



Top Receipting Concerns for Canadian Registered Charities¹

By Mark Blumberg² (January 30, 2011)

The most important benefit that Canadian registered charities receive is the ability to issue “official donation receipts”, also sometimes referred to as donation receipts or tax receipts.

The ability to issue a tax receipt is almost akin to having a licence to print money and the equipment to do so is not only in your basement but just about any room in the house that has a computer and printer. If a donor makes a donation of \$1,000,000.00 and a charity issues a receipt for \$1,000,000.00 the value of that receipt in Ontario for a taxpayer at the highest marginal tax rate is approximately \$460,000.00. One tiny little piece of paper that only takes minutes to produce is worth \$460,000.00! If an average Canadian makes \$40,000.00 - \$50,000.00 this little piece of paper is the equivalent of 10 years’ salary for such Canadian.

It is important that Canadian charities issue official donation receipts according to the rules set out in the *Income Tax Act* (Canada) and according to the guidance of the Charities Directorate of the Canada Revenue Agency (“CRA”). According to the CRA, when it audits Canadian registered charities approximately 89% of charities are issuing

¹ This paper is prepared as part of “Receipting 101: Top Receipting Concerns for Canadian Registered Charities” for the Ontario Bar Association (OBA) Institute 2011 Charity and Not-for-Profit Law program entitled Corporate Changes and Avoiding Charity Compliance Problems on February 3, 2011 in Toronto.

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inappropriate receipts³. Clearly, this is a very large proportion of charities and this is a problem that charities need to work on.

There is a misconception among many charities that if a proper gift is made to the charity, then the charity is obliged to issue a tax receipt. This is not true. Charities are not obliged to issue tax receipts. Furthermore, charities may have administrative policies or guidelines setting out when they will issue tax receipts. For example, many charities do not issue tax receipts for donations under a certain amount, say \$10 or \$20. It is very important in terms of maintaining the confidence of charities in the public's mind that charities are upfront in explaining to donors what their policy is with respect to donations and the issuance of tax receipts. Therefore, if your charity will not issue official donation receipts for small donations you should be up front about that. If for a particular event donation receipts will not be issued you should advise as to that. Furthermore, if at an event you will be providing an advantage, such as a meal, to the guests, in advertising the event you may wish to include a statement essentially warning donors that they will not be getting a full receipt for the amount that they are giving to the charity. If Canadian charities cannot determine how to appropriately receipt then their mantra should be "if in doubt don't receipt".

Another misconception that charities have, is that if funds are received without issuing a receipt those funds can be spent outside the normal rules that apply to registered charities. Whether receipted or not, Canadian registered charities can only spend funds in accordance with their objects, subject to the *Income Tax Act*, CRA's guidance as well as provincial trust law and other applicable law.

Here are some of the top receipting mistakes made by registered charities in no particular order:

1. Providing an official donation receipt for something that is not considered a "gift".

In order for a 'donation' to be considered a gift to a charity and therefore receiptable it must involve four elements namely, be 1) voluntary 2) a complete transfer 3) property, and 4) donative intent/financial sacrifice on the part of the donor. If any one of these elements is not present a receipt should not be issued. If a person makes a donation because he is forced to – he is legally obligated, for example, by court decision, then it is not a gift. If a donor gives, for example, a car and the car keys to a charity but does not sign over the ownership papers then there has not been a complete transfer. If a

³ Page 34 of the CRA report "Small and Rural Charities: Making a Difference for Canadians 2008"

<http://www.cra-arc.gc.ca/E/pub/tg/rc4457/rc4457-e.pdf>

person volunteers for the charity or provides services to the charity then such time or effort may be valuable but it is not “property” transferred but instead a service to the charity and is not receiptable.

Before 2002, if the donor received anything back (i.e. an advantage or “consideration”) for the donation there was no gift. Now with the “split receipting” rules a donor can receive an advantage of up to 80% of the value of the donation but the amount of the advantage reduces the eligible amount of the tax receipt. If the donor receives an advantage of over 80% of the value of the donation, then generally it will be considered that there was no “donative intent” and no gift. Therefore, registered charities cannot issue a receipt where the value of the advantage returned to the donor is more than 80% of the fair market value of the gift.

2. Incomplete information on official donation receipts.

For a cash receipt provided when a donation of cash is made to a charity the *Income Tax Act* requires that there be mandatory information on the official donation receipt. If you are missing any of the mandatory information then your official donation receipts are not complying with the rules. Charities should ensure that the template receipt they are using contains all the necessary information. There are additional elements for gifts-in-kind. CRA has provided sample receipts⁴ that will help charities understand how the receipt can be laid out depending on whether it is a cash/non-cash gift and whether there is an advantage.

All official donation receipts for income tax purposes must contain the following⁵:

- 1) a statement that it is an official receipt for income tax purposes;
- 2) name and address of the charity as on file with the Canada Revenue Agency;
- 3) charity's registration number;
- 4) serial number of the receipt;
- 5) place or locality where the receipt was issued;
- 6) day or year donation was received;
- 7) day on which the receipt was issued if it differs from the day of donation;
- 8) full name, including middle initial, and address of the donor;
- 9) amount of the gift;
- 10) value and description of any advantage received by the donor;
- 11) eligible amount of the gift;

⁴ <http://www.cra-arc.gc.ca/chrts-gvng/chrts/pbs/rcpts-eng.html>

⁵ <http://www.cra-arc.gc.ca/chrts-gvng/chrts/chcklsts/rcpts-eng.html>

- 12) signature of an individual authorized by the charity to acknowledge donations;
and
- 13) name and Web site address of the Canada Revenue Agency -
www.cra.gc.ca/charities.

For non-cash gifts (gifts in kind), these additional elements:

- 14) day on which the donation was received (if not already indicated);
- 15) brief description of the property transferred to the charity;
- 16) name and address of the appraiser (if property was appraised); and
- 17) deemed fair market value of the property in place of amount of gift above.

3. Not everything is receiptable.

There are a large number of valuable payments or transfers from a person to a charity that do not qualify as being a gift for purposes of issuing an official donation receipt.

As CRA notes, the following payments to registered charities do not qualify as gifts:

- the payment of a **basic fee** for admission to an event or to a program (e.g. fees for day-care or nursery school facilities);
- the payment of **membership fees** that convey the right to attend events, receive literature, receive services, or be eligible for entitlements of any kind (e.g. free access to facilities the public has to pay for). However, membership fees are considered as gifts if they confer no more than the right to vote at a meeting and to receive reports of the charity's activities, unless such reports are otherwise available for a fee;
- any portion of the purchase price of a **lottery ticket** or other chance to win a prize, even though the lottery proceeds benefit one or more charities;
- the payment of **tuition fees** (except as permitted by Information Circular 75-23, Tuition Fees and Charitable Donations Paid to Privately Supported Secular and Religious Schools);
- contributions of **services** (i.e. time, skills, effort). Contributions of services are not property and do not qualify. However, a charity can pay for services rendered and later accept the return of all or a portion of the payment as a gift, provided it is returned voluntarily;

- a payment from a business for which the business receives a material advantage such as promotion or **advertising** in return. For taxation purposes, the business may be able to claim the contribution as an advertising expense;
- a gift subject to a direction by the donor that the charity transfer the funds to a **specified person** or family. In such an instance, the donor has made a gift to the person or family and not to the charity; and
- a gift subject to a direction by the donor that the charity give the funds to a **non-qualified donee**.

4. Not properly subtracting value of advantage.

Charities need to ensure that the eligible amount of the gift on the receipt is correct. However, at times this is more difficult than one may think. The CRA has rules on what they call “split receipting”. Essentially, if a donor receives an advantage, the amount of the advantage generally needs to be deducted from the value of the gift when calculating the eligible amount of the receipt. So, if John pays \$250 for a gala ticket the charity cannot issue a \$250 official donation receipt to John. The charity needs to subtract the advantage, e.g. meal, gift bag, entertainment, etc. If the advantage works out to be \$100 then on the receipt it will show amongst the mandatory elements:

Total amount of cash received by charity	= \$250
Value of advantage	= \$100
Eligible amount of gift for tax purposes	= \$150

There are also *de minimis* rules if the value of an advantage is the lesser of \$75 and 10% of the value of the donation. In such cases the value of the advantage would be considered nominal and would not have to be deducted. If the amount of the advantage is over 80% of the value of the donation, then in fact generally a donation receipt cannot be issued.

The definition of advantage is very broad and some of the many possible advantages include:

- property (for example, cash, non-cash gifts also called gifts-in-kind);
- the use of or enjoyment of property;
- the provision of services; and
- other benefits including but not limited to assumption of debt by charity, sponsorship, non-recourse loans, etc.

The split receipting rules which have been around for a number of years are a concession from the Canadian government and the CRA. The traditional common law

approach was that if any advantage or consideration was received by a donor then there was no gift and would be no tax receipt. However, now with the split receipting rules an advantage can be deducted and a tax receipt issued for the remaining amount but it is important to properly account for any advantages. CRA provides detailed descriptions of how advantages need to be calculated with different types of events such as gala dinners or golf tournaments. Unless a charity only receives cash donations, and never gives any advantages or benefits to the donor, a charity would need to be aware of the split receipting rules and how to calculate advantages. If you cannot determine the amount of the gift or the advantage then no official donation receipt can be issued.

5. Donation of services.

Donations of time, skill and effort are services and not property and therefore are not a transfer of “property” from the volunteer to the charity and they do not qualify as gifts for donation receipt purposes. Therefore, donations of services, such as professional advice by a lawyer, accountant or other volunteer, cannot be receipted. As well, a local contractor building a shed with supplies from the charity cannot have the value of their time receipted. Other types of services that do not qualify as gifts are: lending a piece of equipment, or allowing the charity to use a time-share or apartment. CRA takes the view that a loan of property is not a voluntary transfer of property to the charity and the mere granting of a right to use the property for a limited period of time is not considered a gift.

The charity can issue a receipt for work done in the following circumstance: A service is rendered to the charity, the charity is billed for the service, and the charity pays for the service. Then, without any obligation to do so, the person who provided the service makes a donation to the charity of X amount of dollars and the charity then issues to the person a receipt for X amount of dollars. This “crossing of cheques” or “cheque exchange” is very different than just issuing a receipt. When the person receives funds from the charity, they have to include the amount they receive in income which increases the taxes they have to pay and all the receipt does is offset that increased amount of taxes. The cheque exchange works both for donation of time and lending of property.

6. The date of the donation.

The issue of the date of donation being in question typically relates to donations that are very late in the year or come in early January. If a donation is received by a charity during the year then the donation can reflect that date. However, sometimes donors make donations after the new year but want a donation receipt for the previous year and charities should not issue such donation receipts.

7. Incorrect name of donor on official donation receipt.

Who is the donor? It is a factual issue and it is important that the charity provides the receipt to the correct donor. For example, if a charity receives a cheque from a corporation with a subsequent call requesting that the charity make out the tax receipt to its President's spouse. If the funds are actually those of the corporation then this is not permissible. Another example is Jack and Jill organizing a third party fundraising event at which there are 20 individuals who each makes a \$100.00 donation and receives no advantage for their donation. Jack and Jill collect the 20 x \$100.00 cash donations and submit them to the charity. The charity should obtain from Jack and Jill a list of the donors so it can issue a tax receipt to each of the individual donors. It would be inappropriate for the charity to issue a \$2,000.00 tax receipt to Jack or Jill. If in doubt a charity can ask a person or corporation to provide a declaration as to who the donor is or the charity can refuse to issue a receipt.

8. Not keeping copies of official donation receipts.

CRA requires that charities keep copies of tax receipts for a minimum of two years from the end of the calendar year in which the donations were made. With respect to ten-year gifts, charities need to keep the donor is whether directions for as long as the charity is a registered charity and two years after that date. Most other records are required to be kept for seven years. I would strongly recommend that charities in fact keep their official donation receipts for longer than the prescribed time in case they are ever needed by the donor or CRA. As well, if official donation receipts are produced electronically, a copy of the receipts should either be printed or kept in an unalterable format such as burned to a CD.

9. Failure to properly secure the donation receipts.

Official donation receipts are like bags of cash and should always be securely kept by the charity. Donation receipts that are not adequately secured or supervised may be used nefariously by some for their own private interests.

10. Issuing a tax receipt for a donation to a non-qualified donee.

Charities are sometimes approached by people who are interested in contributing to a foreign charity or Canadian non-profit that is not a registered charity. The only reason (or an important reason) the funds are donated to the Canadian registered charity is that while the Canadian individual wants the funds to be sent to the foreign entity they also want to receive an official donation receipt for tax purposes instead of donating the funds directly to the foreign charity and not receiving the receipt for Canadian income tax purposes. CRA refers to this as the registered charity being a "conduit". While

charities are allowed to conduct foreign activities, and I have a whole website devoted to foreign activities at www.globalphilanthropy.ca, they are not allowed to lend their registration or act as conduit.

CRA has issued this warning:

Caution: Lending registration numbers

Under no circumstances should a registered charity lend its registration number to another organization for receipting purposes. A registered charity is responsible for all tax receipts issued under its name and number and must account for the corresponding donations on its annual information return. A charity that lends its registration number risks losing its charitable registration.

A charity wishing to work with a foreign charity as part of an appropriate structured arrangement with direction and control can do so as long as it follows the requirements as set out in CRA's Guidance "Canadian Registered Charities Carrying out Activities Outside Canada"⁶.

11. Inappropriately returning a gift.

Generally, a registered charity cannot return a gift. Once a charity owns the property it should be used for its charitable purposes. Charities must be very careful when accepting gifts with conditions attached to them, or fundraising for a particular purpose. The issue is not just whether an official donation receipt was issued for the gift in question, but also common law obligations about dealing with charitable property.

Charities, when fundraising for a particular cause, whether it be building a new hospital wing or dealing with a disaster in a particular locale, should always identify what will happen if too little funds are raised, there is excess funds raised, or the project is no longer practicable. For example, the charity could advise that the board of directors of the charity could reallocate the funds to another charitable purpose.

If a charity is accepting a conditional gift, in some cases it would be best to not issue a tax receipt until the donor agrees that the conditions have been fulfilled.

Before returning a gift, charities should obtain legal counsel to determine the best course of action and it may be appropriate to also advise the Charities Directorate or provincial public guardian and trustee. In some cases the restrictions or conditions

⁶ <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/tsd-cnd-eng.html>

surrounding the gift may in fact be non-binding (ie. precatory) or it may be possible to obtain a *cy pres* order from a Court varying such conditions.

If a donor is upset with a charity or wants the donation to go to another charity, CRA suggests that one solution to such a problem in some cases may be for the charity to offer, in order to retain the goodwill of the donor, to transfer the gift to another qualified donee instead of returning it.

12. Incorrectly replacing lost or incorrect receipts.

Charities should ensure that if replacing a lost receipt that such replacement receipt has all the same required information as the lost receipt with a note stating that it "cancels and replaces receipt No. X". The charity must ensure that in its records the copy of the original lost receipt is kept and marked "cancelled."

When a charity has issued an incorrect receipt, for example, it does not contain all the required information or there is a typographical mistake on the receipt, then the charity must keep both the incorrect receipt and the charity's copy of such receipt and both should be marked "cancelled." The charity can then prepare a correct receipt.

13. Inappropriately providing receipting for volunteer travel.

A lot can be written on volunteer international travel ("mission trips") and the appropriateness of issuing receipts. CRA has been auditing charities that are inappropriately issuing receipts with certain types of trips or travel involving volunteers. While in some cases it may be appropriate to issue such receipts in many cases it is not.

As CRA notes:

"In the case of expenses incurred by volunteers on behalf of registered charities, the facts of each case will determine whether they qualify as a gift. To determine whether there is a gift, certain factors are taken into consideration, including: whether the expenses are incurred voluntarily or whether the volunteer was compelled to assume them. ... whether the consideration accruing to the volunteer negates donative intent (i.e., intention to give). ... whether the amenities that are being provided to the volunteer

that works for the charity are reasonable, are provided in the context of the work with the charity, and are priced at market rates or lower.”⁷

There are clear-cut examples of when it is acceptable, and not acceptable, and also grey areas. The promotional materials, itinerary, purpose and practices around mission trips need to be carefully reviewed.

14. Inflated fair market value of gift.

When people donate tangible property, sometimes referred to as gifts-in-kind, a charity may issue an official donation receipt if the fair market value (“FMV”) can be determined. Examples of gifts-in-kind include cars, furniture, computers, blankets, food. If the FMV can be determined then, subject to the deemed FMV rules, a receipt can be issued for the FMV of the gift minus any advantage. Sometimes inflated FMV receipts are one-off donations by donors and sometimes they are part of a larger abusive charity gifting tax scheme.

The CRA and the Courts have used the following definition of FMV:

Fair market value is normally the highest price, expressed in dollars, that property would bring in an open and unrestricted market, between a willing buyer and a willing seller who are both knowledgeable, informed, and prudent, and who are acting independently of each other.

When the FMV of either a gift-in-kind or an advantage cannot be determined, an official donation receipt cannot be issued. Charities cannot rely on donors to advise them of the FMV. The onus is on the charity to determine FMV and the consequences of improperly determining FMV can be substantial.

CRA’s position is that for items over \$1,000.00 they recommend that there be an appraisal of the value by someone who is knowledgeable and independent of both the charity and the donor.

15. Issuing fraudulent receipts

There are some people issuing fraudulent tax receipts. Sometimes they are involved with the charity, such as a director or employee, and sometimes they have nothing to do

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http://www.canadiancharitylaw.ca/index.php/blog/comments/mission_trips_and_receipting_for_volunteers_travel_expenses_costs/

with the charity and may, for example, be a tax preparer. According to the CRA “between 100,000-135,000 donors have been involved between 2004 and 2009”.⁸ These fraudulent receipts have been worth hundreds of millions of dollars. CRA has successfully prosecuted people involved with fraudulent receipting.

16. Participating in abusive charity gifting tax shelters.

Some promoters have created tax shelters that provide a tax receipt for an amount larger than the cash investment of the donor/investor. These schemes use various approaches such as buy-low, donate-high arrangements, gifting trust schemes and leveraged cash donations. Some schemes involve the valuation of art, pharmaceuticals, or computer software. A donor may invest \$1,000 and receive, through a convoluted scheme, a receipt for perhaps \$5,000. These schemes generally have a tax shelter number but such number certainly does not entitle the investor to tax savings but just administratively makes it easier for CRA to audit all participants.

CRA considers these abusive charity gifting tax shelters and in many cases has reassessed the “gift” to zero. Investors usually lose their investment and have to pay the foregone taxes as well as interest and substantial penalties. Some of these schemes have lawyers providing opinion letters on the transaction, which may or may not have any resemblance to the transactions that actually occur. There have been class action lawsuits against law firms for allegedly providing negligent opinions. Pleadings of pending matters are available on the internet and these cases have yet to go to trial.⁹ Professional advisors who refer clients to these schemes can be responsible for the whole cost of the scheme to their clients.¹⁰

Probably the most important charity gifting tax shelter case is *F. Max E. Maréchaux v. The Queen* 2010 FCA 287¹¹ in which the FCA noted “F. Max E. Maréchaux participated in a “leveraged donation” scheme. The essence of the scheme was that, for an

⁸ http://www.globalphilanthropy.ca/images/uploads/CRA_presentation_Compliance_Overview_-_Major_Non-Compliance_Issues_by_Danie_Huppe-Cranford_for_ICFO_May_2010.pdf

⁹ For example a class action lawsuit against various parties including Fraser Milner Casgrain LLP at <http://www.classactionlaw.ca/content/claims/Rochester/Rochester.htm> and a class action lawsuit against Cassels Brock & Blackwell http://www.canadiancharitylaw.ca/index.php/blog/comments/major_canadian_law_firm_sued_for_negligent_rcaa_tax_opinion/

¹⁰ See *Lemberg v. Michael George Perris* at http://www.globalphilanthropy.ca/index.php/blog/comments/accountant_liability_for_recommending_charity_tax_shelter_gifting_scheme_-_/

¹¹ <http://decisions.fca-caf.gc.ca/en/2010/2010fca287/2010fca287.html>

expenditure of \$30,000, he received a charitable donation tax receipt for \$100,000, and claimed a tax credit of \$44,218, a potential return on his outlay of nearly 50% in a matter of months. Very little of the money was retained by charities to advance their purposes.” The Federal Court of Appeal dismissed an appeal from Mr. Maréchaux and noted in their decision “Mr Maréchaux had not made a “gift”.

CRA has warned potential investors by providing Taxpayer Alerts and Fact Sheets on tax shelters. According to CRA approximately \$6 billion in receipts have been issued for these schemes between 2002 and 2009 and only approximately 1% of that amount was spent on charitable activities.

Suggestions for reducing the likelihood of inappropriate receipting:

- Know the rules for proper receipting;
- Make sure staff, volunteers, board members who are involved with receipting also know these rules;
- Ensure receipts have all mandatory fields;
- Have good governance and bring board into the receipting discussion;
- Have a gift acceptance policy for the charity and follow through with it;
- Be careful with gifts-in-kind and inflated valuations;
- Stay alert and avoid abusive gifting tax shelters and fraud;
- Have good controls over who prepares and signs receipts and make sure if possible there is segregation of duties and more than one person is involved in the process;
- Have adequate books and records;
- Obtain legal advice when necessary or call CRA.

Consequences for inappropriate receipting

Failure to prepare proper donation receipts can result in the suspension of receipting privileges and revocation of charitable status. However, there are also intermediate sanctions. If incorrect information is placed on a receipt a charity can be fined or provided with a penalty equal to 5% of the eligible amount on the receipt for a first infraction. If the charity places deliberately false information on a tax receipt it is liable to a penalty equal to 125% of the eligible amount stated on the receipt. Furthermore, there are Third-Party Civil Penalties that can be assessed.

In this recent press release from CRA they noted that “Promoters and other third-party representatives are penalized when they make false statements involving schemes that are against the law. Currently, there are 71 audits involving promoters. Recent

examples include...a tax shelter gifting arrangement case where the Canada Revenue Agency (CRA) proposed two penalties of \$24 million against the promoters involved.”¹²

There can be significant reputational harm to a charity and its board if there is inappropriate receipting. In some cases, CRA has put out press releases on charities that have been suspended as a result of improper receipting or have lost their registered status. As mentioned above also CRA in some cases of fraudulent receipting has been successful in obtaining criminal prosecutions.

Conclusion

One of the most valuable privileges that a registered charity has is the ability to issue official donations receipts. The issuance of such receipts costs the Federal and Provincial governments significant lost tax revenue. After some of the recent scandals involving receipting some commentators have either called for the curtailing of receipting privileges or ending the tax subsidy for charitable donations all together. Inappropriate receipting can undermine the public’s confidence in charities.

It is important that charities carefully issue receipts according to the rules. There is now a large amount of publicly available information on appropriate receipting that charities and their advisors should be aware of including but not limited to resources contained in “Additional Resources” below.

¹² <http://www.cra-arc.gc.ca/nwsrm/rlss/2010/m03/nr100316-eng.html>

Additional Resources

For further information on receipting the following resources may be helpful:

CRA's Operating a Registered Charity – Issuing Receipts

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/menu-eng.html>

CRA Webinar on Gifting and Receipting

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/wbnrs/wtchwbcsts-eng.html?clp=v20100415-eng>

Blumbergs CanadianCharityLaw.ca section on receipting

http://www.canadiancharitylaw.ca/index.php/blog/category/blog/category/receipting_by_charities/

Various Webinars on legal issues, including receipting, for Canadian registered charities by Mark Blumberg

http://www.globalphilanthropy.ca/index.php/blog/comments/webinars_on_canadian_charity_law_-_charity_law_information_program_clip_by_/

Blumbergs Canadian Charity Legal Checklist

Attached to this paper is a charity checklist – pages 2-5 deals with receipting issues.

For updated versions see www.globalphilanthropy.ca

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