

PRINCIPAL ISSUES: For purposes of applying the charitable gifting rules in the ITA, can an estate be a graduated rate estate before the actual designation as such is made on filing its tax return?

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SUBJECT Status as a graduated rate estate

SECTION 248(1) definition of “graduated rate estate”

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PRINCIPAL ISSUES: For purposes of applying the charitable gifting rules in the ITA, can an estate be a graduated rate estate before the actual designation as such is made on filing its tax return?

POSITION: Yes.

REASONS: Wording of the Act.

XXXXXXXXXX 2017-068448

Phillip Kohnen

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February 8, 2017

Dear XXXXXXXXXX:

Re: Status as a “graduated rate estate”

This is in response to your email dated January 11, 2017, wherein you asked whether, if an estate were to make a charitable donation prior to filing its first tax return and making the designation to be a graduated rate estate (“GRE”), could the donation be treated as a GRE donation and claimed in the deceased’s final return.

To illustrate your concern, we have assumed the following hypothetical facts:

1. Mr. X died on January 15, 2016;
2. The estate of Mr. X meets all of the requirements to be a GRE, other than those in paragraphs (c) and (d) of the GRE definition in subsection 248(1) of the Income Tax Act (the “Act”);

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3. The estate will make a charitable donation on February 15, 2017;
4. At the time of the donation, the estate will not have met the requirements in paragraphs (c) and (d) of the GRE definition solely due to the fact that the estate will not have filed its return of income for its first taxation year; and
5. On April 1, 2017, the estate will file its return of income for its first taxation year ending January 15, 2017 and in doing so will fulfil all of the requirements to be a GRE.

Our comments:

This technical interpretation provides general comments about the provisions of the Income Tax 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 70-6R7, Advance Income Tax Rulings and Technical Interpretations.

Subsection 118.1(5.1) applies to a donation made by the GRE (as determined without reference to paragraph (a) of the GRE definition) of an individual that dies after 2015 if the donation is made within 60 months of the death and if either of the requirements in paragraph (a) or (b) of that subsection are met.

In our view, the wording of the Act does not prevent a donation to which subsection 118.1(5.1) will apply from being made by an estate prior to its filing of its return of income for its first taxation year.

Accordingly, in the above hypothetical fact scenario, as long as the estate of Mr. X meets all of the requirements in the GRE definition at the time of the filing of its first return of income on April 1, 2017, subsection 118.1(5.1) will apply to the donation if the requirements contained therein are met. In that case, the eligible amount of the donation can be claimed in the deceased's return of income for the year of death or the immediately preceding year, or in the GRE's return of income for the year of the donation or the previous year of the GRE. Any unused donation amount can be carried forward from the year in which the donation is made and claimed by the GRE within the limits in the Act.

We trust our comments will be of assistance.

Yours truly,

Phillip Kohnen, CPA, CMA, TEP

Trust Section I

Financial Industries and Trusts Division

Income Tax Rulings Directorate

Legislative Policy and Regulatory Affairs Branch