

---

**WORLD VISION CANADA  
LAW DAY**

**Mississauga – December 6, 2011**

---

**Tax Receipting and Return of a Gift**

---

**By Terrance S. Carter, B.A., LL.B., TEP, Trade-mark Agent**

tcarter@carters.ca  
1-877-942-0001


© 2011 Carters Professional Corporation

**CARTERS**

**Carters Professional Corporation / Société professionnelle Carters**  
Barristers · Solicitors · Trade-mark Agents / Avocats et agents de marques de commerce  
[www.carters.ca](http://www.carters.ca) [www.charitylaw.ca](http://www.charitylaw.ca) [www.antiterrorismlaw.ca](http://www.antiterrorismlaw.ca)

Ottawa · Toronto  
Mississauga · Orangeville  
Toll Free: 1-877-942-0001

---

 <p><b>CARTERS</b> BARRISTERS SOLICITORS TRADEMARK AGENTS</p>	<p><b>WORLD VISION CANADA LAW DAY</b></p> <p>Mississauga – December 6, 2011</p>
<p><b>Tax Receipting and Return of a Gift</b></p> <p>By Terrance S. Carter, B.A., LL.B., TEP, Trade-mark Agent tcarter@carters.ca 1-877-942-0001</p> <p>© 2011 Carters Professional Corporation</p>	
<p><small>CARTERS PROFESSIONAL CORPORATION TOLL FREE: 1-877-942-0001</small></p> <p><small>Ottawa Toronto Mississauga Orangeville www.carters.ca www.charitylaw.ca www.antiterrorismlaw.ca</small></p>	

---

---

---

---

---

---

---

---

<p><b>OVERVIEW OF PRESENTATION</b></p> <ul style="list-style-type: none"><li>• Tax receipting<ul style="list-style-type: none"><li>– Importance of issuing accurate donation receipts</li><li>– Basic duties of a charity in issuing receipts</li><li>– Split receipting rules</li><li>– When to receipt</li><li>– How to receipt</li><li>– Preparation and other administrative matters</li><li>– What may not be receipted</li></ul></li><li>• Return of a gift</li><li>• How to ensure compliance</li></ul> <p><small>www.charitylaw.ca</small> <small>www.carters.ca</small></p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

---

---

---

---

---

---

---

---

<p style="text-align: right;">3</p> <p><b>A. IMPORTANCE OF ISSUING ACCURATE DONATION RECEIPTS</b></p> <ul style="list-style-type: none"><li>• Donation receipts must be issued in accordance with the requirements of the <i>Income Tax Act</i> (ITA) and Canada Revenue Agency's (CRA) policies</li><li>• If a receipt includes incorrect information:<ul style="list-style-type: none"><li>– Penalty of 5% of the eligible amount on the receipt</li><li>– Increases to 10% penalty for a repeat infraction within 5 years</li></ul></li></ul> <p><small>www.charitylaw.ca</small> <small>www.carters.ca</small></p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

---

---

---

---

---

---

---

---

4

- If a receipt includes false information
  - If the total does not exceed \$25,000 - penalty of 125% of the eligible amount on the receipt
  - If the total exceeds \$25,000 - penalty of 125% and the suspension of tax-receipting privileges
  - May be subject to revocation on repeated contraventions
- As a result of these possible sanctions, it is incumbent upon the board and senior management of a charity to be aware of and comply with the applicable rules on receipting

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

5

**B. BASIC DUTIES OF A CHARITY IN ISSUING RECEIPTS**

- Must only receipt donations that are “gifts”
  - Voluntary transfer of property without consideration
  - Donor must relinquish control of the property
- Comply with split receipting rules
- Include required information on receipts
- Ensure accuracy of information on receipts
- Due diligence in receipting process
- Keep control over the receipts
- Keep adequate books and records in support of receipts issued

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

6

**C. SPLIT RECEIPTING RULES**

(a) Meaning of gift

- Only the “eligible amount” of a gift may be receipted
- CRA adopts the traditional common law definition of a gift
  - The donor must have an intention to give
  - Property is transferred by the donor
  - Transfer of property must be voluntary
  - Gift is made without expectation of return
  - No consideration or benefit can be received by the donor

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

7

- Split receipting rules proposed in 2002
- Although draft amendments to the ITA have not yet been passed, the amendments are treated by CRA as being administratively in effect
- Proposed ITA changes create a new concept of "gift" for tax purposes - permits a donor to receive a benefit, provided that the value of the property donated exceeds the benefit received by the donor

(b) Basic mechanics of split-receipting rules

- Charitable donation receipts must reflect the following:  
Eligible amount of gift = FMV less advantage
- Must have a voluntary transfer of property of "ascertainable value"

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

8

- Donative intent required
  - Must have a clear donative intent by the donor to benefit the charity
  - Donative intent will generally be presumed if the fair market value of the advantage does not exceed 80% of the value of the gift
  - Note that if the value of the advantage to the donor is greater than 80% of the FMV of the gift, then the registered charity cannot issue a tax receipt unless the donor is able to establish to the satisfaction of the Minister that there was an intention to make a gift

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

9

- Deduct Advantage
  - Broad definition of advantage includes:
    - Total value of all property, services, compensation, use or other benefits
    - To which the donor, or a person not dealing at arms length with the donor
    - Has received or obtained or is entitled to receive (either immediately or in the future)
    - As partial consideration of or in gratitude of the gift or that is in any other way related to the gift

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

10

- Advantage must be clearly identified and its value "ascertainable", otherwise there can be no "eligible amount" to receipt
- Advantage can be received prior to, at the same time as, or subsequent to the making of the gift
- Advantage does not require a causal relationship between the making of the gift and the receiving of the advantage, as long as the advantage is in some way related to the gift
- Advantage can be provided to the donor or to a person or partnership not dealing at arm's length with the donor

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

11

- Not necessary that the advantage be received from the charity that received the gift - advantage could be provided by third parties unbeknownst to the charity
- CRA's administrative exemption applies where there is a token advantage of the lesser of 10% of the value of the gift and \$75 (*de minimis* threshold)
- Example - A charity receives a gift of land from a donor who has received some type of benefit from a developer who owns property adjacent to the donated property in exchange for making the gift
- Naming rights are not advantages if there is no prospective economic benefit associated with the naming rights

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

12

- "Deemed fair market value" rules
  - Result of the government's attempt to curtail abusive tax shelter donation schemes involving gifts in kind
  - Do not apply to inventory, real property or an immovable situated in Canada, certified cultural property, publicly traded shares and ecological gifts
  - FMV of donated property will be deemed to be the lesser of
    - FMV of the property
    - Cost (or the adjusted cost base) of the property to the tax-payer immediately before the gift is made

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

13

- Deeming rules applies
  - If the donor acquired the property through a "gifting arrangement" (donation tax shelter scheme)
  - If the donor acquired the property less than 3 years before making the gift
  - If the donor acquired the property less than 10 years before making the gift, and it was reasonable to conclude that when the donor acquired the property, one of the main reasons for the acquisition was to make a gift
  - Also require a "look-back" to see if the property had been acquired within the last 10 years by a non arm's length person and if so then the "deemed fair market value" applies when that non arm's length person acquired the property

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

14

**D. WHEN TO RECEIPT?**

- A charity is not required to receipt donations for gifts it accepts
- A charity may set administrative minimum threshold of gifts before issuing receipts
- The "date of issue" of a receipt is the date on which the receipt was prepared
- There are no requirements that receipts must be issued within a particular time frame, but CRA suggests that they be issued at least by the last day of February following the year during which the gift was made

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

15

**E. CONTENTS OF RECEIPTS**

- Each official receipt must contain at least the following
  - A statement that it is an official receipt for income tax purposes
  - Name and address of the charity as on file with CRA (it should normally reflect its full corporate name)
  - Charity's registration number
  - Serial number of the receipt
  - Place or locality where the receipt was issued
  - Day or year donation was received
  - Day on which the receipt was issued if it differs from the day of donation

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

16

- Full name, including middle initial, and address of the donor
- Amount of the gift
- Value and description of any advantage received by the donor
- Eligible amount of the gift as described above with regards to split receipting
- Signature of an individual authorized by the charity to acknowledge donations
- CRA's name and website address

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

17

- For gifts in kind, include additional information
  - Day on which the donation was received (if not already indicated)
  - Brief description of the property
  - Deemed fair market value of the property in place of amount of gift above
    - Gifts in kind over \$1,000 will require a professional appraisal by a third party
  - Name and address of the appraiser (if property was appraised)
- See CRA sample receipts on next slides for cash gifts and gifts in kind

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

18

**Sample #2 - Cash gift with advantage**

**Official Donation Receipt For Income Tax Purposes**

Receipt # 0001

Charity name _____	Canadian charity address _____	Charity BN/Registration # _____
--------------------	--------------------------------	---------------------------------

Date donation received: \_\_\_\_\_

Donated by: \_\_\_\_\_  
(First name, initial, last name)  
Address: \_\_\_\_\_

Total amount of cash received by charity = \_\_\_\_\_ **A**

Value of advantage = \_\_\_\_\_ **B**  
(cash/fair market value of property or services)

Eligible amount of gift for tax purposes: = \_\_\_\_\_ **C**  
(line A minus line B)

Date receipt issued: \_\_\_\_\_  
Location issued: \_\_\_\_\_  
Authorized signature: \_\_\_\_\_

For information on all registered charities in Canada under the *Income Tax Act* please visit:  
Canada Revenue Agency [www.cra.gc.ca/charities](http://www.cra.gc.ca/charities)

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---





22

- May use a facsimile signature on a receipt, provided that
  - Receipts are distinctively imprinted (usually by a commercial printer) with the name, address, and registration number of the charity
  - Receipts are serially numbered by a printing press or numbering machine
  - All unused receipt forms are kept at the charity's address
- May use computer-generated receipts, provided that
  - The charity ensures that the computer system used to store the receipts is password protected and restricts entry to and modification of donor contribution records

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

23

- Donor records are stored on non-erasable media, such as CD-ROMs or printouts, with copies kept off-site for recovery purposes
- Hard copies of issued receipts can be printed on request
- Records must be kept at a location inside Canada
  - Records for activities outside Canada must be brought back and stored in Canada - records maintained outside Canada but accessible electronically in Canada do not meet CRA's requirement of being kept in Canada
  - CRA may provide permission for electronic records to be maintained outside Canada

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

24

- In that case, if systems are maintained on servers that are located outside of Canada, the servers should be accessed or arrangements should be made for staff to access the servers for the purpose of providing systems electronic records as required by CRA
- Canadian privacy legislation permits the collection, use and disclosure of personal information if proper arrangements are first made for its protection in Canada in accordance with applicable legislation
- However, the *Patriot Act* provides U.S. authorities with the means to access personal information in U.S. jurisdiction (e.g. court orders may be obtained to access personal information held in the U.S.), so should exercise caution (need to notify donors)

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

25

- May email donation receipts to donors, provided that
  - Receipts should be in a read-only or non-editable format
  - Receipts should be protected from hackers through the use of appropriate software
  - Receipts should be encrypted and signed with an electronic signature
  - Use of secure electronic signature should be kept under the control of a responsible individual authorized by the charity
  - Copies of email-issued receipts must be retained by the charity

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

26

- Must reflect true donor on the receipt
  - This is a question of fact
  - In general, where a charitable donation is provided by way of a cheque on an account held jointly by spouses (i.e., both names of the spouses appear on the cheque), then the charity will issue the official donation receipt in either or both names, regardless of how the cheque is endorsed

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

27

- If a charity is asked to issue a receipt in another person's name and there is no obvious indication as to the true donor, the charity should request a written declaration or letter from the party providing the donation as to the identity of the true donor, in order to allow the charity to ensure that the name it records on the receipt is that of the true donor
- Duplicate copies of receipts must be retained for at least two years from the end of the last calendar year to which the receipts relate
- However, it is prudent to retain duplicate receipts if possible (e.g. in the event of a future CRA audit and/or investigation)

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

28

**G. WHAT MAY NOT BE RECEIPTED?**

- Advantage received by the donor (value of advantage may not be receipted)
- Advantage exceeds 80% of the gift unless proven donative intent
- Unascertainable value of property
- Unascertainable value of advantage (which means that no receipt could be issued for the actual gift)
- Gift pledges
- Donation of services

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

29

- Purchase of an item or service by the charity
- Sponsorship fees where the sponsor receives something in exchange for the donation made, such as advertising
- Loans
- Free use of a property
- Court ordered donations
- Gifts from other charities or qualified donees (as it would serve no purpose)
- Fundraising proceeds, e.g., dinner tickets, concert admission, bake sale, etc. for the value of the advantage
- Anonymous gifts (unless CRA's requirements are followed, e.g. donor establishes an agency or trust agreement to make the anonymous gift)

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---

30

**H. RETURN OF A GIFT**

- Generally, once a gift is completed, it is the property of the charity and cannot be returned unless the original gift has failed
- A gift will be considered to have failed if
  - The applicable restricted term becomes impossible or impractical to fulfill with no gift over and a cy-prés court order is not available,
  - The applicable condition precedent or condition subsequent is unfulfilled, or
  - Limited interest in a determinable gift comes to an end,but need to obtain legal advice in this regard

www.charitylaw.ca www.carters.ca

---

---

---

---

---

---

---

---



