

HIGHLIGHTS OF CRA REGISTERED CHARITIES NEWSLETTER FALL 2009

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A. INTRODUCTION

This *Charity Law Bulletin* highlights some key aspects of Canada Revenue Agency's ("CRA") Fall 2009: Registered Charities Newsletter No. 33 ("Newsletter") released on December 16, 2009. This issue of the Newsletter focuses on many important topics, including proper receipting procedure, the new fundraising guidance and tax shelter related revocations. The full text of the Newsletter is available at: <http://www.cra-arc.gc.ca/E/pub/tg/charitiesnews-33/README.html>.

B. SUMMARY OF CRA NEWSLETTER NO. 33

1. Education: Improper Receipting

In recent years, CRA audits of charities have uncovered many cases of improper receipting. This section of the Newsletter highlights some issues charities need to be aware of when issuing donation receipts. Charities should take note of this important information to ensure they are issuing receipts in a manner that complies with the *Income Tax Act*. A charity that issues improper receipts risks having a sanction imposed or having its charitable status revoked.

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a) Issuing a receipt with inaccurate or missing information

Official donation receipts must contain all the information required by the regulations to the *Income Tax Act*. The CRA notes that charities often issue receipts with inaccurate or missing information. All official donation receipts issued by registered charities must include the following information:

- a statement that it is an official receipt for income tax purposes;
- the name and address of the charity as on file with the Canada Revenue Agency;
- the charity's registration number;
- the serial number of the receipt;
- the place or locality where the receipt was issued;
- the day or year donation was received;
- the day on which the receipt was issued if it differs from the day of donation;
- the full name, including middle initial, and address of the donor;
- the amount of the gift (for cash gifts);
- the value and description of any advantage received by the donor;
- (under proposed legislation) eligible amount of the gift;
- signature of an individual authorized by the charity to acknowledge donations; and
- name and Web site address of the Canada Revenue Agency - www.cra.gc.ca/charities.

There are different requirements for receipts issued for gifts-in-kind (non-cash gifts). In addition to the requirements listed above, official donation receipts for gifts-in-kind must contain the following information:

- the day on which the donation was received (if not already indicated);
- a brief description of the property transferred to the charity;
- the name and address of the appraiser (if the property was appraised); and
- the deemed fair market value of the property if the property was acquired by the donor in circumstances to which the new deemed fair market value rules apply.¹

Sample official donation receipts are available of the CRA website at: <http://www.cra-arc.gc.ca/tx/chrts/pbs/rcpts-eng.html>.

b) Issuing a receipt for a transaction that does not qualify as a gift

Before issuing receipt, a charity must determine whether the donation qualifies as a gift. A gift is defined as a voluntary transfer of property without valuable consideration. Therefore, to qualify as

¹ See *Charity Law Bulletin* No. 76 available at: <http://www.carters.ca/pub/bulletin/charity/2005/chylb76.pdf> for a detailed description of these rules.

a gift, the donation must be given voluntarily. If the donor is obligated to make the donation, it does not meet the definition of gift. In addition, only gifts of property are eligible for a donation receipt. Cash and gifts-in-kind, such as equipment or artwork constitute property. Services do not constitute property and, therefore, no receipt can be issued for a donation of services.

A charity must also take into account any advantage received by the donor in exchange for the donation. Previously, any valuable consideration received by the donor would disqualify the gift. However, under proposed amendments to the *Income Tax Act* currently being applied by CRA, a donor may receive some advantage in exchange for a donation. The proposed amendments to the *Income Tax Act* define the amount of the advantage as the total value of all property, services, compensation, or other benefits that a person is entitled to receive as partial consideration for, in gratitude for, or is in any other way related to the gift. If an advantage is received, the eligible amount of the gift must be reduced accordingly. This practice is known as “split receipting”. The eligible amount of the gift is the amount by which the fair market value of the gifted property exceeds the amount of an advantage received in respect of the gift. For example, if a person pays \$100 dollars to attend a charity’s fundraising event, but receives a meal worth \$50 at the event, the charity can only issue a donation receipt in the amount of \$50. To qualify as a gift, there must also be a clear donative intent by the donor to benefit the charity. According to the proposed amendments to the *Income Tax Act*, donative intent will generally be presumed if the fair market value of the advantage does not exceed 80% of the value of the gift. The split receipting rules do not apply where the advantage received does not exceed the lesser of 10% of the value of the gift and \$75.²

CRA notes that charities often make mistakes regarding the types of gifts that are receiptable. The following are examples of transactions that do not qualify as a “gift:

- Pledged amounts which are not received;
- Donation of services;
- Payment of sponsorship fees;
- Loans;
- Provision of free use of property; and

² *Income Tax Technical News #26*, available at: <http://www.cra-arc.gc.ca/E/pub/tp/itnews-26/README.html>, provides further guidance and helpful guidance regarding split-receipting issues.

– Donations which are court ordered or otherwise compelled.

c) Issuing a receipt on behalf of another organization

The CRA warns that a registered charity cannot issue donation receipts on behalf of another organization or lend its registration number to another organization for receipting purposes. A registered charity is responsible for all tax receipts issued under its name and number and must account for the corresponding donations on its annual information return. A charity that lends its registration number risks losing its charitable registration.

d) Issuing a receipt for an inflated amount

Donation receipts must accurately reflect the value of the property a charity has received. The amount on the receipt should be the fair market value of the property and the onus is on the charity to ensure this value is correct. However, CRA notes that establishing the fair market value of a non-cash gift is often problematic for charities. If the fair market value of the property, or an advantage received by the donor, cannot be determined, no receipt can be issued.

If the fair market value of the property is less than \$1,000, a member of the registered charity, or another individual, with sufficient knowledge of the property may determine its value. However, CRA strongly recommends that charities have donated property professionally appraised by an independent third party if its expected value is over \$1,000. As noted above, the name and address of the appraiser must be included on the receipt.

e) Receipts and good governance

Charities must take steps to prevent the unauthorized or fraudulent use of its registration number. CRA recommends that a charity's governing body develop a code of conduct and administration, and follow it at all times. In the Newsletter, CRA has provided a list of general best practices that can be used by a charity to minimize the risk that its official donation receipts will be used in an inappropriate or unauthorized manner.

CRA also reminds charities of the importance of maintaining adequate books and records. Failure to keep adequate books and records may result in the suspension of a registered charity's tax

receiving privileges, or the loss of its registered status. More information about books and records is available on the CRA website at: <http://www.cra-arc.gc.ca/tx/chrts/prtng/bks-eng.html>.

2. Tax Shelter Related Revocations

The Newsletter contains a list of charities that had their charitable registration revoked in 2009 due to tax-shelter related non-compliance.

a) The Millennium Charitable Foundation

The Millennium Charitable Foundation participated in two donation tax shelter structures, the Insured Giving Program by Insured Donations Inc. and the Global Learning Gifting Initiative by Global Learning Group Inc., issuing approximately \$168 million worth of donation tax receipts, but could account for only \$2,200 directed towards charitable works. Consequently, CRA concluded that the organization had been operating to promote a tax shelter arrangement and for the benefit of the tax shelter promoters.³

b) The Children's Emergency Foundation

A CRA audit concluded that the Children's Emergency Foundation had devoted a significant portion of its resources to the promotion of two tax shelter donation arrangements, an international donation arrangement and had devoted a substantial portion of its actual cash donations to fundraising and administrative expenses.⁴

c) Living Waters Ministry Trust

A CRA audit concluded that Living Waters Ministry Trust issued in excess of \$41.6 million in receipts for cash received through a tax shelter arrangement, but only \$416,000 was actually retained for use in the Charity's own activities. Consequently, CRA concluded that the

³ For a further discussion of the Millennium Charitable Foundation, see *Charity Law Update* January 2009 available at <http://www.carters.ca/pub/update/charity/09/jan09.pdf>.

⁴ The CRA news release regarding The Children's Emergency Foundation is available at: <http://www.cra-arc.gc.ca/nwsrm/rlss/2009/m05/nr090511-eng.html>.

organization had been operating to promote a tax shelter arrangement and for the benefit of the tax shelter promoters.⁵

d) Healing and Assistance Not Dependence Canada

Healing and Assistance not Dependence Canada received nearly \$2.8 million in cash through the Canadian International Aid Program, a registered tax shelter. Of this amount, \$1.9 million was transferred to a registered charity and other entities participating in the tax shelter arrangement. Of the 30% or \$900,000 retained by the Charity, it reported \$543,000 was incurred for administrative costs and \$282,000 was devoted to its own charitable programs. CRA concluded that Healing Assistance Not Dependence Canada had completely restructured its operations in order to facilitate entrance into a tax shelter arrangement. The Charity's role in the scheme was to circulate funds in a guise to add legitimacy to the transactions and that the payments made by the Charity to the other charities were not gifts to qualified donees. Consequently, CRA determined that the Charity had operated for the non-charitable purpose of promoting and participating in a tax shelter arrangement.⁶

e) Jesus El Buen Pastor Spanish Pentecostal Church of Toronto

A CRA audit revealed that Jesus El Buen Pastor Spanish Pentecostal Church of Toronto had devoted a significant portion of its resources to the promotion of the Insured Giving Donation Program tax shelter gifting arrangement. The Charity issued in excess of \$18.5 million in receipts for cash and non-cash gifts received through this tax shelter arrangement. However, the Charity's records failed to substantiate that the property actually existed, that the property was in the Charity's possession, that the values recorded on the receipts were accurate or that the property was distributed for charitable purposes.⁷

⁵ The CRA news release regarding Living Waters Ministry Trust is available at: <http://www.cra-arc.gc.ca/nwsrm/rlss/2009/m06/nr090608b-eng.html>.

⁶ The CRA news release regarding Healing and Assistance Not Dependence Canada is available at: <http://www.cra-arc.gc.ca/nwsrm/rlss/2009/m06/nr090608-eng.html>.

⁷ The CRA news release regarding Jesus El Buen Pastor Spanish Pentecostal Church of Toronto is available at: <http://www.cra-arc.gc.ca/nwsrm/rlss/2009/m08/nr090810-eng.html>.

f) Funds for Canada Foundation

A CRA audit revealed that Funds for Canada Foundation issued nearly \$176.5 million in receipts for cash received through a tax shelter arrangement. However, only 1% of the total tax-receipted amounts were retained by the charity for use in its own programs. Consequently, CRA determined that the Charity had operated for the non-charitable purpose of promoting a tax shelter arrangement and for the private benefit of the tax shelter promoters. The Charity had also failed to meet its Disbursement Quota.⁸

g) New Hope Ministries Institute

A CRA audit concluded that New Hope Ministries Institute had issued receipts totalling in excess of \$100 million for pharmaceuticals received through the Canadian Humanitarian Trust (CHT) tax shelter arrangement. However, the Charity's records failed to substantiate that the values recorded on the receipts were accurate or that the property was distributed for charitable purposes. For its participation and tax-receipting abilities, the Charity received a cash gift from another participating charity of \$1.5 million. Of this amount, the Charity paid \$1.0 million to the tax shelter promoters as fundraising fees and retained only \$500,000 for use in its own activities. As a result, CRA determined that the Charity had operated for the non-charitable purpose of promoting a tax shelter arrangement and for the private benefit of the tax shelter promoters.⁹

h) Alberta Distribution Relief Agency Aid Society International

A CRA audit determined that Alberta Distribution Relief Agency Aid Society International had participated in a tax shelter arrangement where its role was to receive and receipt donations and then transfer 98% of the money as per the promoters' instructions. Consequently, CRA determined that the Charity operated for the non-charitable purpose of promoting a tax shelter arrangement, for the private benefit of the tax shelter promoters and failed to demonstrate control over its international programs.¹⁰

⁸ The CRA news release regarding Funds for Canada Foundation is available at: <http://www.cra-arc.gc.ca/nwsrm/rlss/2009/m08/nr090810b-eng.html>.

⁹ The CRA news release regarding New Hope Ministries Institute is available at: <http://www.cra-arc.gc.ca/nwsrm/rlss/2009/m09/nr090908-eng.html>.

¹⁰ The CRA news release regarding Alberta Distribution Relief Agency Aid Society International is available at: <http://www.cra-arc.gc.ca/nwsrm/rlss/2009/m09/nr090914-eng.html>.

CRA cautions that it is reviewing all tax shelter related donation arrangements and plans to audit every participating charity, promoter and investor. More information about tax shelter donations schemes is available on CRA's website at: <http://www.cra-arc.gc.ca/tx/chrts/dnrs/lrt/2-eng.html>.

3. New Fundraising Guidance

The CRA released its new guidance on fundraising on June 11, 2009. Guidance (CPS-028), Fundraising by Registered Charities provides information for registered charities regarding the requirements for reporting fundraising expenditures and CRA's approach to determining whether a charity's fundraising activities comply with the *Income Tax Act*. The information contained in the new guidance is important for all charities with fundraising activities.

The public and the charitable sector may continue to submit comments on the guidance to CRA during the implementation period. In April 2010, CRA will review the guidance and consider whether revisions are necessary. Comments can be sent by email to consultation-policy-politique@cra-arc.gc.ca or by mail to Charities Directorate, Canada Revenue Agency, Ottawa, Ontario K1A 0L5.

For a discussion of Guidance (CPS-028), Fundraising by Registered Charities see *Charity Law Bulletin* No. 169 available at: <http://www.carters.ca/pub/bulletin/charity/2009/chylb169.htm>.

4. Small and Rural Charities Initiative Update

The Small and Rural Charities Initiative (SARC) began in October 2007 with a series of consultations designed to help CRA better understand the unique needs and challenges of small and rural charities. Small charities are defined as registered charities with total annual revenues under \$100,000 and rural charities are defined as registered charities that have "0" as the second character of their postal code. As a result of these consultations, the report *Small and Rural Charities: Making a Difference for Canadians* (RC4457) was released in June 2008.

CRA reports that since the SARC report was released, 82% or 54 of the report's recommendations have been completed. The Newsletter lists several new features on the CRA website that have been developed for small and rural charities, including a Toolbox for directors, officers and volunteers and a resource manual on maintaining charitable registration.

More information on the SARC initiative is available on the CRA website at: <http://www.cra-arc.gc.ca/tx/chrts/cmmnctn/src/menu-eng.html>.

5. Charities Partnership and Outreach Program Update

In 2005, CRA initiated the Charities Partnership and Outreach Program (“Program”), which was designed to support education and training projects on regulatory compliance for the charitable sector. CRA states that the Program “is designed to provide contribution funding to registered charities and non-profit organizations serving the charitable sector in Canada, to assist in developing and delivering innovative compliance-related education and training projects for charities.”

In response to a previous call for proposals, eight new agreements have been signed under the Program for projects that will be carried out before March 31, 2010. CRA launched a fifth call for proposals in October 2009, and expects to sign agreements for new projects in the spring of 2010. The priorities for these proposals are:

- educating charities on compliant fundraising practices;
- educating charities and/or donors about tax shelter donation arrangements and false receipting; and
- promoting transparency and accountability in the charitable sector.

More information on the Charities Partnership and Outreach Program is available on the CRA website at: <http://www.cra-arc.gc.ca/tx/chrts/fndng/menu-eng.html>.

6. Reminders

The Newsletter contains a few important reminders for charities.

- a. A registered charity must include a copy of the charity’s financial statement with its T3010, *Registered Charity Information Return*. CRA warns that it may revoke the charitable registration of charities that do not include a copy of their financial statements with their annual return. Financial statements should at least consist of a *statement of assets and liabilities* and a *statement of revenue and expenditures*.
- b. Private foundations that hold more than 2% of the issued and outstanding shares of any class of shares of a corporation at any time during the fiscal period must complete and file Form T2081, *Excess Corporate Holdings Worksheet for Private Foundations*. The form is sent to private

foundations with the *Registered Charity Information Return* package. This requirement does not apply to charitable organizations and public foundations.

- c. International Volunteer Day took place on December 5, 2009. In the Newsletter, the Charities Directorate took the opportunity to recognize the valuable contribution volunteers make to Canadian society. CRA noted that according to Statistics Canada, more than 12.5 million Canadians did volunteer work in 2007.

C. CONCLUSION

Registered Charities Newsletter No. 33 contains much useful information for charities, especially with respect to proper receipting practices. All charities, including board members, should give careful consideration to the guidance CRA provides in their newsletters, available at: <http://www.cra-arc.gc.ca/tx/chrts/whtsnw/menu-eng.html>. Other summaries of recent CRA newsletters can be found at www.charitylaw.ca.