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SUBJECT Interpretation of Gift

SECTION 118.1(2), Reg 3501

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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: 1. Whether a gift is voluntary? 2. Whether a qualified donee is required to issue a donation receipt?

POSITION: 1. General comments provided. 2. No.

REASONS: 1. Question of fact. 2. No provision in the Act requires qualified donees to issue donation receipts.

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2012-046997

Sylvie Danis

(613) 957-3496

January 17, 2013

Dear XXXXXXXXXXXX:

Re: Interpretation of Gift

This is in response to your letters dated October 31, 2012 and December 30, 2012 wherein you requested clarification of the rules relating to the gifting of property. You asked us whether a transfer of a property would be considered voluntary if one had to go to Court to prove ownership of the property prior to the making of a gift and whether a registered charity could be held accountable for not providing a donation receipt. You've also asked us other general questions with respect to the naming of beneficiaries and conflict of interest issues to which we cannot comment since the Canada Revenue Agency ("CRA") does not provide legal advice. Finally, you've outlined concerns in your December 30, 2012 letter with respect to a particular registered charity that you believe is making false statements that are not of an income tax nature.

Our comments

The term "gift" is not defined in the Income Tax Act (the "Act") and therefore assumes its common law meaning. Under common law, a bona fide gift is a voluntary transfer of property from a donor, who must freely dispose of his or her property, to a donee, who receives the property given with no right, privilege, material benefit or advantage conferred on the donor or any person designated by the donor in exchange for the donor making the gift. Proposed subsections 248(30) to (32) of the Act allow for the recognition of a gift for tax purposes in certain situations where a donor, or a person or partnership who does not deal at arm's length with the donor, receives consideration or other advantages for property transferred. Pursuant to proposed subsection 248(31) of the Act, the eligible amount of a gift is the excess of the fair market value of the property transferred to a qualified donee over the amount of the advantage provided. A qualified donee is defined in subsection 149.1(1) of the Act and includes municipalities in Canada registered by the Minister of National Revenue and registered charities.

Whether a transfer of property has been made voluntarily is a question of fact. In order for a transfer to be considered as voluntary there must be no obligation to make such a transfer. In our view, the act of going to court to establish ownership of a property prior to making a gift would not generally, in and by itself, create an obligation to make a gift. Whether any other agreement or settlement decided in the court process could create an obligation to transfer a property is a question of fact which must be considered on a case by case basis.

Subsection 118.1(2) of the Act requires a receipt issued in prescribed form in order for an individual to claim a donation tax credit. However there are no provisions in the Act requiring a qualified donee to issue a donation receipt. Section 3501 of the Income Tax Regulations provides that the official receipt in respect of a gift issued by a qualified donee must contain certain information which includes, for a gift of property other than cash, "the amount that is the fair market value of the property at the time that the gift was made". Consequently, a qualified donee cannot issue a donation receipt where it cannot reasonably determine the value of the gift.

The CRA administers a system to register charities and to promote compliance with the income tax legislation and regulations relating to charities. Registration provides charities with exemption from income tax and authorizes charities to issue official donation receipts for income tax purposes. While the CRA can impose penalties or sanctions on charities where they do not comply with the Act, the CRA has no jurisdiction with respect to a charity over matters that are outside the scope of the Act. If you suspect that a charity is involved in fraudulent activities, please contact the Canadian Anti-Fraud Centre, by going to www.antifraudcentre.ca or calling 1-888-495-8501. Matters relating to government funding should be directed to the appropriate Ministry or Department responsible for issuing grants.

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We trust the above comments are of assistance.

Yours truly,

Jenie Leigh
for Director
Financial Industries and Trusts Division
Income Tax Rulings Directorate
Legislative Policy and Regulatory Affairs Branch