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PRINCIPAL ISSUES: Whether improvement districts, particularly in British Columbia, would be considered municipal or public bodies performing a function of government for the purpose of paragraph 149(1)(c) and therefore able to issue donation receipts as a qualified donee.

POSITION: Yes.

REASONS: See Below

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Charities Directorate
7th Floor, Place de Ville, Tower A
320 Queen Street
Ottawa, ON, K1A 0L5
(613) 957-9229
Attention: Ann Rénoüs
Policy, Planning and Legislation Division

CRA HEADQUARTERS
Income Tax Rulings
Directorate
Lori Merrigan

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Advice to Charities on 149(1)(c) - Improvement Districts

This is in response to your e-mail request of September 23, 2013, for advice concerning the interpretation of paragraph 149(1)(c) of the Income Tax Act (the "Act"). In this letter, unless otherwise expressly stated, all statutory references are to the provisions of the Act.

ISSUE

Whether improvement districts, particularly in the province of British Columbia, could be considered municipal or public bodies performing a function of government for the purpose of paragraph 149(1)(c) and therefore able to issue donation receipts as a qualified donee as defined in subparagraph 149.1(1)(a)(iii).

LEGISLATION

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 often be determined on a case-by-case basis.

The term "municipal body" is also not defined in the Act. However, we consider a municipal body to have similar characteristics to a municipality. In this regard, a municipal body is typically considered to be a body established or exercising a power under a municipal act or a similar statute of a province or territory with respect to governing the affairs or purposes of a geographic area and is accountable to those governed by it. To that end, an improvement district might better be described as a municipal body rather than a public body.

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The term "function of government" means having a governance function, not merely performing a particular activity. Thus, providing or performing a provincial-type service (e.g., education performed by school boards) or a range of municipal services would qualify as a function of government. As such, it could appear that an improvement district that provides one or two municipal-type services might not appear to be considered to be performing a function of government.

ANALYSIS

Improvement districts are local authorities responsible for providing local services for the benefit of the residents in a community. They vary considerably in size from small subdivisions to larger communities and are usually located in rural areas of a province.

In British Columbia, improvement districts are focused on providing local services such as water, fire protection, street lighting, diking, drainage, garbage collection and parks (rather than general governance or land use planning) which are financed by taxation or user fees. Each district is governed by a board of elected trustees. The powers exercised by the trustees (to enact and enforce its regulations and charges, to assess and collect taxes, to acquire, hold and dispose of lands, to borrow money and to expropriate lands) flow from the improvement district's bylaws.

The British Columbia improvement districts are accountable to the Local Government Department ("Department"), which is part of the Ministry of Community, Sport and Cultural Development of the Government of British Columbia. The Department also plays a role in reviewing improvement district bylaws, annual general meeting minutes, financial statements, and facilitating changes to improvement district boundaries.

Prior rulings documents examined whether these British Columbia improvement districts could be considered municipalities under paragraph 149(1)(c). In our document 9235386 we opined that since an "improvement district" in British Columbia, as defined in the Local Government Act of British Columbia, enjoys the same powers as a municipality, it should qualify as a Canadian municipality and could therefore issue donation receipts. However, this letter predated the decision of the Quebec Court of Appeal in 2001 in *Tawich Development Corporation v. Deputy Minister of Revenue of Quebec*, which found that merely exercising municipal functions was not sufficient to attribute to a body the status of a municipality. Instead, the Court held that this status could only be achieved as a result of statute, letters patent or order. Therefore, an improvement district could no longer be considered to be a municipality.

In addition, for purposes of the current analysis, we compared the criteria identified by the judge in *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844, to analyze whether municipalities were "governmental" and therefore subject to the Canadian Charter of Rights and Freedoms, to the characteristics of the improvement districts of British Columbia and found that these improvement districts did meet these four criteria:

- * The municipalities are democratically elected by members of the general public and are accountable to their constituents. Similarly, each improvement district is governed by a board of elected trustees;
- * The municipalities possess a general taxing power and the trustees of the improvement districts have the power to assess and collect taxes;
- * Both the municipalities, and the trustees of the improvement districts, are empowered to make laws, to administer them and to enforce them within a defined territorial jurisdiction; and
- * Municipalities derive their existence and law-making authority from the provinces. Likewise, the powers of the improvement districts flow from the improvement district's bylaws, the Local Government Act and other applicable provincial statutes. (footnote 1)

There are a range of opinions as to what "performing a function of government" means from a legislative and a policy perspective. Whether an organization is "performing a function of government" would seem to be more than just what services an organization provides, having a governance function would appear to comprise those organizations that have these characteristics listed above. In our opinion, these improvement districts, whether providing one or several services to the public in their respective districts,

exercise the powers similar to those of municipalities and in our view are “governmental” or performing a “governance function”.

CONCLUSION

It is our view that the improvement districts in the province of British Columbia would qualify as municipal bodies performing a function of government for the purpose of paragraph 149(1)(c) and are therefore able to issue donation receipts as a qualified donee as defined in subparagraph 149.1(1)(a)(iii) and as specified in paragraph 118.1(1)(d.1) and subparagraph 110.1(1)(a)(iv.1).

Roger Filion, CPA, CA
Manager
Non-Profit Organizations and Aboriginal Issues Section
Business and Employment Division
Income Tax Rulings Directorate
Legislative Policy and Regulatory Affairs Branch

FOOTNOTES

Note to reader: Because of our system requirements, the footnotes contained in the original document are shown below instead:

1 <http://www.cscd.gov.bc.ca/lgd/pathfinder-id.htm>