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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: Whether a donation receipt can be issued by a charity to an individual who has agreed to donate wines and incur expenses in hosting a fundraising dinner on behalf of the charity, and to the individuals who purchase the right to attend the fundraising dinner.

POSITION: Question of fact. Provided general comments.

REASONS: Legislation and draft legislation.

XXXXXXXXXX

2010-039151
Robert Demeter, CGA
(613) 948-5274

May 23, 2012

Dear XXXXXXXXXXXX:

Re: Split-receipting for fundraising events

This is in reply to your email of December 29, 2010, in which you requested our comments on the application of the proposed split-receipting rules to a fundraising dinner. We also acknowledge the information provided during our telephone conversations (XXXXXXXXXX/Demeter) in connection with your request.

You have described a hypothetical situation where an individual ("Ms. A"), who does not carry on a business of any kind, will enter into an arrangement with a registered charity to host a dinner as a fundraising event for the charity's benefit. Pursuant to the arrangement, Ms. A will host the fundraising event in her home on behalf of the charity by acquiring catering services from a third-party contractor who deals at arm's length with both Ms. A and the charity. As part of her arrangement with the charity, Ms. A will also donate a selection of fine wines for consumption by the dinner participants. Ms. A has requested a donation receipt in respect of the wines that she will donate and the catering service expenses that she will incur.

The right to participate in the fundraising dinner to be hosted by Ms. A will be acquired by prospective participants by either of two means. Under one scenario, Ms. A will collect a pre-determined amount on behalf of the charity from each of the dinner participants. Under a second scenario, each right to participate in the fundraising dinner will be sold at an auction held for the charity's benefit.

Based on this information, you have requested guidance in respect of the issuance of an official donation receipt to Ms. A and to any individual who purchased the right to attend the fundraising dinner.

In regards to the situations described above, section 118.1 of the Income Tax Act ("the Act") provides that an individual taxpayer may claim a credit against taxes payable, within specified limits, for a gift made to a qualified donee, which includes a registered charity, if supported by an official donation receipt.

The term "gift" is not defined in the Act, and as such, generally assumes its common law meaning for tax purposes. 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. By contrast to the common law meaning, proposed amendments

to the Act provide for “split-receipting”, which may, in certain circumstances, allow a transfer of property to qualify as a gift for tax purposes where a donor has received consideration for property transferred to a qualified donee after December 20, 2002.

Under the proposed split-receipting provisions, it is the eligible amount of a gift that is relevant in determining an individual donor’s “total charitable gifts” that qualify for a tax credit. The eligible amount of a gift is generally the amount by which the fair market value (“FMV”) of the property that is the subject of the gift exceeds the amount of the advantage, if any, in respect of the gift. In addition, the proposed amendments provide that the amount of the advantage in respect of a gift is generally equal to the FMV of any property, service, compensation or other benefits 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, that is consideration or in gratitude for, or in any other way related to the gift. Also, when determining the eligible amount of a gift, an advantage received by a taxpayer in respect of a gift will generally not, in and by itself, disqualify the transfer from being a gift if the amount of the advantage does not exceed 80% of the FMV of the property transferred to the qualified donee.

With regard to a gift in kind, a charity may issue a receipt in respect of the eligible amount of the gift. However, in certain circumstances, when determining the eligible amount of a gift, the FMV of the gifted property may be deemed by proposed subsection 248(35) of the Act to be the lesser of the FMV of the property otherwise determined and its cost to the donor, or in the case of a capital property, its adjusted cost base to the donor, or in the case of a life insurance policy, its adjusted cost basis to the donor. For example, this may arise where a taxpayer acquires the property that is the subject of the gift less than three years before the day that the gift is made to a qualified donee. It is a question of fact whether this deeming rule would apply to a particular gift, such as the donation of wines in the situation described. We also note that paragraph 69(1)(b) of the Act provides that a taxpayer who has disposed of anything to any person by way of gift inter vivos is considered to have received “proceeds of disposition” equal to the FMV of the gifted property, as adjusted by proposed subsection 248(35) of the Act where applicable. If the proceeds of disposition exceed the cost of the property, the donor may realize a gain which may be required to be included in computing income for tax purposes.

The question of whether a registered charity can issue an official donation receipt to an individual who incurs expenses on behalf of the charity is a factual determination that will depend on the terms and conditions of the arrangement and dealings between the individual and the charity. Generally, a charity can reimburse an individual for expenses incurred on behalf of the charity and later accept the return of the payment as a gift if

the amount is returned voluntarily. Also, as set out in Policy Commentary CPC-012, provided a volunteer has a right to reimbursement for expenses incurred on behalf of a charity, the charity may treat the right to reimbursement as a gift and issue a receipt. Therefore, in a case where expenses are incurred by an individual that hosts a fundraising dinner for the benefit of a charity, the host must have a right to be reimbursed under the terms of an agreement with the charity if the charity is to issue a receipt to the host in lieu of reimbursing the expenses. CPC-012 is available on the Canada Revenue Agency (“CRA”) website at <http://www.cra-arc.gc.ca>. For more information on CRA’s policy regarding expenses incurred by volunteers on behalf of registered charities, please refer to Policy Commentary CPC-025 on the CRA website.

In regards to the receipting obligations of a registered charity in respect of an individual’s purchase of the right to attend a fundraising dinner for the benefit of the charity, the CRA has provided general guidance on the application of the proposed split-receipting provisions in Income Tax Technical News (ITTN) No. 26 dated December 24, 2002. In particular, these guidelines include a discussion of receipting issues in respect of fundraising dinners and charitable auctions, which you might find useful. Consistent with the comments in ITTN No. 26, where a participant purchases the right to attend a fundraising dinner for the benefit of a charity from the host of the dinner who is, pursuant to an agreement, acting on behalf of the charity, it is the value of a comparable meal provided by a comparable facility that should be considered in determining the amount of advantage in respect of the gift in order to arrive at the eligible amount of the gift.

By contrast, where a participant purchases the right to attend a fundraising dinner for the benefit of a registered charity at a charity auction, the registered charity may determine that an eligible amount of a gift is present to the extent that the amount bid by the taxpayer is in excess of the value of the right to attend the fundraising dinner sold at the auction, provided that the value is clearly otherwise ascertainable and made known to all bidders in advance. For this purpose, it would seem reasonable for the charity to consider the value of a comparable meal provided by a comparable facility in order to determine the value of the right to attend a fundraising dinner being sold at auction and to arrive at the eligible amount of the gift.

Finally, we note that it is the responsibility of the charity to support that the amount reported on the donation receipt reflects the FMV of the property donated. Further, the charity is responsible to determine the value of the advantage provided in respect of a gift. As noted in ITTN No.26, if the value of an advantage cannot be reasonably ascertained, no charitable tax deduction or credit will be allowed. In this regard, the donee will be required to identify the advantage and the amount thereof on any receipt

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provided to the donor in accordance with the proposed amendments to section 3501 of the Income Tax Regulations.

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 CRA in respect of any particular situation.

Yours truly,

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