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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. How are certain payments to members taxed and what are the reporting requirements of the organization in respect of the payments?  
2. Do the payments disqualify the organization from being exempt from tax under 149(1)(1) of the Act?  
3. Should payments made to non-residents or Canadian students outside Canada be treated differently?

**POSITION:** 1. The payments could be bursaries or gifts, but are likely social assistance payments pursuant to 56(1)(u) of the Act.  
2. Yes, possibly.  
3. Reference to relevant guide.

**REASONS:** 1. Payments are made on the basis of a means, needs or income test.  
2. Income cannot be made available for the benefit of members.  
3. Canadian residents attending school in another country could still be resident in Canada.

XXXXXXXXXX 2010-038916  
P. Burnley  
(613) 957-2100

March 30, 2011

Dear XXXXXXXXXXXX :

Re: Non-Profit Organization - Assistance to Members

This is in response to your email of December 1, 2010, requesting our comments with respect to the reporting requirements under the Income Tax Act (the "Act") for payments made to individuals by a society (the "Society") and the effect of these payments on the tax status of the Society. You have stated that the Society is exempt from tax under paragraph 149(1)(1) of the Act and that the payments are made to certain student members of the Society through the XXXXXXXXXX (the "Project").

The situation outlined in your letter appears to relate to a factual one, involving specific taxpayers. 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". This Information Circular and other Canada Revenue Agency ("CRA") publications can be accessed on our website at <http://www.cra-arc.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 ("TSO") for their views. Although we cannot comment on your specific situation, we are able to provide the following general comments, which may be of assistance.

You have provided information about the Project that indicates that it is designed to assist members in financial difficulty with child care expenses. The potential recipients must apply for the assistance and provide proof of membership, income levels and child care expenses. Applications are approved by a committee. Recipients may be required to repay assistance received if they make false statements or do not provide the required information.

Based on your description of the payments made through the Project, it appears that they could be considered to be gifts, bursaries or social assistance payments to the recipient. Gifts or windfalls are not taxed under the Act. Non-taxable windfalls are described in Interpretation Bulletin IT-334R2, "Miscellaneous Receipts". Among the characteristics used to identify a windfall are (1) that the recipient has made no organized effort to receive the payment and (2) that the recipient has neither sought after nor solicited the payment. For an amount to be received as a gift, it must be a voluntary

transfer of real or personal property without consideration (or expectation of return) or conditions attached. A requirement to repay the amount received under certain circumstances may indicate that the amount is not a gift.

A bursary, net of any scholarship exemption available under subsection 56(3) of the Act, is included in income pursuant to paragraph 56(1)(n) of the Act. Very generally, a full scholarship exemption may be available to a student if the student is eligible to claim the education tax credit. To qualify as a bursary, the primary purpose of the payment must be to assist the individual in furthering his or her education. A bursary is broad enough to encompass almost any form of financial assistance paid to a student to enable a student to pursue his or her education, including a payment based on the means or needs of the student. This can include assistance for dependant care. Bursaries must be reported on a T4A slip pursuant to paragraph 200(2)(a) of the Income Tax Regulations (the "Regulations"). T4A slips are required even when bursaries are non-taxable due to the exemption provided under subsection 56(3). However, the CRA has a policy that a T4A slip is not required if the total payments to an individual do not exceed \$500. There is no requirement to withhold tax on payments of bursaries.

In general, social assistance payments are made on the basis of a means, needs or income test and are included in income under paragraph 56(1)(u) of the Act to the extent that they are not otherwise included in the income of the taxpayer, or the taxpayer's spouse or common-law partner. The amount included in income under paragraph 56(1)(u) is then deducted when calculating taxable income pursuant to paragraph 110(1)(f) of the Act. You have stated that the primary purpose of the Project is to help parents in need of financial assistance for child care expenses and that three tiers of funding are available based on the level of financial hardship. Under the requirements of the Project, an applicant must provide proof of income and estimates of child care expenses. In our view, the payments made through the Project are most likely social assistance payments.

Pursuant to subsection 233(1) of the Regulations, payers of amounts described in paragraph 56(1)(u) of the Act must file a T5007 information return and report the amounts on T5007 slips. However, subsection 233(2) of the Regulations lists certain exceptions from these reporting requirements. Payments that do not have to be reported on a T5007 include:

- a) social assistance payments in respect of medical expenses incurred by or on behalf of the recipient;
- b) social assistance payments in respect of child care expenses incurred by or on behalf of the payee or a person related to the recipient (see IT-495R3, "Child Care Expenses", for the meaning of child care expenses);
- c) social assistance payments in respect of job training or counselling of the recipient or a person related to the recipient;
- d) a social assistance payment paid in a particular year as part of a series of payments whose total does not exceed \$500;
- e) a social assistance payment which is not part of a series of payments.

It is the practice of the CRA not to require items excluded from the T5007 reporting requirements to be included in a recipient's net income, so that these items will not affect the calculation of income-tested benefits.

You have asked how the payments should be treated if they are paid to "non-resident Canadians". It is not clear if the recipients you are referring to are Canadian students attending university outside Canada, or non-resident students attending university in Canada. A student normally resident in Canada who is attending an educational institution outside Canada may continue to be resident in Canada for tax purposes ("factual residence"). Information to assist in determining whether a student is resident in Canada is available on our website in publications T4166, "Are you an international student studying in Canada?" and RC192, "Information for Students - Educational Institutions Outside Canada". Payments to members who are factually resident in Canada will be treated in the same manner as payments to other members who are resident in Canada. While we have not considered the matter in detail, it appears likely that the payments to members who are not resident in Canada for tax purposes are not taxable in Canada. If you require more specific information on this point, please do not hesitate to write to us.

You have also asked if the payments from the Project to members could affect the Society's exemption from tax pursuant to

paragraph 149(1)(1) of the Act. Paragraph 149(1)(1) provides an exemption from income tax for the income of

"...a club, society or association that, in the opinion of the Minister, was not a charity within the meaning assigned by subsection 149.1(1) and that was organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof...;"

Very generally, then, in order for an organization to be exempt from tax under paragraph 149(1)(1) of the Act, the organization must not be a charity, must be organized and operated for a purpose other than profit, and its income must not be payable to or made available for the benefit of its members. Whether the Society qualifies for this exemption is a question of fact that is dependent on its organization and operation. If the Society is making income available for the personal benefit of members under the Project, it will not qualify for the exemption from tax available under paragraph 149(1)(1). Additionally, if the Society has a profit purpose, it will not meet the requirement of being operated exclusively for "any other purpose except profit". However, incidental profits earned by the Society that are connected to its not-for-profit activities will not, in and of themselves, disqualify the Society from the exemption available under paragraph 149(1)(1).

We trust that these comments will be of assistance.

Yours truly,

Eliza Erskine  
Manager  
Non-Profit Organizations and Aboriginal Issues Section  
Financial Sector and Exempt Entities Division  
Income Tax Rulings Directorate  
Legislative Policy and Regulatory Affairs Branch