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SECTION 149(1)(l)

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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: Will an NPO jeopardize its exemption from tax under 149(1)(l) where it incorporates a Community Contribution Company (C3) to carry on for-profit activities.

POSITION: The ownership of shares will not, in itself, cause the NPO to lose its exempt status.

REASONS: Whether an organization is organized and operated for non-profit purposes is a question of fact in each situation.

XXXXXXXXXXXX

2012-045607

A. Townsend

January 18, 2013

Dear XXXXXXXXXXXX

Re: Non-Profit Organization and a Community Contribution Company

This is in response to your email requesting our views as to whether a non-profit organization ("NPO") claiming the exemption from income tax provided by paragraph 149(1)(l) of the Income Tax Act (the "Act") will jeopardize its exemption from tax if it incorporates a Community Contribution Company subsidiary to carry on for-profit activities.

Our Comments

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 publications can be accessed on our website at <http://www.cra-arc.gc.ca>. However, we are prepared to provide the following general comments.

The Province of British Columbia amended its provincial Business Corporations Act, effective May 14, 2012, to allow for Community Contribution Companies (C3). A C3 is described in provincial Information Bulletin 2012FIN0011-00024, as a new hybrid type company that is an alternative business model. A C3 primarily benefits the community and provides limited investor returns. The legislation provides that the dividends paid to investors of a C3 are capped to ensure profits are either retained by the C3 or directed for community benefit.

In general terms, paragraph 149(1)(l) provides that an NPO is exempt from tax under Part I of the Act for a period throughout which it complies with all of the following:

- a) it is not a charity;
- b) it is organized exclusively for social welfare, civic improvement, pleasure, recreation or any other purpose except profit with no income available for the personal benefit of its members or shareholders;
- c) it is in fact operated exclusively for the same purpose for which it was organized or for any of the purposes mentioned in (b); and
- d) it does not distribute or otherwise make available for the personal benefit of a member or shareholder any of its income, unless the organization is an association which has as its primary purpose and function the promotion of amateur athletics in Canada.

In our view, as a C3 is organized to provide profit to investors as well as social benefits, it will not qualify as an NPO, and it will be subject to tax as a regular corporation under the Act.

Where an NPO incorporates a C3 and holds the shares of a taxable C3 subsidiary, this will not, in itself, cause the organization to lose its exemption under paragraph 149(1)(l) of the Act. Generally, an organization claiming the exemption can earn a profit, as long as the profit is incidental and arises from activities directly connected to its not-for-profit objectives. If an organization holds shares to earn income from property, it may be considered to have a profit purpose, even if the income from those shares is used in furtherance of the organization's not-for-profit objectives. However, the CRA has accepted that where an organization that otherwise qualifies for the exemption under paragraph 149(1)(l) of the Act, engages in an income-generating activity that is carried out in a taxable, wholly-owned corporation, and this corporation pays dividends out of its after-tax profits to the organization to enable the organization to carry out its not-for-profit activities, the organization may still qualify for the exemption as set out in paragraph 149(1)(l) of the Act. The facts of a situation would need to be examined to determine whether a particular holding of shares of a C3 would affect the status of its NPO parent.

We trust that our comments will be of assistance.

Yours truly,

R.A. Albert, CA

Manager

Non-Profit Organizations and

Aboriginal Issues Section

Business and Employment Division

Income Tax Rulings Directorate

Legislative Policy and Regulatory Affairs