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SUBJECT NPO - Payments to Members

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: Whether a 149(1)(l) entity can pay surplus out to its members.

POSITION: No.

REASONS: The provisions of 149(1)(l) specifically prohibit payments of income to members.

XXXXXXXXXX

2012-043313

Lori Merrigan

(613) 957-9229

October 23, 2012

Dear XXXXXXXXXXXX:

Re: 149(1)(l) Entity - Payments to Members

This is in response to your email of January 26, 2012, inquiring whether an organization would compromise its tax exempt status under paragraph 149(1)(l) of the Income Tax Act (the "Act") by distributing surplus to members.

In this letter, unless otherwise expressly stated, all statutory references are to the provisions of the Act.

You have presented the following scenario:

A non-profit organization (the "Organization") provides, among other services, internet services to its members. A system was created through a buy-in fee paid by each member and then monthly user fees thereafter. The Organization has surplus funds from these member fees, which were accumulated for maintenance, repairs and upgrades. The surplus is no longer required for the internet service since that service will no longer be provided, however, the Organization itself is not being wound-up and other services will continue to be provided.

The situation outlined in your email appears to relate to a factual one, involving a specific taxpayer. 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 ("CRA") publications can be accessed on our website at <http://www.cra-arc.gc.ca>. However, we are prepared to provide the following general comments, which we trust will be of assistance to you.

The CRA's general views regarding 149(1)(l) entities are contained in Interpretation Bulletins IT-496R, "Non-profit Organizations", which may be viewed at <http://www.cra-arc.gc.ca>. To qualify as a tax exempt entity described in paragraph 149(1)(l), an organization must be both organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit. In addition, no part of the income of the club, society or association can be payable or be available to any of its members.

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In our view, in a scenario such as that described above, the distribution of surplus funds to members would likely result in prohibited personal benefits being provided to members, as the surplus was accumulated from income of the 149(1)(l) entity. We note that income, such as user or internet fees, that has been earned and accumulated by a 149(1)(l) is still considered income and cannot be distributed to members without the 149(1)(l) entity losing its tax-exempt status.

We trust that these comments will be of assistance.

Yours truly,

R.A. Albert, CA

Manager

Non-Profit Organizations and Aboriginal Issues Section

Financial Industries Division

Income Tax Rulings Directorate

Legislative Policy and Regulatory Affairs Branch