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SECTION 149(1)(c), 149.1(1)

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PRINCIPAL ISSUES: Does the Park qualify as a municipal or public body performing a function of government for purposes of 149(1)(c) of the Act and the definition of a qualified donee in subsection 149.1(1).

POSITION: Based on information provided, yes.

REASONS: See below.

June 18, 2015

Charities Directorate IT Rulings Directorate

Policy, Planning and Legislation R. Meers

613-670-9037

Attention: Vanessa Modeste

2015-058493

Public Body Performing a Function of Government

This is in response to your email dated April 30, 2015 asking for our comments on whether the XXXXXXXXXXXX (the "Authority") is considered to be a "municipal or public body performing a function of government" in Canada for the purpose of paragraph 149(1)(c) of the Income Tax Act (the "Act") and therefore able to issue donation receipts as a qualified donee as defined in subparagraph 149.1(1)(a)(iii) of the Act. In particular, you asked us to address the issue of whether the scale and purpose of the services provided impact the decision as to whether the Authority is performing a function of government.

FACTS

The following is our understanding of the facts:

* The XXXXXXXXXXXX ("XXXXXXXXXXXX Parks") were established in the XXXXXXXXXXXXXs to encourage an appreciation and use of natural and recreational resources within XXXXXXXXXXXX

communities.

- * A XXXXXXXXXXXX Park is constituted under the XXXXXXXXXXXX.
- * XXXXXXXXXXXX gives authority to the XXXXXXXXXXXX Park to make park bylaws that provide for the health, protection, safety and general welfare of persons within the XXXXXXXXXXXX Park, including appointing a constable for the purpose of enforcing the park bylaws. The XXXXXXXXXXXX Park is also responsible for providing fire protection and the removal of waste.
- * XXXXXXXXXXXX requires the XXXXXXXXXXXX Park to submit audited annual financial statements to the represented municipalities and, on request, to the Province of XXXXXXXXXXXX.
- * XXXXXXXXXXXX's Municipalities Act addresses taxation in XXXXXXXXXXXX Parks. It provides that the XXXXXXXXXXXX Park and the council of a municipality shall authorize the levy of a uniform rate applicable to the entire XXXXXXXXXXXX Park including land, improvements or land and improvements (for example on long-term campers). The municipality is responsible to assess and collect the tax within the XXXXXXXXXXXX Park and then forward payment to the park along with any other amounts agreed to with the council of the municipality.
- * While the Authority possesses the ability to tax, there are currently no cottages or residences in the park and as a result no tax is levied.
- * The Authority was constituted under the XXXXXXXXXXXX. The Authority has the power as set out in the XXXXXXXXXXXX and regulations to pass bylaws within the Authority's boundaries.
- * The Authority has passed bylaws with respect to park entry, facility use, rules of camping, personal conduct, vehicles and traffic, animals, swimming and fishing, boats and boating, buildings and structures, firearms and general prohibitions amongst others.
- * The Authority currently has XXXXXXXXXXXX members on its board. The members are appointed by elected officials of the participating municipalities. The XXXXXXXXXXXX members are appointed by the Authority and have no voting rights.

COMMENTS

The definition of a qualified donee in subsection 149.1(1) of the Act, for purposes of determining eligibility to issue charitable donation receipts, includes a "municipal or public body performing a function of government in Canada" that is registered. We are of the view that in order to be considered a "municipal or public body performing a function of government in Canada" two conditions must be met. The first condition is that the organization must be a municipal or public body and the second condition is that it must perform a function of government.

There is no definition of a "municipal or public body performing a function of government in Canada" in the Act. Therefore, whether any organization is a municipal or public body performing a function of government must be determined on a case-by-case basis.

The term "public body" is also not defined in the Act. A public body is typically a body that acquires both its existence and its authority from a statute enacted by a legislature, and whose functions and transactions are for the benefit of, and affect the whole community of, persons to whom its authority extends. Generally, a public body has a governance purpose and is accountable to those governed, regulated or represented by it.

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In our view, if a public body is incorporated, the federal government or a provincial or territorial government or the “public” that the corporation is serving or representing should have some specific control over the actions and operation of the corporation and the corporation should be accountable to that government and that public.

The Authority was constituted by a statute, the XXXXXXXXXXXX. The Authority’s voting members are all appointed by elected officials. The Authority is accountable to the public, the Province of XXXXXXXXXXXX and the municipalities from which it was created.

The term “function of government” is also not defined in the Act and reference must be made to the ordinary usage of this term. Historically, we have required that to be performing a function of government an entity must have the ability and powers to govern, tax, pass by-laws and/or provide municipal- or provincial-type services to its members or citizens.

We have accepted that providing a range of municipal-type services or providing a key service traditionally offered by the provinces or territories such as social services, oversight of the environment, health services, and education is generally considered to constitute performing a function of government.

The Authority has passed several bylaws and has the ability to impose penalties, in this case fines, to those in breach of the bylaws. While there is no indication that fines have been assessed, the Authority has passed a bylaw allowing them to assess the fines if necessary.

In addition to passing bylaws, the Authority has indicated that they are responsible for fire protection and water testing. The Authority has also negotiated contracts with respect to waste removal and septic removal. You have questioned whether the scale of these services as well as their purpose should impact the determination as to whether the Authority is a public body performing a function of government. In assessing whether the applicant is providing municipal type services we must be mindful of its geographic area. In this case, the applicant is a XXXXXXXXXXXX Park with approximately XXXXXXXXXXXX camp sites. The costs associated with the Authority providing its municipal type services will be significantly less than a traditional municipality. In the end, the Authority is responsible for, and is providing, the services.

You have also expressed concern with the fact that the Authority’s constitution indicates that there are now XXXXXXXXXXXX participating municipalities of which only XXXXXXXXXXXX are part of the XXXXXXXXXXXX municipalities included on the original order in council creating the Authority. The XXXXXXXXXXXX does provide that, if the minister is satisfied that it is necessary or appropriate to do so in the public interest, the minister may, by order, alter the boundaries of a XXXXXXXXXXXX park and amend or alter the membership of a XXXXXXXXXXXX park authority responsible for the administration of the XXXXXXXXXXXX park. Every order must be published in the Gazette. We should ask for a copy of the order.

CONCLUSION

Based on the criteria discussed above, pending receipt of the order referenced above, it is our view that the Authority is a municipal or public body performing a function of government in Canada for the purposes of paragraph 149(1)(c) of the Act and the definition of a “qualified donee” in subsection 149.1(1) of the Act.

We trust that these comments will be of assistance.

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Roger Filion, CPA, CA

Manager

Non-Profit Organizations and Aboriginal Issues

Business and Employment Division

Income Tax Rulings Directorate

Legislative Policy and Regulatory Affairs Branch
