MCF was a qualified donee under the *Income Tax Act* (the “Act”).
6. MCF was a registered charity within the meaning of the definition of “total charitable gifts” in subsection 118.1(1) of the Act throughout the Appellant’s Taxation Year.
7. The Appellant did not receive any benefit or consideration from MCF, or any other person, in return for or in connection with the Cash Donation.
8. The Cash Donation was made by the Appellant, intentionally, voluntarily and without expectation of any benefit.
9. The Appellant did not impose, directly or indirectly, any restriction, direction or obligation on MCF relating to the use of his Cash Donation.
10. MCF issued an official receipt to the Appellant, in the total amount of the Cash Donation, in the form prescribed by the Act and relevant regulations.

COURSEWARE DONATION

11. In 2004, a resident of the Bahamas (the “Settlor”) settled the Global Learning Trust (the “Trust”) with a gift of US\$100.

12. In accordance with the Deed of Trust, the Canadian Charity Association was appointed as the income beneficiary of the Trust.
13. The Canadian Charity Association subsequently changed its name to the International Charity Association Network (the "Charity").
14. The Charity was a qualified donee under the Act.
15. The Charity was a registered charity within the meaning of the definition of "total charitable gifts" in subsection 118.1(1) of the Act throughout the Appellant's Taxation Year.
16. In accordance with the Deed of Trust, a "Capital Beneficiary" at any time meant any sui juris individual, other than the Settlor and any individual who has at any time prior to that time contributed any property to the Trust Fund, and who
 - (i) made one or more charitable donations to one or more Registered Charities in the calendar year in which the individual made an application for consideration for inclusion as a Capital Beneficiary or in the immediately preceding calendar year,
 - (ii) received from each of those Registered Charities a receipt in the form prescribed by the Income Tax Act issued in the name of that individual or their spouse,
 - (iii) made written application to the Trustee for consideration for inclusion as a Capital Beneficiary, and

- (iv) whose application for consideration was approved by the Trustee, in the exercise of an absolute discretion prior to that time. an individual who is a resident of Canada and who has demonstrated a past history of charitable giving could apply to become a capital beneficiary of the Trust.
17. The trustee of the Trust, Global Learning Trust Services Inc., an Ontario corporation, (the “Trustee”), had the absolute discretion to accept or reject such application.
 18. InfoSource, Inc., a Florida corporation, (the “Publisher”) was and continues to be in the business of designing, creating, marketing and selling to the public various computer software programs (the “Courseware”) which provide training solutions for those interested in learning about personal computer software applications, and obtaining advanced technical and business skills.
 19. The Trust owned a number of fully transferable, royalty-free, perpetual licenses of the Courseware (the “Trust’s Courseware”).
 20. The Appellant chose to participate in the Global Learning Gifting Initiative (the “Program”).
 21. The Program is registered under the Act as a tax shelter. The tax shelter number is TS070003.
 22. The Appellant applied to become a capital beneficiary of the Trust.
 23. On September 15, 2006 the Appellant received confirmation that he was approved by the Trustee to become a capital beneficiary of the Trust.

24. As a capital beneficiary of the Trust, the Appellant received a distribution of capital property of the Trust in the Taxation Year from the Trustee in satisfaction of his capital interest in the Trust.
25. This capital property received by the Appellant consisted of 58 licenses of the Trust's Courseware (the "Appellant's Courseware").
26. The Trust's Courseware was independently appraised by a qualified valuator, Michael Ozerkevich of EMC Partners ("EMC") (the "Appraised Value"). Another qualified appraiser, Richard M. Wise of Wise Blackman, Chartered Accountants ("Wise"), independently reviewed and confirmed the methodology of the foregoing appraisal.
27. The Appellant intentionally and voluntarily chose not to keep but to donate the Appellant's Courseware in the Taxation Year to a registered charity under the Act, the Charity, and obtained a donation receipt from the Charity in an amount based on the Appraised Value (the "Courseware Donation").
28. The Appellant received from the Charity a donation receipt totalling \$10,073.86 for the Courseware Donation.
29. The Appellant did not receive any benefit or consideration from the Charity, or any other person, in return for or in connection with, the Courseware Donation. The Appellant did not attach any restriction, obligation or other limitation on the use by the Charity of the Courseware Donation.
30. In each case of the donation of the Courseware Donation and the Cash Donation, the Appellant signed a written direction to Escrowagent Inc. (the "Escrow Agent") which

afforded the Appellant a period of reflection during which time he was free to decide to keep or donate either, neither, or both of the Appellant's Courseware or cash to any charity of choice.

31. In the case of the Courseware Donation, the direction provided that the Appellant had forty-eight hours from the later of (a) the time the Appellant received notice that his application to become a beneficiary of the Trust had been accepted, and (b) the Subject Courseware was distributed by the Trustee to the Appellant (the "Initial Time") in which to make up his mind. He chose to make the gift.
32. In the case of the Cash Donation, the Appellant had seventy-two hours from the Initial Time in which to make up his mind. He chose to make the gift.
33. In making the Courseware Donation to the Charity and the Cash Donation to MCF, neither the Appellant nor any person dealing not at arm's length with the Appellant received any property, service, compensation, accretion to wealth or other benefit of any kind whatsoever as consideration for, in gratitude for or as a direct or indirect consequence of making such gift of Appellant's Courseware to the Charity or Cash Donation to MCF.

TAX CREDITS CLAIMED

34. The Appellant reported, in his 2006 tax return, a disposition of the Appellant's Courseware. The adjusted cost base and proceeds of disposition were, respectively, \$10,073.86, was based on the Appraised Value and on the amount of the donation receipts in respect of the Courseware Donation.

35. In computing his tax payable for the Taxation Year, the Appellant claimed charitable donations and government gifts in the amount of \$12,073.86.
36. In computing his tax payable for the Taxation Year, the Appellant deducted a charitable tax credit (collectively the "Tax Credits") in the amount of \$3,473.92.
37. In filing his tax return for the Taxation Year the Appellant received and filed the prescribed T5003 form.
38. By way of the Reassessment, the Minister denied the claim for the Tax Credits.

D. ISSUES TO BE DECIDED

39. Whether the Appellant was entitled to a charitable donation tax credit on account of the full amount of the Cash Donation in computing his income for the Taxation Year.
40. Whether the Appellant was entitled to a charitable donation tax credit on account of the appraised fair market value of the Courseware Donation in computing his income for the Taxation Year.

E. STATUTORY PROVISIONS RELIED ON

41. The Appellant relies on sections 3, 69, 107, 108, 118.1 and 248(1) of the Act.

F. REASONS WHICH THE APPELLANT INTENDS TO SUBMIT

42. The Appellant's Courseware was deemed to have been acquired by the Appellant for a cost amount equal to the cost amount of the Trust's Courseware to the Trust.

43. The cost amount of the Trust's Courseware to the Trust was the Appraised Value of \$10,073.86.
44. The Appellant is entitled to the deductions from tax payable claimed by him under subsection 118.1(3) for the Taxation Year.
45. The Courseware Donation and Cash Donation amounts, as stated on the official receipts issued to the Appellant, properly reflect amounts that were gifts, in law, made by the Appellant to the relevant charity as stated on the face of each such official receipt.
46. The Appellant was the legal and beneficial owner of the Appellant's Courseware at the time it was donated.
47. The fair market value of the Appellant's Courseware was no less than the Courseware Donation amount.
48. The Appellant correctly computed his Tax Credit using the formula provided in subsection 118.1(3) of the Act.
49. In making the Courseware Donation to the Charity and the Cash Donation to MCF, neither the Appellant nor any person dealing not at arm's length with the Appellant received any property, service, compensation, accretion to wealth or other benefit of any kind whatsoever as consideration for, in gratitude for or as a direct or indirect consequence of making such gift of the Appellant's Courseware to the Charity or Cash Donation to MCF.

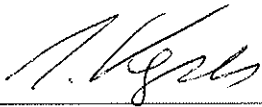
50. The Appellant submits that he should be allowed the tax credit claimed for the donation to MCF and the Charity.

G. RELIEF SOUGHT

51. The Appellant respectfully requests that

- (a) this appeal be allowed;
- (b) the reassessment under appeal be varied, vacated, or referred back to the Minister for reconsideration and reassessment,
- (c) the costs of this appeal be awarded in the Appellant's favour; and
- (d) such other relief as this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of February 2009.

per: 

Solicitors for the Appellant

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Solicitors for the Appellant

TO: Her Majesty the Queen
in right of Canada,
attention of the Deputy
Attorney General of Canada.

LUZMINDO NAVATO
Appellant

HER MAJESTY THE QUEEN
and
Respondent

Court File No:

TAX COURT OF CANADA

Proceeding commenced at Toronto, Ontario.

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