Canada Revenue Agency | Agence du revenu du Canada

Mr. David M. Sherman
[redacted]
Toronto ON [redacted]

2014-055551
Alex Johnstone
(613) 410-9134

January 27, 2015

Dear Mr. Sherman:

Re: Spousal sharing of charitable gifts

We are writing in response to your email dated November 7, 2014 concerning the CRA's administrative practice to allow gifts made by an individual's will to be claimed by the deceased individual's spouse. Your question is whether this administrative practice will continue to apply in light of the legislative amendments in Bill C-43 which received Royal Assent on December 16, 2014.

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 only be confirmed by this Directorate in the context of an advance income tax ruling request submitted in the manner set out in Information Circular IC 70-6R6, *Advance Income Tax Rulings and Technical Interpretations*.

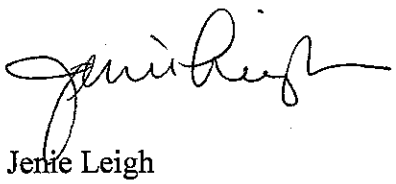
It has been the CRA's administrative practice to accept gifts made by the spouse or common-law partner of an individual as part of that individual's "total charitable gifts" as defined in subsection 118.1(1) of the Act. This practice presumes that a spousal or common-law partnership existed at the time of the donation and includes in its scope gifts made by will. As stated in technical interpretation 2010-0372621E5, assuming a spousal or common-law relationship existed at the time of death and the donation would otherwise qualify as a gift for the purposes of the charitable donations tax credit, where a donation is made in accordance with the terms of a deceased's will, the surviving spouse and the executor can arrange a tax credit claim that is most beneficial to both parties. This results in a surviving spouse having the option of claiming the donation on his/her return in the year in which the spouse dies.

Bill C-43 includes amendments specifying how gifts by will and certain designated gifts will be treated for tax purposes for deaths occurring after 2015. In general, such gifts will no longer be deemed to have been made by the individual immediately before the individual's death. Instead, such gifts will be deemed to have been made by the individual's estate at the time the property that is the subject of the gift is transferred to the qualified donee. Where the estate is a "graduated rate estate" (as defined in subsection 248(1) of the Act) and new subsection 118.1(5.1) of the Act applies to the gift, the gift may generally be included in the "total charitable gifts" of the individual.

With regard to spousal sharing of charitable gifts, the definition of "total charitable gifts" of an individual in subsection 118.1(1) of the Act is amended, applicable to the 2016 and subsequent taxation years, to legislatively address the matter. Where the individual is not a trust, clause (c)(i)(A) of that definition includes the eligible amount of a gift made to a qualified donee by the individual or the individual's spouse or common-law partner in the taxation year or any of the five preceding taxation years. The accompanying explanatory notes provide that this amendment is consistent with the CRA's current administrative practice. Clause (c)(i)(C) of that definition allows gifts that are deemed by new subsection 118.1(5.1) of the Act to have been made by the individual's graduated rate estate (as discussed above) to be claimed on the deceased individual's return for the year of death or the immediately preceding taxation year. Clause (c)(i)(C) of that definition is more limited in scope and does not refer to gifts made by the graduated rate estate of the individual's spouse or common-law partner. Given these amendments, the CRA's administrative practice as stated in technical interpretation 2010-0372621E5 will not apply in respect of deaths occurring after 2015.

We trust that these comments will be of assistance.

Yours truly,



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