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PRINCIPAL ISSUES: Whether income from fundraising event would be exempt from tax?

POSITION: It depends.

REASONS: See below.

XXXXXXXXXX

2014-051884

R. Meers

(613) 957-2100

May 30, 2014

Dear XXXXXXXXXXXX:

Re: Fundraising 149(1)(l)

This is in response to your e-mail of January 20, 2014, inquiring as to whether the income from your fundraising event would be exempt from tax as a non-profit organization under paragraph 149(1)(l) of the Income Tax Act (the "Act").

This technical interpretation provides general comments about the provisions of 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 70-6R5, Advance Income Tax Rulings. Although we cannot comment on your specific situation, we are able to provide the following general comments, which may be of assistance.

The CRA's general views regarding non-profit organizations ("NPO") are contained in Interpretation Bulletin IT-496R, Non-Profit Organizations and IT-83R3, Non-profit organizations - Taxation of income from property which may be viewed at <http://www.cra-arc.gc.ca>.

In general terms, paragraph 149(1)(l) of the Act provides that a club, society or association 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.

You have indicated that you will be organizing an event in which XXXXXXXXXX will collect donations/pledges in order to enter a team in the event. Proceeds from the event will first be used to XXXXXXXXXX. Additional proceeds would then go to support XXXXXXXXXX with any remaining proceeds being donated to a charitable organization.

Generally, fundraising, by its very nature, is considered a profit activity. However, the CRA accepts that certain fundraising activities can be carried on directly by a 149(1)(l) entity without jeopardizing its tax-exempt status. Limited fundraising activities involving games of chance (e.g., lotteries, draws), or sales of donated or inexpensive goods (e.g., bake sales or plant sales, chocolate bar sales), generally do not indicate that the organization as a whole is operating for a profit purpose. However, the scope of the fundraising activities, especially by comparison with other activities, should not be so significant that fundraising can be considered a purpose of the organization, in which case the organization may not qualify as a 149(1)(l) entity.

It does not appear, based on your e-mail, that your event would meet the conditions in paragraph 149(1)(l) of the Act as the event is not organized as a club, society or association and the scope of the fundraising activities in relation to other activities seems substantial. As an individual, fundraising may be undertaken as an adventure in the nature of trade, the income of which would generally be included in calculating income under section 9 of the Act.

You also indicate that you intend to donate some of the proceeds from the event to a registered charity (or other qualified donee). Section 118.1 of the Act provides a federal and provincial non-refundable donation tax credit for gifts to registered charities or other qualified donees. The credit is claimed when you file your personal income tax return. Generally, you can claim all or part of the amount donated, up to a limit of 75% of your net income for the year (not from the event itself). It appears that the organization you intend to donate to is not a Canadian registered charity but is a U.S. charity. As it is not a Canadian registered charity or other qualified donee, donations to this organization will not qualify for the donation tax credit. However, if you have U.S. income, you can claim any gifts to U.S. charities that would be allowed on a U.S. return. You can claim the eligible amount of your U.S. gifts up to 75% of the net U.S. income you report on your Canadian return.

Notwithstanding the above, there are situations where the amounts received would not be taxable income. As indicated in paragraph 4 of Interpretation Bulletin IT-334R2, "Miscellaneous Receipts", voluntary payments (or other transfers of benefits) received by virtue of a profession or by virtue of

carrying on a business are considered to be taxable receipts. However, IT-334R2 also discusses non-taxable windfalls. The following factors indicate that a particular receipt is a windfall:

- (a) The taxpayer had no enforceable claim to the payment,
- (b) The taxpayer made no organized effort to receive the payment,
- (c) The taxpayer neither sought after nor solicited the payment,
- (d) The taxpayer had no customary or specific expectation to receive the payment,
- (e) The taxpayer had no reason to expect the payment would recur,
- (f) The payment was from a source that is not a customary source of income for the taxpayer,
- (g) The payment was not in consideration for or in recognition of property, services or anything else provided or to be provided by the taxpayer, and
- (h) The payment was not earned by the taxpayer as a result of any activity or pursuit of gain carried on by the taxpayer and was not earned in any other manner.

Based on the criteria outlined above, it would appear that the income earned from this event would not qualify as a windfall.

Interpretation Bulletin IT-334R2 also contains information with respect to gifts and other voluntary payments. It states that amounts received as gifts, that is, voluntary transfers of real or personal property without consideration, are not subject to tax in the hands of the recipient. However, voluntary payments (or other transfers or benefits) received by virtue of a profession or by virtue of carrying on a business are taxable receipts.

While it remains a question of fact as to whether you are carrying on a business or whether the amounts received can be considered gifts, it would appear, based on the information provided, that the amounts received are not a gift but rather funds received in exchange for participation in your event.

We trust that these comments will be of assistance.

Yours truly,
Roger Fillion
Manager
Non-Profit Organizations and Aboriginal Issues
Business and Employment Division
Income Tax Rulings Directorate
Legislative Policy and Regulatory Affairs Branch