

LANGIND E
DOCNUM 2016-0630351E5

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DESCKEY 25

RATEKEY 2

REFDATE 170331

SUBJECT Return of a gift

SECTION 118.1, 149.1, 168 and 188.1

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) Can a registered charity return a gift of a life insurance policy to a donor? 2) If so, what are the tax consequences to the registered charity and to the donor?

POSITION: General comments provided.

REASONS: 1) Question of law. 2) Legislation.

XXXXXXXXXX 2016-063035

Elaine Danilchenko

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March 31, 2017

Dear XXXXXXXXXXXX

Re: Return of a gift of a life insurance policy

This is in response to your emails dated February 2 and April 28, 2016 and further to our telephone conversations (XXXXXXXXXX/Danilchenko). We apologize for the delay in responding to your request.

You indicate that in 1981 you gifted a whole life insurance policy to a particular charitable foundation that raises funds to support a specific college. The gift was made on the condition that the funds be used by the college to create a scholarship in a specific program. While that program existed at the time the gift was made, you advise that it no longer exists. As a result, in your view, the condition of the gift was not fulfilled and so you contacted the foundation to request a return of the life insurance policy. The foundation is prepared to consider returning the life insurance policy to you if you are able to obtain assurance from the Canada Revenue Agency ("CRA") that there would be no negative impact on its registered status.

Our comments

This technical interpretation provides general comments about the provisions of the Income Tax Act (the "Act") and related legislation (where referenced). It does not confirm the income tax treatment of a particular situation involving a specific taxpayer but is intended to assist you in making that determination. The income tax treatment of particular transactions proposed by a specific taxpayer will be confirmed by this Directorate in the context of an advance income tax ruling request submitted in the manner set out in Information Circular 70-6R7, Advance Income Tax Rulings and Technical Interpretations, dated April 22, 2016. We are, however, prepared to offer the following general comments, which may be of assistance.

As noted on the CRA webpage (footnote 1), Returning a gift to a donor, in most cases, a registered charity cannot return a donor's gift. At law, a gift transfers ownership of the gifted property from the donor to the charity. Once the transfer is made,

the charity is obliged to use the gifted property in carrying out its charitable purposes. However, there may be circumstances where a charity is occasionally obliged by law to return gifts to donors. This can happen, for instance, when a charity asks the public to contribute to a special project and later events make it impossible to carry out the project. The CRA webpage goes on to indicate that the return of gifts to donors falls more appropriately under trust law than the Act and is ultimately a matter for a court to decide. It is also noted that a charity may wish to consult legal counsel in these instances.

Where a registered charity or other qualified donee returns a gift to a donor, there are rules in the Act to ensure that the donor cannot improperly retain tax assistance in the form of a charitable donation tax credit or deduction in respect of the transfer of property. These rules address situations where a transfer of property was not a gift at law and an official tax receipt had been issued by the qualified donee, as well as situations where a transfer of property was a gift at law and nevertheless has been returned. We note that these rules apply to transfers of property from a qualified donee to a taxpayer after March 21, 2011.

In general terms, under these rules, no gift is recognized, whether or not the transfer to the donee was a gift at law. Where the original property is returned, the taxpayer is deemed not to have disposed of the property nor to have made a gift. If the returned property is not the original property, the original disposition will not be recognized but the taxpayer will be considered to have disposed of the original property at the time the returned property is transferred to the taxpayer for deemed proceeds of disposition. The taxpayer's tax return may be reassessed to the extent that the reassessment relates to the transfer (such as the disallowance of the charitable donations tax credit or deduction or to address the disposition of the original property).

The tax implications to qualified donees that return gifted property after March 21, 2011 are discussed in Guidance CG-016, Qualified donees – Consequences of returning donated property, which can be found on the CRA website (footnote 2). It is recommended that a qualified donee contemplating a return of gifted property refer to this publication. As noted in Guidance CG-016, before returning gifted property, qualified donees should determine if other provincial or federal legislation might affect their ability to legally return donated property. Further, a registered charity that returns gifted property could be regarded as making a gift to a non-qualified donee or providing an undue benefit, which are contraventions of the Act and could result in sanctions that include revocation of registered status. For more information on sanctions, please visit the CRA website (footnote 3).

In the situation described, the determination of whether the gift of the life insurance policy to the foundation was subject to a condition subsequent or whether the foundation can legally return the life insurance policy is a question of law and beyond the scope of this technical interpretation. Such a determination can only be made based on a review of the relevant documents and facts and the applicable legislation. In this regard, we understand you have consulted with your legal advisor and have been in discussions with the foundation in attempting to find a resolution to this matter.

We hope these comments are of some assistance.

Yours truly,

Jenie Leigh

Manager

Financial Institutions Section

Financial Industries and Trusts Division

Income Tax Rulings Directorate

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