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## DONATIONS OF PREMIUM POINTS

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### A. INTRODUCTION

On July 18, 2006, the Canada Revenue Agency (“CRA”) released its most recent technical interpretation with respect to donations of airline tickets obtained through the redemption of airline reward points.<sup>1</sup> With the increasing use of such reward or “premium” points in conjunction with customer loyalty programs, many individuals and charities have been presented with various opportunities to benefit from donations of premium points. This bulletin will discuss CRA’s policies with respect to donations of premium points and will explore the options for such donations.

### B. CAN PREMIUM POINTS BE GIFTED?

CRA’s general views with respect to the existence of a gift are set out in *IT-110R3: Gifts and Official Donation Receipts*.<sup>2</sup> Paragraph 3 indicates that a gift, for purposes of sections 110.1 and 118.1 of the *Income Tax Act* (the “Act”), is a voluntary transfer of property without valuable consideration and sets out three conditions:

- a) some property is transferred by a donor to a registered charity;
- b) the transfer is voluntary; and
- c) the transfer is made without expectation of return.

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<sup>1</sup> CRA Technical Interpretation, Document #2006-019326 dated July 18, 2006.

<sup>2</sup> Available at <http://www.cra-arc.gc.ca/E/pub/tp/it110r3/README.html>.

Assuming that the conditions in paragraphs (b) and (c) are met, the legal issues that arise with respect to donations of premium points are whether premium points may be considered “property” for the purposes of the donation tax credit provisions and whether a transfer from the donor to the recipient occurs. Because the gift made is the premium points and not the air travel, merchandise or other benefits associated with the program, the answers to these questions are highly dependent upon the facts surrounding the particular program.

Subsection 248(1) of the Act defines “property” to include “a right of any kind whatever.” In CRA’s view, where a premium points or other customer loyalty program gives an individual the right to redeem points or credits accumulated through the program for benefits, e.g. airfare, merchandise, or gift certificates, the points or credits constitute property and can be the subject of a gift provided that the points may be transferred and their value reasonably estimated.<sup>3</sup>

Therefore, premium points may or may not constitute property depending on the particular circumstances of the situation. The question to ask is whether the premium points program provides a legally enforceable right that can be acted upon by the holder of the premium points? If a person attempted to redeem the points and was refused, would the person have a claim against the promoter of the program? If the answer to this question is yes, then the premium points program has a legally enforceable right and would likely be considered property. An example of when the answer would be no is if air miles had to be used within a specified period of time. If the person attempted to redeem them after the specified date, the legally enforceable right attached to the air miles would have expired, providing the holder of the air miles with no legally enforceable right to redeem them, and the air miles would therefore not be considered property.

Once it has been determined that the premium points are property, the next question to ask is whether or not the premium points may be transferred. It is important to read the restrictions attached to the premium points carefully, as many premium points programs do not allow points to be transferred from the holder to a third party. If the premium points cannot be transferred, then a gift cannot be made. Premium points that do not have any transfer restrictions attached to them may be transferred to a registered charity or other qualified donee.

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<sup>3</sup> CRA Technical Interpretations, Document #1999-000709 dated 12 January, 2000, Document #2001-008873 dated 17 September, 2001, and Document #2006-019326, *supra* note 1.

### C. VALUATION ISSUES

The primary concern with respect to the donation of premium points is determining the fair market value of the gift. CRA has repeatedly indicated its view that such a gift would fail if the fair market value of the donated premium points cannot be reasonably determined at the time the premium points are transferred to the recipient.<sup>4</sup> In most instances, valuation may be difficult because the property may not have a value until the premium points are actually redeemed.

The most common examples of premium points programs in Canada are Airmiles and Aeroplan points. Consumers accumulate points over time and varying amounts of points may be exchanged for air travel. The value of the air travel points accumulated will depend upon a number of factors, including date of travel, destination chosen, and restrictions placed upon the redemption of the air miles. With respect to the donation of air travel points, CRA has indicated its view that the fair market value of such a donation could not be determined since there would be no ticket or other tangible benefit related thereto at the time of the transfer and that even if a value could be ascertained it would be nominal.<sup>5</sup>

A similar valuation problem would likely arise where the premium points may be redeemed for merchandise, unless there was some way of determining a clear relationship between the number of points and the fair market value of the merchandise available to be redeemed. In some instances, premium points may be redeemed for gift certificates for various commercial vendors at a flat rate, e.g. 2,500 points for \$25; 5,000 points for \$50, etc. It may be possible to satisfy CRA with respect to the value of a donation of such points, depending upon the terms and conditions of the program, but it is strongly recommend that charities contemplating accepting such donations seek CRA's guidance with respect to valuation in advance of issuing a receipt.

One way of dealing with the valuation issue is for the donor to redeem the points for air travel, merchandise or gift certificates and then to transfer that property, instead of the points, to the recipient organization. This is the situation CRA considered in its most recent technical interpretation<sup>6</sup> wherein the donor exchanged their

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<sup>4</sup> *Ibid.*

<sup>5</sup> Document #2001-008873, *supra* note 2. In another Technical Interpretation, Document #2002-014175 dated 8 August, 2002, CRA indicates that the position expressed in *IT-470R: Employee Fringe Benefits* with respect to the income inclusion of frequent flyer points earned while traveling at an employer's expense does not apply to the donation of such points to charity since the legislative provisions at issue are different.

<sup>6</sup> *Supra* note 1.

points for an airline ticket and then gifted the airline ticket to a charity. CRA stated in this technical interpretation that

[w]here an individual redeems reward points under a program in which the individual is a member to acquire a particular item, and then voluntarily transfers it to a registered charity, the individual will be considered to have made a gift of that particular item rather than a gift of reward points. For the purposes of section 118.1 of the Act, the gift will be considered to have been made at the time the item is transferred to the charity and, subject to draft subsection 248(35) of the Act, it is the fair market value of the item at that time that is relevant in determining the eligible amount of the gift in computing the donation tax credit. In the case of an airline ticket, assuming it is immediately transferred to the charity upon redemption of the reward points, the fair market value of the airline ticket at the time of donation and the cost to the donor of the airline ticket should be the same.

With respect to the redemption of premium points for gift certificates, while it may be generally fairly easy to value a gift certificate since the gift certificate will usually have a value set out on its face, careful regard must be had to the structure of the transaction.<sup>7</sup> Where a gift certificate is issued directly by the issuer to the charity, CRA has stated that there is no gift:

[a] gift certificate is essentially, a promise to provide goods or services on the presentation of the certificate. A promise bestows a right if it is enforceable. A right is a property and hence, can be gifted. A promise is enforceable if it is made for consideration. Since a donor cannot receive consideration for a gift, it is not possible for a person to make a gift by issuing a gift certificate directly to a charity.

However, when the gift certificate has been issued to the donor upon the redemption of premium points (the consideration) and the donor then gifts the certificate to a charity, a receipt may be issued by the charity.<sup>8</sup>

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<sup>7</sup> Note that *CPS-018: Donations of Gift Certificates* discuss a number of situations where the fair market value of a gift certificate might not be its face value.

<sup>8</sup> Note that a charity cannot give a tax receipt for a gift certificate it received from the issuer of the gift certificate. For example, if The Bay gave a gift certificate worth \$100 to Boy Scouts Canada, Boy Scouts Canada could not issue a tax receipt to The Bay. However, if The Bay issued a gift certificate to an individual and then that individual decided to donate the gift certificate to Boy Scouts Canada, Boy Scouts Canada could issue a tax receipt to the individual who donated the gift certificate. The reason for this is that the individual conferred consideration for the gift certificate when she/he purchased it or redeemed premium points for it from The Bay. Then, when the individual chose to transfer the gift certificate to Boy Scouts Canada with the intention of benefiting Boy Scouts Canada, at the fair market value of the property on the date of transfer, all of the conditions necessary in order to make a gift under the provisions of the Act were met. For more detailed information, please see CRA, Technical Interpretation 2000-0030237.

**D. WHERE THE GIFT IS MADE TO A REGISTERED CHARITY: WHAT MUST IT DO?**

A charity that is the recipient of premium points as a gift must include the value of the premium points<sup>9</sup> in determining its income, and it may issue an official tax receipt for the gift. If a receipt is issued, the value of the premium points will be included in the calculation of the charity's disbursement quota. As long as the gift is used by the charity in connection with its charitable activities, there should be no other tax implications for the charity. It is not recommended that premium points be held for any long period of time because their value could possibly diminish or the points expire, causing potential problems from the valuation perspective and possibly exposing the charity to the consequences of failing to devote its resources on charitable activities.

**E. CONCLUSION**

While it is commendable and creative to donate things such as gift certificates, air travel points and other reward points to registered charities, care must be taken to determine if the donation qualifies as a gift for the purposes of the Act. Failure to do the necessary homework could prove costly if CRA ultimately decides that the gift does not qualify.

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<sup>9</sup> Or property received by the charity if the premium points are redeemed and the property received upon redemption is transferred to the charity.