

LANGIND E
DOCNUM 2011-0405881E5
AUTHOR Danis, Sylvie
DESCKEY 25
RATEKEY 2
REFDATE 110601
SUBJECT Qualified donee for receipting purposes
SECTION 118.1(1); 110.1(1)
SECTION
SECTION
SECTION
\$\$\$\$

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 donation receipt can be issued by a public body performing a function of government in Canada where the donor directs the gift to a specific program of the public body?

POSITION: Yes, in this particular situation.

REASONS: In our view, in this particular situation the public body performing a function of government in Canada retains sufficient discretion over the gifts received.

XXXXXXXXXX

2011-040588
Sylvie Danis
(613) 957-3496

June 1, 2011

Dear XXXXXXXXXXXX :

Re: Gift to a public body performing a function of government in Canada

This is in response to your email dated May 9, 2011, wherein you requested confirmation of the tax implications with respect to a situation where a taxpayer makes a directed gift to an entity that is a public body performing a function of government in Canada as described in 149(1)(c) of the Income Tax Act (the "Act").

Written confirmation of the tax implications inherent in particular transactions is given by this Directorate only where the transactions are proposed and are the subject matter of an advance income tax ruling request submitted in the manner set out in Information Circular 70-6R5, Advance Income Tax Rulings, dated May 17, 2002. Where the particular transactions are completed, the inquiry should be addressed to the relevant Tax Services Office. However, we can offer the following general comments that may be of assistance.

We understand that the XXXXXXXXXXXX (the "Council") is considered a public body performing a function of government in Canada pursuant to paragraph 149(1)(c) of the Act. The Council is contemplating assisting the XXXXXXXXXXXX with its fundraising efforts. The XXXXXXXXXXXX is not incorporated and does not legally form part of the Council. However, the Council passed a resolution on XXXXXXXXXXXX stating that:

XXXXXXXXXX

The XXXXXXXXXXXX has been supported through Council funding since XXXXXXXXXXXX to cover utility expenses (such as telephone and electricity) incurred during operation. The current Contribution Agreement from the Council includes rent-free location in a building owned by the Council. The XXXXXXXXXXXX is required to regularly report to the Council via updated financial statements (income statement, balance sheet, cash flow statement). In addition, the XXXXXXXXXXXX Coordinator is required to give regular updates to the Chief and Council.

The Council is proposing to increase its financial support to the XXXXXXXXXXXX by undertaking the following steps:

- * The Council would draft new policies with respect to gifts received in support of the XXXXXXXXXXXX .
- * The Council would approve larger special projects for funding for the XXXXXXXXXXXX . Smaller amount might be approved by Council staff. Donors would direct their gifts to these projects.
- * The Council would accept gifts for XXXXXXXXXXXX projects and issue donation receipts to the donors. The Council would administer funds received by directly paying the costs for the approved projects and account for the donations and related expenditures as part of its own financial statements.

Section 118.1 of the Act provides that individual taxpayers may claim a credit against taxes payable, within specified limits, for an eligible amount of a gift made to a "qualified donee", if supported by official receipts. Section 110.1 of 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". A public body performing a function of government in Canada is a "qualified donee" for purposes of the Act by virtue of subsection 149.1(1) of the Act and for purposes of the proposed amendments to the definition of "total charitable gifts" in subsection 118.1(1) of the Act and to paragraph 110.1(1)(a) of the Act. Therefore, when a public body performing a function of government in Canada receives a gift from an individual or corporation, the public body may issue an official donation receipt for the eligible amount of the gift which will permit an individual donor to claim a tax credit or a corporate donor to claim a deduction in computing taxable income.

Under the proposed split-receipting rules, the eligible amount of a gift is the amount by which the fair market value of the property that is the subject of the gift exceeds the amount of the advantage in respect of the gift. The amount of the advantage in respect of a gift is generally the fair market value, at the time the gift is made, of any property, service, compensation or other benefit received, or expected to be received in the future, by the donor, or a person or partnership who does not deal at arm's length with the donor, as consideration for, or in gratitude for the gift.

It is our general view that donations can be receipted by a qualified donee such as a public body performing a function of government in Canada on behalf of an organization which operates under its authority provided the public body retains discretion as to how the donated funds are to be spent. If the public body performing a function of government in Canada is merely collecting funds from donors on behalf of the organization and the latter is legally or otherwise entitled to the property so transferred, the public body performing a function of government in Canada is not in receipt of a gift and cannot issue an official donation receipt. In that case, the public body is merely acting as a conduit for the other organization and it is our view that payments received on behalf of the organization could not qualify as gifts to a public body performing a function of government in Canada for purposes of subsections 118.1(1) and 110.1(1) of the Act.

It is a question of fact whether a gift has been made to a qualified donee in a particular situation. In the situation described, where the Council supports the XXXXXXXXXX fundraising efforts in the manner described above, it is our view that the Council may issue an official donation receipt for the eligible amount of the gift received which will permit an individual donor to claim a tax credit or a corporate donor to claim a deduction in computing taxable income.

We trust the above comments are of assistance. However, as stated in paragraph 22 of Information Circular 70-6R5, the above comments do not constitute an income tax ruling and accordingly are not binding on the Canada Revenue Agency in respect of any particular situation.

Yours truly,

Jenie Leigh
for Director
Financial Sector and Exempt Entities Division
Income Tax Rulings Directorate
Legislative Policy and Regulatory Affairs Branch