
AFP 2004 CONGRESS CURRENT LEGAL ISSUES IN FUNDRAISING

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Implications of Regulatory Reform Under the New Budget Proposals (Power Point Presentation)

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Compliance

Changes based on Voluntary Sector Initiative (VSI) Joint Regulatory Table (JRT) recommendations


- Pre Budget
 - Revocation only sanction
 - Loss of ability to issue receipts
 - Loss of tax exempt status
 - Revocation tax 1 year after revocation = 100% of assets at time of revocation
- Post Budget
 - Intermediate sanctions
 - tax
 - penalties
 - revocation

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Intermediate Sanctions

- Suspension of tax receiving privileges
- Tax on revenue earned on prohibited activities
- Monetary penalties
- Will apply in respect of taxation years that begin after March 22, 2004

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Offence

Offence	First Infraction	Repeated Infraction (Within 10 years)
<ul style="list-style-type: none"> • Late filing or failure to file T3010A • Issuing incomplete receipts • Carrying on prohibited business activity <ul style="list-style-type: none"> • Private foundation – any business • Public foundation/organization – unrelated business • Foundation acquiring control of corporation • Undue personal benefit • Transfer among charities to avoid disbursements quota (joint and several liability) • Issuing receipts in taxation year that do not exceed \$20,000 if no gift or if receipt contains false information. • Issuing receipts totaling more than \$20,000 if no gift or receipt contains false information • Failure to comply with certain verification and enforcement requirements (ex. Keeping proper books and records) 	<ul style="list-style-type: none"> • \$500 penalty • Penalty of 5% of eligible amount stated on receipt • Tax of 5% on gross revenue from activity • 5% tax on dividends paid to charity • Penalty of 105% of benefit • Tax of amount transferred and 10% of amount transferred • 125% tax on eligible amount of receipt • Tax of 125% of amount received and suspension of tax privileges • Suspension of tax receipting privileges 	<ul style="list-style-type: none"> • \$500 penalty → May lead to Revocation • Penalty of 10% of eligible amount stated on receipt • Tax of 100% on gross revenue from activity and suspension of receipt privileges • 100% tax on dividends paid to charity • Penalty of 115% of benefit and suspension of tax receipt privileges • Tax of amount transferred and 10% of amount transferred • 125% tax on eligible amount of receipt • Tax of 125% of amount received and suspension of tax privileges • Suspension of tax receipting privileges

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Inappropriate Business Activities


- Charitable organization public foundation can carry on related business or if substantially all (90%) of staff involved in activity are volunteers
- Private foundation – cannot carry on any business activities
- What is business?
 - No statutory definition/question of fact
 - Profit motive
 - Business v. investment activity
- What is “carrying on business”?
- What is Related Business?
 - Alberta Institute for Mental Retardation v. MNR [1987] 3 FC 286 (1987) 87DT
 - 5306 (FCA) business is related if it raises money for charity’s purposes (destination test)
 - Earth Fund v. Canada [2003] FCJ 1769 (CA) rejected destination test but did not suggest alternate test
 - CRA Policy CPS 019 (March 31, 2003)

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Acquiring control of a corporation

- 149.1(12) - control – ownership of more than 50% of corporation’s issued share capital having voting rights under all circumstances
- Exception – if Foundation did not purchase or acquire for consideration more than 5% of the shares and is given block of shares to bring total shareholding to more than 50%
- Caveat: Charitable Gifts Act (Ontario)

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Undue Benefit

- Gift other than to qualified donee
- The amount of any “rights, income, property or resources” paid, payable, assigned or otherwise made available to member, trustee, over 50% contributor or NAL person

Exceptions


- Reasonable remuneration or consideration for property acquired or services rendered
- Gift made or benefit conferred in course of charitable activities unless improper eligibility
- Gift to qualified donee

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Tax/Penalty


- Sanctioned charity can transfer amount of tax, penalty to CRA or to another charity (arms length)
- Arms length – more than 50% of directors deal at arms length with all directors of taxed charity

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Revocation


- Still available for any offence and can be applied with intermediate sanctions
- Revocation Tax
 - In lieu of paying revocation tax to CRA
 - Equivalent amount can be paid to eligible transferees i.e. other registered charities dealing at arms length (pre budget the revocation tax would be paid to a “qualified donee” but CRA concerned about transfers to NAL charities)
 - Pre budget – revocation tax applied 1 year after revocation
 - Proposed amendments – tax assessed immediately, collection suspended for one year

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Annulment


- Where registration obtained in error or if charity ceases to be a charity because of changes in the law
 - No effect on issued receipts
 - No revocation tax or other penalty will be charged
 - Useful tool – permits errors to be rectified without negative public notice which goes with Notice of Revocation

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Appeals Regime


- Pre Budget
 - Federal Court of Appeal judicial review
 - No administrative appeal process
 - Costly, ineffective
- Post Budget: Internal Reconsideration Process
 - Existing internal objection review process will be extended to notices of
 - decision re denial of application for charitable status
 - revocation of charitable status
 - annulment
 - designation of charity as charitable organization, private or public foundation, or
 - objections to imposition of taxes/penalties

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Appeals Regime – (cont'd)


- Notice of objection within 90 days of CRA notice of result of review in writing
- No appeal to court unless objection route taken
- Will apply wrt notices issued by MNR after later of December 31, 2004 and 30 days after Royal Assent

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Appeals Regime – (cont'd)


1. External Review Process
 - Appeals of intermediate taxes and penalties → trial de novo to Tax Court of Canada (after going through internal process)
 - Appeals of refusal to register, revocation, annulment, charitable designation → by way of judicial review to Federal Court of Appeal

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Stay of Appeal


- Revocation
 - revocations – 1st proposed by notice
 - MNR may then revoke 30 days after notice
 - Right of charity to appeal revocation and decision begins at time of notice
 - practice of CRA – not to actually revoke until appeal to CRA has run its course
 - review if CRA not accommodating – can appeal to Federal Court of Appeal for stay pending court decision
- Suspension of receiving privileges
 - takes effect 7 days after notice mailed
 - charity may apply to Tax Court for postponement of beginning of suspension
 - court may only postpone if finds it is “just and equitable” to do so
 - not necessary to file appeal to request postponement
- Appeals of penalty tax
 - usual stay pending appeal applies (225.1(2))

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Additional Information Available to Public – Increased Transparency

- Financial information
- Registration/annulment correspondence from CRA
- CRA decisions re objections to assessment of tax or penalties
- Material filed and CRA responses re requested exemption, special status (ex. permission to accumulate)
- Information detailing application of sanctions
 - Identification of charity
 - Sanction imposed
 - Grounds for sanction

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Additional Information Available to Public (cont'd)

- Increased website information
 - Reasons for registration decisions
 - Policies
 - Procedures
 - Research database
- Will help charities in regulating their activities and to comply with law and CRA administrative positions
- Additional Information required on official tax receipts (2005 →)
 - Name and website address of CRA
- Charities Advisory Committee
 - Greater impact by charities into shaping of tax rules affecting charities

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