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# CCRA POLICY STATEMENTS CONCERNING CHARITABLE PROPERTY

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## A. INTRODUCTION

This *Charity Law Bulletin* ("Bulletin") provides a brief overview of three *Policy Statements* dealing with charitable property, entitled *Holding of Property for Charities* (Revised January 14, 2003), *Management of Investment Portfolio* (August 1, 2002), and *Third Party Fundraisers* (February 26, 2003) (collectively "Policy Statements"), that were recently posted on the Canada Customs and Revenue Agency ("CCRA") website. All three *Policy Statements* are applicable to charities in the way in which they can deal with charitable property, whether in the form of land, goods, or funds.

Portions of this *Bulletin* were previously published in 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. POLICY STATEMENT ON HOLDING OF PROPERTY FOR CHARITIES

Based on British case authority (*Commissioners of Inland Revenue v. The Helen Slater Charitable Trust Ltd.* ([1979] T.R. 489; [1981] 3 W.L.R. 377 (C.A.)), CCRA has recognized in its new *Holding of Property for Charities Policy Statement*, that certain organizations which hold title for registered charities can be registered as charities themselves, depending on their charitable purpose.

Charities may want to use charitable title-holding organizations in order to protect their assets from liability associated with their operations. CCRA defines the landlord, tenant and property involved in charitable title-holding transactions as follows:

- "landlord entity" means the body holding title to the property
- "tenant charity" means the charity occupying and using the property
- "leasehold interest" means conferring on a tenant a right of exclusive possession to the property for a fixed period subject to the terms of its agreement with the landlord entity

The *Policy Statement* sets out a number of basic premises with respect to how holding property, such as land for a charity, is charitable in nature. Firstly, CCRA points out that it is charitable to hold title to real property for a charity, as it can be likened to the gifting of funds or assets to the charity. Secondly, the conferral of a leasehold interest from a landlord to a charity is not deemed to be carrying on a business, according to sections 149.1(3)(a) and 149.1(4)(a) of the *Income Tax Act* ("ITA"). Thirdly, simply holding property for a charity is not charitable in and of itself; rather, it is the fact that a charity or charities will be able to use the property to further their charitable objects and activities that make these arrangements charitable.

CCRA has identified the following factors that will be considered when a landlord entity seeks to become a registered charity:

- the landlord entity intends ultimately to convey the property to the tenant charity;
- the landlord entity provides other goods and services to the tenant charity;
- the landlord entity holds the property for the use of several charities, either successively, for example, a campground used by a succession of youth groups, or concurrently, for example, a former school building and surrounding playgrounds, converted to house a daycare, a children's aid society, a group helping immigrant mothers;
- the tenant charity benefits from a facility that would not otherwise be available to it;
- the building is of a specialized nature associated with charitable work, for example, a theatre or nursing home; or
- the tenant charity transfers the property to a landlord entity in order to protect itself from liability claims or to reduce its insurance costs.

As no rent can be charged to the charities in order for the landlord to further its charitable purpose, landlord entities may offer charities free net leases, as an arrangement in which the charity takes financial responsibility for the costs of occupying the property but does not pay the landlord rent.

Holding property for a charity's use is subject to the condition precedent that the leasehold interest in question has some usefulness for a prospective tenant charity. Under the *ITA*, a landlord entity that holds property for a charity will be characterized as a public foundation, unless its source and/or the structure of its board dictates otherwise, in which case, the landlord entity will be registered as a private foundation. All tenant entities must be registered charities, barring which "the landlord entity would be conferring a benefit on a non-qualified donee."

The *Holding of Property for Charities Policy Statement* can be accessed on the CCRA website at http://www.ccra-adrc.gc.ca/tax/charities/policy/cps/cps-009-e.html.

### C. POLICY COMMENTARY ON CHARITIES MANAGING INVESTMENT PORTFOLIOS

On August 1, 2002, CCRA issued a short policy commentary entitled *Management of Investment Portfolio* to clarify whether or not a private foundation's management of an investment portfolio constitutes a business activity. In a concise statement, CCRA reminds charities that under *ITA* section 149.1(4) (a), private foundations are prohibited from involvement in any business activity. At the same time, CCRA acknowledges that there are many private foundations and charities that justifiably manage sometimes substantial investment portfolios in-house rather than using a professional broker.

Managing one's own investment portfolio is not automatically considered a business activity, but a case-by-case analysis must be done each time to determine whether the *ITA* has been infringed. It is CCRA's position that, from an income tax perspective, allowable arrangements would include registered charities managing the investment portfolios for other registered charities at below market rates, which would be considered "promoting the efficiency of other charities." (Editor's note: However, this position by CCRA does not address the problem of delegation and sub-delegation that has to be considered with respect to investment of charitable funds in accordance with the common law and provincial legislation concerning investment of funds by trustees.) It is also the position of CCRA that it is not a charitable purpose for a charity to manage the portfolios of non-charities at below market rates, or in ways that unduly benefit these persons.

The *Management of Investment Portfolio Policy Commentary* can be accessed on the CCRA website at http://www.ccra-adrc.gc.ca/tax/charities/policy/cpc/cpc-023-e.html.

## D. NEW POLICY ON THIRD PARTY FUNDRAISERS

A charity can use a third party organization or fundraiser as an agent to organize a fundraising event, but the charity must retain control over all monies earned and all receipts issued in relation to the event. CCRA's *Policy Commentary* entitled, *Third Party Fundraising*, set outs the parameters under which registered charities can use fundraising events as a means of furthering their charitable purposes. Key to charitable fundraising is the issue of control, in that charities may use agents for their fundraising efforts, but must ultimately direct all fundraising activities. If control is not maintained, a charity puts itself at risk of losing it charitable registration.

Where a charity is not directly involved in the management of a fundraising event, CCRA advises the charity to do the following:

- create a written agreement stipulating all facets of the fundraising arrangement;
- ensure that official donation receipts are only issued to donors for the eligible amount of the donation as defined above;
- ensure that an authorized official duly signs all receipts in accordance with the Income Tax Regulations 3501(1)(i), 3501(2), 3501(3);
- be prepared to show CCRA a full accounting of all donated fundraising monies and issued receipts; and
- be able to report the amount of advantage received by the fundraising event's participants to CCRA.

The *Third Party Fundraiser Policy Commentary* can be accessed on the CCRA website at http://www.ccra-adrc.gc.ca/tax/charities/policy/cpc/cpc-026-e.html.

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