

HIGHLIGHTS OF CRA REGISTERED CHARITIES NEWSLETTER SUMMER 2007

*By Terrance S. Carter, B.A., LL.B., Trade-mark Agent
and Kimberley A. LeBlanc, B.A., LL.B., Student-at-Law*

A. INTRODUCTION

The Canada Revenue Agency (“CRA”) released the Summer 2007: Registered Charities Newsletter No. 28 (“Newsletter”) in August of this year.¹ This Newsletter focuses on information with respect to public education and compliance issues within the regulatory environment for charities. It also addresses legislative changes that have been implemented with respect to re-registration, the objection and appeals process for charities and capital gains exemptions on gifts of securities.

B. SUMMER 2007: REGISTERED CHARITIES NEWSLETTER NO. 28

1. New Electronic Mailing List

The CRA encourages charities and their officers, directors, and employees to subscribe to the Charities Directorate’s “What’s New Electronic Mailing List” (“EML”). This is a free service offered by the CRA to “...support sustainable development, to provide timely and up-to-date information, to remain fiscally responsible, and to ensure continued compliance by both the charities sector and the public.”²

¹ CRA, *Registered Charities Newsletter* No. 28, online: <http://www.cra-arc.gc.ca/E/pub/tg/charitiesnews-28/charitiesnews-28-e.html>.

² *Supra* note 1 at 3.

Those who sign up for the EML will be "...notified by email about new policy statements and commentaries, draft guidelines for consultation, new calls for proposal for the Charities Partnership and Outreach Program, various outreach activities, the Charities Newsletter, and substantial changes or new information added to the Charities Directorate Web site."³

Anyone interested in subscribing to the EML can do so at the following web site:
<http://www.cra.gc.ca/eservices/maillist/subscribecharities-e.html>

2. Registration Statistics

The CRA reported preliminary statistics on registration and denials of charities as a result of a recommendation by the Joint Regulatory Table⁴ to establish a policy of denying applications where applicants "...do not respond within ninety days to communications from the regulator."⁵

The CRA implemented this policy effective June 13, 2005. The statistics illustrate a marked increase in turn down letters following the execution of this policy compared to the previous year. In the 2005/2006 fiscal year, fifty-two applications for charitable status were turned down. In comparison, three hundred and twenty-six applications were denied in 2006/2007, more than a 6 fold increase. As a result, it will be very important for organizations applying for charitable registration to ensure that they have responded to communication from CRA within 90 days.

3. New Re-Registration Process

Charities that fail to file their annual information return, Form T3010A, within the prescribed six months following their fiscal year end, are subject to the revocation of their charitable status, but are able to apply for re-registration in accordance with a new re-registration requirement of a \$500 penalty imposed by CRA. This new re-registration requirement comes as a result of a recommendation by the Joint Regulatory Table⁶ providing for a \$500.00 late filing penalty to charities. At the present time,

³ *Supra* note 1 at 3.

⁴ This group was comprised of representatives of the government and voluntary sector. Their work culminated in *Regulatory Reform Final Report: Strengthening Canada's Charitable Sector*, which can be found on the Voluntary Sector Initiative's website at: http://www.vsi-isbc.ca/eng/regulations/jrt_finalreport/index.cfm.

⁵ *Supra* note 1 at 4.

⁶ *Supra* note 4.

CRA has decided to only implement the aforementioned penalty when the charity is applying for re-registration as opposed to at the time of revocation.

As has been the case for any charity that has lost its charitable status for failure to file in the past, it may apply for re-registration by providing all missing annual information returns, as well as Form T2050, Application for Registration.

4. The Objection and Appeals Process for Charities

The CRA provides an overview of the new appeals process for charities contesting a CRA decision. This will have a significant impact on charities, as the objections process is now mandatory prior to making an appeal to court. Charities challenging a CRA decision are no longer limited to an appeal at the Federal Court of Appeal. Charities now have access to the existing appeals process used by other taxpayers.

The Newsletter states that the Charities Redress Section in the Appeals Branch of the CRA will now process all objections by charities pertaining to the following notices issued by the CRA after June 12, 2005:

- ◆ Notice of refusal of registration;
- ◆ Notice of intention to revoke a registration;
- ◆ Notice of annulment of a registration;
- ◆ Notice of designation of registered charities as public or private foundations, or charitable organizations;
- ◆ Notice of assessment concerning a revocation tax or one of the financial penalties applicable to charities;
- ◆ Notice of suspension of tax-receipting privileges and qualified donee status.⁷

The Newsletter advises, that where a charity contests that the CRA has failed to interpret the facts or to apply the law correctly, it can object by submitting a written objection, which sets out all reasons and relevant facts, to the Appeals Branch, no later than ninety days after the mailing date of the notice. The CRA also details that where a charity does not file its objection on time, due to circumstances beyond

⁷ *Supra* note 1 at 5..

its control, the charity can apply for an extension for up to one year following the original ninety day limit.

The Newsletter states that for the first four CRA notices listed above, if a charity disagrees with the decision on its objection, it can appeal to the Federal Court of Appeal, but must do so within thirty days of the Appeal Board's decision. For the last two notices listed above, a charity must appeal an objection decision to the Tax Court of Canada within ninety days of the Appeal Board's decision. However, no appeal can be made either to the Tax Court of Canada or the Federal Court of Canada without going through the new objection process.

5. Capital Gains Exemption on Gifts of Securities

The Newsletter also discusses the federal government's budget initiatives in 2006 and 2007 which have resulted in the complete elimination of the capital gains tax on gifts of publicly listed securities and ecologically sensitive land to charitable organizations and public foundations, as well as the elimination of the taxation of capital gains arising from donations of publicly-listed securities to private foundations.

The Newsletter highlights the following helpful links on the CRA website relevant to capital gains exemptions on gifts of securities:

- ◆ The Charities Directorate Web site at:
<http://www.cra-arc.gc.ca/tax/charities/budget-e.html>
- ◆ The Department of Finance Web site at:
<http://www.budget.gc.ca/2007/bp/bpc3e.html#charitable>

6. New Fillable T3010A, Registered Charity Information Return

The Newsletter announces the Charities Directorate's initial step towards providing charities with the opportunity to file their annual information return electronically through its explanation of the newly developed fillable T3010A, which is currently available on the Charities Directorate's website at <http://www.cra-arc.gc.ca/E/pbg/tf/t3010a/t3010a-fill-05e.pdf>. Although the fillable form cannot be

filed electronically as of yet, charities are able to enter their information into the return on their computer prior to printing it and submitting it to the Charities Directorate by mail.

When completing the form online, charities will be able to access help functions, links to Guide T4033A – Completing the Registered Charity Information Return and prompted instructions assisting the user with specific actions. Charities should be aware that they will be unable to electronically save information entered into the fillable form for future use without an advanced version of the Adobe Acrobat software.

For additional information on fillable forms, charities can visit the Charities Directorate website at <http://www.cra.gc.ca/formspubs/fillable/help-e.html>.

C. CONCLUSION

Charities will find that this CRA Newsletter provides helpful direction on a range of important issues, especially with respect to the new re-registration requirement, objection and appeals process and capital gains exemptions on gifts of securities. All charities should give careful consideration to CRA's various guidelines found in their newsletters available at: <http://www.cra-arc.gc.ca/tax/charities/newsletters-e.html>. Other summaries of recent CRA newsletters can be found at www.charitylaw.ca.