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## NEW CCRA POLICY ON GIFT CERTIFICATES

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### A. INTRODUCTION

This *Charity Law Bulletin* (“Bulletin”) provides a brief overview of the *Donation of Gift Certificates Policy Statement*, issued by the Canadian Customs and Revenue Agency (“CCRA”) on October 9, 2002 (“Policy Statement”). The *Policy Statement* allows registered charities to issue official donation receipts for charitable donations in the form of gift certificates and provides a number of scenarios in which gift certificate donations can be received. The *Policy Statement* is available on the CCRA website at <http://www.ccra-adrc.gc.ca/tax/charities/policy/cps/cps-018-e.html>.

Portions of this Bulletin were extracted from a paper prepared for the Sixth Annual Estates and Trusts Forum entitled, “Recent Changes under the Income Tax Act and Policies Related to Charities and Charitable Gifts,” which can be accessed at <http://www.carters.ca/pub/article/charity/2003/tsc1119.pdf>.

### B. TERMINOLOGY

The *Policy Statement* defines two important terms in relation to donations of gift certificates:

- a) “gift certificate” means a certificate having a stated monetary value that entitles the recipient to purchase goods and/or services in the establishment of the issuer; (i.e. a gift certificate can be considered to be a promise from a merchant to supply goods and/or services in an amount specified on the face of the certificate); and
- b) “issuer” means the person (individual, retailer, business) that creates a gift certificate redeemable for goods and/or services from that person.

### C. APPLICATION OF THE POLICY STATEMENT

The *Policy Statement* is applicable to registered charities that receive donations of gift certificates. Registered charities cannot issue official donation receipts for gift certificates received directly from the issuer, except as specifically permitted by CCRA, as described later in this section of the paper. However, an official donation receipt can be issued to a donor who:

- a) is not the issuer of the gift certificate; and
- b) has obtained the gift certificate for valuable consideration, either from the issuer or other third party.

### D. WHEN AN OFFICIAL RECEIPT CAN BE ISSUED

CCRA has outlined a number of situations under which a charity that receives a gift certificate from a donor, may or may not, issue an official donation receipt. These include the following:

- When a person purchases, or otherwise obtains for consideration, a gift certificate, the terms of which permit its assignment from an issuer and donates it to charity, an official donation receipt for the fair market value of the gift certificate can be issued to the purchaser/donor.
- When the issuer donates a gift certificate directly to a charity, the issuer is not entitled to an official donation receipt at the time the donation is made.
- When the issuer donates a gift certificate directly to a charity, the issuer may be eligible for an official donation receipt when the charity redeems the certificate for property. To be eligible for a receipt, the charity must redeem the certificate for some form of property, other than for a continuation of services by the issuer.
- Where the issuer donates a gift certificate directly to a charity, and the charity transfers the certificate to a third party (e.g. at an auction or a raffle), the redemption of the gift certificate by the third party does not entitle the issuer to an [official donation] receipt

The *Policy Statement* also includes CCRA's position with regard to the basic legal definition of a charitable donation:

*A charitable donation must involve a transfer of property of any kind, real or personal, corporeal or incorporeal, which includes rights. A right is a legally enforceable claim by one person against another. Whether the donation of a gift certificate constitutes a transfer of property, and more particularly a transfer of a right, depends on the particular circumstances.*

The *Policy Statement* also stipulates that not only is a gift certificate considered a transfer of property, but it is also a right to enforce a promise:

*A gift certificate can be considered to be a promise from a merchant to supply goods and/or services in an amount specified on the face of the certificate. The Canada Customs and Revenue Agency (CCRA) has determined that a gift certificate constitutes property and a right, but only if the promise is enforceable, that is, only when the certificate was acquired for consideration.*

## E. VALUATION OF GIFT CERTIFICATES

CCRA takes the position that in some situations, the face value of a gift certificate may not necessarily be its face value. The official donation receipt issued by a charity must state the fair market value of the gift certificate in question. CCRA may consider a number of factors in determining the fair market value of a gift certificate, including the flexibility of the certificate and the usefulness of the certificate, factors which may reduce the fair market value of a gift certificate.

## F. CONCLUSION

The *Policy Statement on Donation of Gift Certificates* should be consulted by charities and their legal advisors when filing their annual information returns, and more importantly, during the year as they plan fundraising events and other donation programs in which they may receive gift certificates as a form of donation. By carefully reviewing the situations described by CCRA in which a registered charity can and cannot issue an official donation receipt for gift certificates, charities will avoid possible challenges by CCRA with respect to its receipting practices. Furthermore, donors will be aware in advance of when they will be entitled to an official donation receipt for an intended donation including a gift certificate.