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SUBJECT 149(1)(I) – donations to capital fund

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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: 1. Can an organization that is exempt from income tax under paragraph 149(1)(I) receive donations from its members and businesses affiliated with its members to fund a capital project? 2. Can the organization recognize the contributions from members on a "wall of honor" or through naming rights of capital assets?

POSITION: 1. Yes, provided that the capital project is funded with member contributions and gifts. 2. Question of fact, the amount received may be a donation or other income.

REASONS: Since an 149(1)(I) organization does not operate for profit, it funds capital projects through member contributions, gifts, grants and incidental profits. Provided a project is funded with member contributions and gifts, an increase in services to members will not indicate that income has been made available to its members.

XXXXXXXXXX 2012-045425

A. Townsend

July 2, 2013

Dear XXXXXXXXXX:

Re: 149(1)(I) Organization - Capital Project

This is in response to your letter inquiring whether an organization claiming the exemption from income tax provided by paragraph 149(1)(I) of the Income Tax Act (the "Act") can receive donations from its members and businesses affiliated with its members in order to support a capital project.

You have provided us with the following information:

\* An organization, the "Sports Club", provides athletic facilities and social activities for its members.

\* The Sports Club's operations are funded by annual membership dues, entrance fees paid by new member families and a member-paid annual facility improvement fee.

\* To improve and expand its current facilities, the Sports Club is considering a multi-year, multi-million dollar capital improvement project.

\* The Sports Club will solicit donations from its members and businesses affiliated with its members through brochures, members' newsletter, emails and the Sports Club website.

The Sports Club will develop a "wall of honor" or other system to recognize member donations at specified monetary levels.

\* The Sports Club will accept donations from businesses affiliated with members and offer the businesses the opportunity to have naming rights over part of the capital project as agreed upon.

#### Our Comments

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

The situation outlined in your letter 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 may be of assistance.

Paragraph 149(1)(l) provides an exemption from income tax for a "club, society, or association" that is not a charity and that is 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 for the personal benefit of its members unless the member was a club, society or association the primary purpose and function of which was the promotion of amateur athletics in Canada.

As discussed in paragraph 9 of Interpretation Bulletin IT-496R, "Non-Profit Organizations":

"...accumulating surplus funds in excess of its current needs may affect the association's status as a tax-exempt NPO. However, in certain cases, when an association requires a time period in excess of the current and prior year to accumulate the funds needed to acquire a capital property that will be used to achieve its declared exempt activities, the association's tax-exempt status may not be affected."

The CRA has previously stated that a reasonable capital fund for a special project that furthers the organization's exempt objectives can be accumulated from capital contributed by members, from gifts and grants, or from accumulated, incidental profits without affecting the organization's ability to claim the exemption under paragraph 149(1)(l). Generally, developing a "wall of honour" that provides recognition of member contributions should not affect the ability of an organization to claim the exemption under paragraph 149(1)(l). Similarly, to the extent that naming rights over parts of a capital project are in recognition of a gift from a member or a business, the naming rights should not, in and of itself, preclude an organization from claiming the exemption under paragraph 149(1)(l). This would generally be the case where such rights or "honour" has only a nominal value.

However, amounts received by an organization in exchange for naming rights may be received, either wholly or partially, in relation to advertising or other income (e.g., where the naming rights provide a prospective economic benefit to a business, or if a business is able to deduct from its income the amount as an advertising or other expense). If such income received by the organization is not incidental, the organization may be considered to have a profit purpose and may be considered to have made income available for the personal benefit of its members, particularly when the amounts are received from non-members.

It is a question of fact whether an organization is operating exclusively for any purpose other than profit and whether income is being made available for the personal benefit of any member or shareholder. Such a determination can only be made after the end of the period for which the exemption is claimed.

An organization's accounting records should clearly identify the capital funds accumulated for the capital project and all transactions concerning the capital project. In addition, since the Sports Club's main purpose appears to be providing sporting and recreational facilities to its members, any property

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income earned from the investment of the funds that are accumulated for the capital project will be subject to tax under subsection 149(5).

Yours truly,

Roger Filion

Manager

Non-Profit Organizations and Aboriginal Issues Section

Business and Employment Division

Income Tax Rulings Directorate

Legislative Policy and Regulatory Affairs Branch