

LANGIND E
DOCNUM 2015-0565601E5
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DESCKEY 25
RATEKEY 2
REFDATE 150831
SUBJECT Acceptable uses of accumulated surplus by an NPO
SECTION 149(1)(l)

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PRINCIPAL ISSUES: Will a benefit to members result from the use of an accumulated surplus under various scenarios.

POSITION: Possible benefit to members may result.

REASONS: Previous interpretations

XXXXXXXXXXXX
2015-056560
A. Townsend

August 31, 2015

Dear XXXXXXXXXXXX:

Re: Paragraph 149(1)(l) – Use of surplus funds by a non-profit organization

This is in response to your questions concerning the use of surplus funds by an organization that claims the exemption from tax as a non-profit organization under paragraph 149(1)(l) of the Income Tax Act (the “Act”). The situation you have described involves an unincorporated professional organization (the “Organization”) whose members are XXXXXXXXXXXX in the province of XXXXXXXXXXXX. The Organization’s mandate includes providing a forum for members to share information and ideas and to provide professional development through conferences and workshops. In this letter, unless otherwise expressly stated, all statutory references are to the provisions of 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 70-6R6, Advance Income Tax Rulings and Technical Interpretations. Although we cannot comment on your specific situation, we are able to provide the following general comments which may be of assistance.

OUR COMMENTS

In general terms, paragraph 149(1)(l) provides that the taxable income of an organization is exempt from tax under Part I of the Act for a period throughout which the organization meets all of the following conditions:

- * it is a club, society or association;
- * it is not a charity;
- * it is organized and operated exclusively for social welfare, civic improvement, pleasure, recreation or any other purpose except profit; and
- * its income is not available for the personal benefit of a member or shareholder, unless the member or shareholder is an association which has as its primary purpose and function the promotion of amateur athletics in Canada.

As discussed in paragraph 8 of Interpretation Bulletin IT-496R, Non-Profit Organizations, a 149(1)(l) organization may earn income in excess of its expenditures provided the requirements of the Act are met. However, if a material part of the excess is accumulated each year and the balance of accumulated excess at any time is greater than the association's reasonable needs to carry on its non-profit activities, profit may be considered to be one of the purposes for which the association was operated.

You have asked whether the use of surplus funds to create academic scholarships for students at the universities and colleges where XXXXXXXXXXXX of the members are XXXXXXXXXXXX is an indication of a profit purpose. It is our view that where an organization has an accumulated surplus that is large enough to fund academic scholarships this could indicate that the organization may have retained earnings larger than is necessary to meet its not-for-profit objectives and therefore that organization may not be operating exclusively for a purpose other than profit. However, a review of all of the circumstances, including (but not limited to) how and why the surplus was accumulated and the length of time over which the surplus has been accumulated may indicate that the Organization does not have a profit purpose, notwithstanding the surplus. In addition, generally surpluses may not be viewed as reflecting a for-profit motive if the entity is taking reasonable business steps to reduce the surpluses e.g., by adjusting the costing of its products or services.

You have also asked whether the Canada Revenue Agency (CRA) would consider the income of an organization is payable to or available for the personal benefit of members where a paragraph 149(1)(l) organization uses surplus funds to reimburse members for the cost of personal tuition fees paid for post-secondary courses or for the cost of attending conferences provided by other organizations. It is our understanding that the mandate of the Organization is to provide professional development to members through conferences and workshops provided by the Organization. Therefore, a benefit to members may result where incidental profits are used to reimburse members for tuition fees or conference fees, unless the member attends as a delegate of the Organization (discussed below).

You have requested clarification of the term “delegate” that is used in paragraph 12 of IT-496R, which concerns members attendance at conferences as “delegates” of the 149(1)(l) organization. The term “delegate” generally refers to a person sent or authorized to represent others. It is the CRA’s view that a payment to attend a conference as a delegate of an organization, that is not directly for the personal benefit of a member but incidentally benefits a member, while mainly benefiting the organization, will not be considered to be a benefit to members. However, it is always a question of fact whether attendance at a conference is primarily for the member’s benefit or to further the objectives of the organization.

Finally, you have asked whether it is our view that the income of an organization is payable to or available for the personal benefit of members where the membership fee is paid by the member’s employer to an organization and a portion of that fee is reimbursed directly to the member by the organization. Generally, where a 149(1)(l) organization overestimates its annual membership fees and refunds the excess fees to its members in the year it will not be denied the exemption under paragraph 149(1)(l). The organization’s financial records together with the facts surrounding the distribution must support the characterization of the amounts as a refund of fees. However, in order to ensure that income is not available for the personal benefit of a member, the payments should be available, proportionately, to all members or groups of members of the organization and the organization should refund the fee directly to the employer that paid the fee on behalf of the member.

We trust that these comments will be of assistance.

Yours truly,

Roger Fillion, CPA, CA
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Non-Profit Organizations and Aboriginal Issues
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