

PRINCIPAL ISSUES: Whether a donation to a fund maintained and controlled by a municipality for the purposes of XXXXXXXXXX constitutes a gift for income tax purposes?

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SECTION ITA 118.1(1), 149.1

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 donation to a fund maintained and controlled by a municipality for the purposes of XXXXXXXXXX constitutes a gift for income tax purposes?

POSITION: Yes, based on the facts provided.

REASONS: The fund is deemed a project of community interest by the municipality and the municipality will have full control and ownership of the fund.

XXXXXXXXXX 2016-063403

XXXXXXXXXX, 2016

Dear XXXXXXXXXX,

Re: Advance Income Tax Ruling

XXXXXXXXXX

XXXXXXXXXX

We are writing in response to your letter of XXXXXXXXXX, seeking an advance income tax ruling on behalf of the above named taxpayers. We also acknowledge the information provided in subsequent correspondence and during our various telephone conversations in connection with your request.

We understand that, to the best of your knowledge and that of the taxpayers, none of the proposed transactions and/or issues involved in the ruling request are the same as or substantially similar to transactions and/or issues that are:

(i) in a previously filed tax return of the taxpayers or a related person;

- (ii) being considered by a tax services office or tax centre in connection with a previously filed tax return of any of the taxpayers or a related person;
- (iii) under objection by the taxpayers or a related person;
- (iv) the subject of a current or completed court process involving the taxpayers or a related person; or
- (v) the subject of a ruling request previously considered by the Income Tax Rulings Directorate.

This letter is based solely on the facts and transactions described below. Any information or documentation submitted in the course of processing your request does not form part of the facts and transactions and any references thereto are provided solely for the convenience of the reader.

Unless otherwise stated, all references to a statute are to the Income Tax Act (Canada), R.S.C. 1985, c.1 (5th Supp.), as amended to the date of this letter, (the “Act”), and all terms and conditions used herein that are defined in the Act have the meaning given in such definition unless otherwise indicated.

DEFINITIONS

“ACO” means the XXXXXXXXXX;

“BCO” means the XXXXXXXXXX;

“CCO” means the XXXXXXXXXX;

“Council” means the elected Council officials of XXXXXXXXXX;

“County” means the geographic area of XXXXXXXXXX;

“CRA” means the Canada Revenue Agency;

“Fund” means the XXXXXXXXXX established by ACO and BCO;

“Individual” means XXXXXXXXXX;

“Municipality” means the XXXXXXXXXX;

“Municipal Fund” means the XXXXXXXXXX established by the Municipality, ACO and BCO;

“Policy” means XXXXXXXXXX;

“Province” means the Province of XXXXXXXXXX;

XXXXXXX; and

“Tribunal” means the XXXXXXXXXX.

Our understanding of the facts, transactions and the purpose of the proposed transactions is as follows:

FACTS

1. The Municipality was formed in XXXXXXXXXX. It has a XXXXXXXXXX fiscal year end and is a qualified donee as defined in subsection 149.1(1).
2. BCO was founded in XXXXXXXXXX and is an affiliate of XXXXXXXXXX, a charitable

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organization. BCO provides XXXXXXXXXXXX.

3. ACO is committed to XXXXXXXXXXXX.

4. Both BCO and ACO are incorporated as not-for-profit corporations in the Province.

5. The Individual is a resident of XXXXXXXXXXXX.

6. On XXXXXXXXXXXX, the Municipality declared itself XXXXXXXXXXXX. Despite this, on XXXXXXXXXXXX, CCO received XXXXXXXXXXXX from the Province authorizing the XXXXXXXXXXXX consisting of XXXXXXXXXXXX to be located in the County. The only legal method allowed for the public by XXXXXXXXXXXX law to XXXXXXXXXXXX of the County and the XXXXXXXXXXXX of the community is to appeal to the Tribunal and courts.

7. During the XXXXXXXXXXXX stage, the Municipality passed a resolution supporting the XXXXXXXXXXXX. The Municipality has been given full party status with respect to the hearing dealing with the appeal against the XXXXXXXXXXXX.

8. The Fund was established on XXXXXXXXXXXX by ACO and BCO as a collaborative effort to pay for the legal expenses incurred in defending XXXXXXXXXXXX from the XXXXXXXXXXXX. Donations to the Fund have been accepted by ACO and BCO. The donations were not tax deductible.

9. Donations to the Municipality are governed by the Municipality's Policy that took effect on XXXXXXXXXXXX and was amended on XXXXXXXXXXXX. The salient features of the Policy are described below.

a) Section XXXXXXXXXXXX of the Policy provides that the Municipality will issue an official income tax receipt for gifts for a community project led by an organization under the following conditions:

(i) The donation has been made to the Municipality;

(ii) Council deems the project to be in the interest of the Municipality;

(iii) Council establishes how ongoing direction and control over the use of the funds will occur;

(iv) A written agreement is entered into between the Municipality and the organization;

(v) The funds are used for a purpose for which the Municipality could accomplish in its own right.

b) Section XXXXXXXXXXXX of the Policy provides that a donor can direct that a gift be used in a particular program provided that no benefit accrues to the donor or anyone not at arm's length with the donor; however the Municipality must have full discretion in deciding how to allocate its funds and must be able to re-allocate all donated funds to other programs or activities when it deems appropriate.

c) Section XXXXXXXXXXXX of the Policy provides that the Policy does not apply and an official receipt cannot be issued when:

(i) The Municipality acts as a conduit by collecting gifts from donors and then funnels the donation to an organization without maintaining direction and control as provided for under section XXXXXXXXXXXX of the Policy;

(ii) The organization is already legally or otherwise entitled to the transferred funds or property;

(iii) An advantage, as defined under subsection 248(32), accrues to the donor or to any person not

dealing at arm's length with the donor as a result of the donation.

PROPOSED TRANSACTIONS

10. The Municipality, ACO and BCO will enter into an agreement to establish the Municipal Fund for the purpose of XXXXXXXXXXXX. The agreement will provide, among other things, that:

- a) All donations to the Municipal Fund will be deposited to the Municipal Fund bank account set up by the Municipality;
- b) The responsibility of ACO and BCO will be to work with a lawyer in facilitating a cost effective process for defending XXXXXXXXXXXX of the County from XXXXXXXXXXXX;
- c) ACO and BCO may also provide fundraising efforts for the Municipal Fund;
- d) The Municipality will at its sole and absolute discretion reimburse expenditures relating to legal expenses and disbursements incurred in defending XXXXXXXXXXXX the County;
- e) When all expenditures are complete, any remaining funds in the Municipal Fund will be made available to support activities that in the sole discretion of the Municipality are beneficial to the County's XXXXXXXXXXXX;
- f) ACO and BCO agree that the Municipality cannot pass on donated funds directly from donors to them and if for any reason all funds are not expended, the Municipality cannot return donations;
- g) In their capacity as fundraisers, ACO and BCO will inform donors of the facts in f;
- h) The agreement may be amended provided that such amendment does not derogate from the following:
 - (i) the remaining capital of the Municipal Fund and any additions to the Municipal Fund will be held by the Municipality and managed in accordance with the financial management policies of the Municipality in force from time to time; and
 - (ii) the capital and investment earnings of the Municipal Fund will only be used to support activities or qualified donees engaged in activities that in the sole discretion of the Municipality are beneficial to the County's XXXXXXXXXXXX.

11. The Municipality will maintain the bank account referred to in 10.a) into which it will accept donations to the Municipal Fund. This bank account will be separate from the current bank account being maintained by ACO and BCO for the Fund. The Municipality will use this bank account to reimburse, at its sole discretion, legal invoices and other related expenses to XXXXXXXXXXXX. The Municipality will maintain full control and ownership of the funds as required under the Policy.

12. A lawyer is required to XXXXXXXXXXXX. The lawyer will be retained by ACO and BCO and will not be directly engaged by the Municipality. Both ACO and BCO will submit the legal invoices to the Municipality for reimbursement, at which time the Municipality will have full authority and discretion to reimburse these organizations, in whole or in part, for costs incurred to XXXXXXXXXXXX.

13. The Municipal Fund will be deemed a project of community interest by the Municipality allowing the Municipality to accept donations to the Municipal Fund. This also requires the Municipality to comply with its Policy regarding the issuance of official receipts.

14. All expenses of the Municipal Fund will be approved by the Director of Finance of the Municipality or a designate prior to payment.

15. The Individual will donate \$XXXXXXXXXX to the Municipal Fund controlled by the Municipality in respect of which donation the Municipality proposes to issue an official receipt for an eligible amount of \$XXXXXXXXXX. The Individual and persons or partnerships not dealing at arm's length with the Individual will not receive any benefit or advantage (as defined under subsection 248(32)) in respect of the donation to the Fund.

PURPOSE OF THE PROPOSED TRANSACTIONS

The purpose of the Municipality entering into an agreement to maintain and control the Municipal Fund as a project of community interest is to allow for donations to the Municipal Fund to be eligible as gifts under "total charitable gifts" as defined under subsection 118.1(1).

The purpose of the Individual's proposed donation is to contribute to the Municipal Fund in order to help offset the legal expenses required to XXXXXXXXXXXX. Specifically, the Individual has concerns related to the XXXXXXXXXXXX. The Individual believes that through his donation, the Municipality will be able to assist in XXXXXXXXXXXX.

RULING

Provided that

- (a) the preceding statements constitute a complete and accurate disclosure of all of the relevant facts, proposed transactions and the purpose of the proposed transactions,
- (b) the proposed transactions are completed in the manner described above, and
- (c) there are no other transactions which may be relevant to the ruling requested,

we rule as follows:

Subject to the limitations and other restrictions found in section 118.1 and provided that an official receipt containing prescribed information is filed as required by subsection 118.1(2), the cash donation made by the Individual to the Municipal Fund as described in 15 above will qualify as a gift to the Municipality for purposes of the definition of "total charitable gifts" in subsection 118.1(1) and the eligible amount of the gift will be \$XXXXXXXXXX less the amount of the advantage, if any, in respect of the gift as defined in subsection 248(32).

The above ruling is based on the Act and Income Tax Regulations to the Act in their present form and does not take into account any proposed amendments which if enacted, could have an effect on the ruling provided herein.

The above ruling is given subject to the general limitations and qualifications set out in Information Circular 70-6R7, Advance Income Tax Rulings and Technical Interpretations, dated April 22, 2016, and is binding on the CRA provided that the proposed transactions are completed on or before XXXXXXXXXXXX.

OTHER COMMENTS

Except as expressly stated, this letter does not imply acceptance, approval or confirmation of any income tax implications of the facts or proposed transactions described herein. For greater certainty, the

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CRA has not considered, reviewed, agreed to or ruled on any other tax consequences relating to the facts, proposed transactions or any transaction or event taking place either prior to the proposed transactions, including, any donations made prior to the proposed transactions, or subsequent to the proposed transactions, whether described in this letter or not, other than those specifically described in the ruling given above.

An invoice for our fees in connection with this ruling request will be forwarded to you under separate cover.

Yours truly,

XXXXXXXXXX

for Director

Financial Industries and Trusts Division

Income Tax Rulings Directorate

Legislative Policy and Regulatory Affairs Branch