

2010-0380811E5 -- Donation to a U.S. charity

Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA.

Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: Whether a Canadian resident corporation (“Canco”) would receive the same tax relief in Canada for a charitable donation made to a U.S. charity as it would have received had it donated to a Canadian registered charity.

POSITION: General comments given.

REASONS: If the U.S. charity is exempt under section 501(c)(3) of the U.S. Internal Revenue Code, then in accordance with paragraph 7 of Article XXI of the current Canada-U.S. Tax Convention, Canco may claim a deduction for the eligible amount of the gift to the U.S. charity, not to exceed 75 per cent of Canco's income from U.S. sources.

XXXXXXXXXX

2010-038081

T. Elsey

November 4, 2010

Dear XXXXXXXXXXXX:

Re: Gifts to U.S. Charities

We are writing in response to your email dated May 20, 2010, addressed to the Department of Finance regarding the Canadian tax relief that would be available to a Canadian resident corporation that makes a donation to a United States (“U.S.”) based charity. A copy of your email was forwarded to us for reply.

Written confirmation of the tax implications inherent in particular transactions may only be provided by this Directorate where the transactions are proposed and are the subject matter of an advance income tax ruling submitted in the manner set out in Information Circular 70-6R5, Advance Income Tax Rulings, dated May 17, 2002. This Information Circular and other Canada Revenue Agency (“CRA”) publications can be accessed on the Internet at www.cra.gc.ca. Should your situation involve a specific taxpayer and a completed transaction, you should submit all relevant facts and documentation to the appropriate Tax Services Office for their views. We are, however, prepared to offer the following general comments on the relevant provisions of the Act, which may be of assistance.

Our Comments

Subsection 110.1(1) of the Income Tax Act (the “Act”) permits a corporation to claim a deduction, within specified limits, in computing taxable income in respect of an eligible amount of a gift made by the corporation to a “qualified donee”, if supported by an official receipt. Generally, donors can claim gifts in the year of the gift or in any of the five years immediately following, up to a limit of 75% of net income.

A qualified donee, as defined in subsection 149.1(1) of the Act, includes a registered charity, which is defined in subsection 248(1) of the Act as a charitable organization, private foundation or public foundation that is resident in Canada and was either created or established in Canada that has applied to the Minister in prescribed form for registration and that is at that time registered as a charitable organization, private foundation or public foundation. A qualified donee also includes a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift in the year or in the 12 months immediately preceding that year. A list

of such charitable organizations is available in IC84-3R [Information Circular 84-3R6]—Attachment. According to IC84-3R [Information Circular 84-3R]—Attachment, revised September 9, 2010, Her Majesty in right of Canada has not made a gift to your organization in recent years. Therefore, it would not be a qualified donee for purposes of the Act.

The Canada-U.S. Tax Convention (the “Treaty”) also provides limited tax relief with respect to gifts made by Canadian residents to U.S. organizations. Pursuant to paragraph 7 of Article XXI of the Treaty, gifts made by a resident of Canada to an organization that is resident in the U.S. that is generally exempt from U.S. tax, and that could qualify in Canada as a registered charity if it were created or established and resident in Canada, will be treated as gifts to a registered charity. Generally, a corporation may claim a deduction for the eligible amount of such gifts up to 75 per cent of its income from U.S. sources. The CRA accepts that any organization that is exempt under section 501(c)(3) of the U.S. Internal Revenue Code will qualify for the purposes of paragraph 7 of Article XXI of the Treaty.

Therefore, if your organization is exempt under section 501(c)(3) of the U.S. Internal Revenue Code, a Canadian resident corporation may claim a deduction for the eligible amount of a gift to your organization, not to exceed 75 per cent of its income from U.S. sources.

For further information, please refer to Information Circular IC84-3R6 [Information Circular 84-3R6], Gifts to Certain Charitable Organizations Outside Canada.

While we trust that our comments will be of assistance to you, they are given in accordance with the practice referred to in paragraph 22 of IC 70-6R5 [Information Circular 70-6R5] and are not binding on the CRA in respect of any particular situation.

Yours truly,

Jenie Leigh

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Section Manager

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Income Tax Rulings Directorate

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