

LANGIND E
DOCNUM 2015-0593921E5
AUTHOR Johnstone, Alexander
DESCKEY 25
RATEKEY 2
REFDATE 151027
SUBJECT Donation of property and amount of tax receipt
SECTION ITA 118.1(2)(a), 118.1(6), 248(35), ITR 3501(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: Can an official receipt issued for property donated in kind include an amount less than the fair market value of the property?

POSITION: The official receipt should include the amount of the fair market value or the deemed fair market value of the property, depending on the circumstances.

REASONS: Required by section 3501 of the Regulations.

XXXXXX
XXXXXX

2015-059392

Alex Johnstone

(613) 410-9134

October 27, 2015

Dear XXXXXXXXX:

Re: Donation Receipt

We are writing in response to your email dated June 18, 2015 requesting our comments on whether an official receipt for a gift of property to a municipality can be made out for an amount other than the fair market value of that gifted property.

This technical interpretation provides general comments about the provisions of the Income Tax Act (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.

We assume for the purposes of responding to your email that the donor is an individual, the gifted property is capital property and the municipality is a qualified donee.

Section 118.1 of the Act provides that individual taxpayers may claim a credit against taxes payable, within specified limits, for an eligible amount of a gift made to a qualified donee, if

supported by an official receipt. Subsection 118.1(2) of the Act requires a receipt issued in prescribed form in order for an individual to claim the donation tax credit. Section 3501 of the Income Tax Regulations (the “Regulations”) provides that the official receipt in respect of a gift issued by a qualified donee must contain certain information, which includes, for a gift of property other than cash, the amount that is the fair market value of the property at the time that the gift was made. A qualified donee may not issue a donation receipt if it cannot reasonably determine the value of the property gifted.

Subsection 118.1(6) of the Act, in conjunction with subsection 118.1(5.4) of the Act, generally provides that, if an individual donates capital property to a qualified donee, the individual may designate an amount between the adjusted cost base and the fair market value of the donated property to be treated both as the proceeds of disposition for the purpose of calculating the individual's capital gain and the fair market value of the donated property for the purpose of determining the eligible amount of the gift in calculating the donation tax credit. In particular, the designated amount may not exceed the fair market value of the property otherwise determined, and may not be less than the greater of:

- * the amount of the advantage, if any, in respect of the gift, and
- * the adjusted cost base of the property or, if the property is depreciable property, the undepreciated capital cost of the class of the property at the end of the individual's taxation year.

As noted above, the designation under subsection 118.1(6) of the Act applies for the purpose of determining the eligible amount under subsection 248(31) of the Act. Therefore, regardless of whether or not the designation is made, the official receipt must include the fair market value of the property at the time the gift was made as required under section 3501 of the Regulations.

We note that subsections 248(35) to (37) of the Act may be relevant to the situation at hand. Under subsection 248(35) of the Act, the fair market value of the property cannot exceed its cost to the taxpayer for the purposes of subsections 248(31), 110.1(2.1) and (3) and 118.1(5.4), (6) and (13.2), and paragraph 69(1)(b) of the Act where certain conditions apply. Specifically, subsection 248(35) of the Act provides that the fair market value of the gifted property is deemed to be the lesser of its fair market value otherwise determined and its cost, or in the case of capital property, its adjusted cost base, or in the case of a life insurance policy in respect of which the taxpayer is a policyholder, its adjusted cost basis, of the property immediately before the gift is made. This deeming rule applies to property acquired under a gifting arrangement that is a tax shelter as defined in subsection 237.1(1) of the Act. Unless the gift was made as a consequence of the individual's death, this deeming rule also applies where the individual acquired the property

- (a) less than three years before the day the gift is made; or
- (b) less than 10 years before the day the gift is made and it is reasonable to conclude that one of the main reasons the individual acquired the property was to gift the property to a qualified donee.

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Subsection 248(37) excludes several types of gifts from the application of subsection 248(35) of the Act.

For more information on gifts in kind and related rules, please see Pamphlet P113, Gifts and Income Tax, available on the CRA website at www.cra-arc.gc.ca. Further information on the issuance of receipts can be found on the Charities Directorate website at www.cra-arc.gc.ca/charities.

We trust that these comments will be of assistance.

Yours truly,

Jenie Leigh
Manager
Financial Institutions Section
Financial Industries and Trusts Division
Income Tax Rulings Directorate
Legislative Policy and Regulatory Affairs Branch