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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: Tax exempt status of affordable housing provider.

POSITION: Tax exempt.

REASONS: Various sections of the Act.

XXXXXXXXXX

2014-054279

A. Townsend

February 3, 2015

Dear XXXXXXXXXX:

This is in response to your letter of July 31, 2014, regarding the tax implications to an entity described in paragraph 149(1)(l) of the Income Tax Act (the "Act") with respect to the long-term lease of parking spots to a business owned by one of its board members. In this letter, unless otherwise expressly stated, all statutory references are to the provisions of the Act.

The situation you have described involves an affordable housing provider ("housing provider") that is a "designated housing project" governed by the Ontario Housing Services Act, 2011. The housing provider

is contemplating entering into a XXXXXXXXXX-year term lease for the rental of XXXXXXXXXX excess parking spots and will charge the same rate that it charges to tenants of the housing provider. You have advised that in your opinion the total rental income received from the parking spots will be immaterial relative to the total income of the NPO.

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.

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.

The courts have recognized that an organization claiming a paragraph 149(1)(l) exemption can earn a profit, as long as the profit is incidental and arises from activities directly connected to its not-for-profit objectives. For example, maintaining reasonable operating reserves or bank accounts required for ordinary operations will generally be considered to be an activity undertaken to meet the not-for-profit objectives of an organization.

It is a question of fact whether the rental income described would be incidental and directly connected to the not-for-profit objectives of the housing provider. Income from the rental of XXXXXXXXXX parking spots under a XXXXXXXXXX-year term lease to a third party by an organization providing affordable housing will generally not be considered to be directly connected to the objective of providing affordable housing. However, a review of all of the circumstances, including (but not limited to) how and why the extra parking spots were acquired by the housing provider, and why the extra spots continue to be maintained, may indicate that the housing provider does not have a profit purpose, notwithstanding the lease.

It is also a question of fact whether the income of the organization is payable to or otherwise made available for the personal benefit of any member. An organization may fail to comply with this requirement if it distributed income during the year, either directly or indirectly, to, or for the personal benefit of, any member. It is not clear in your situation whether the board member is also a member of the housing provider.

Affordable Housing Providers – Other Exemptions

Affordable housing providers may be exempt from tax under the following sections of the Act that do not have the same requirements and restrictions imposed by paragraph 149(1)(l):

* Municipal corporations are exempt from tax under paragraph 149(1)(d.5) provided at least 90% of the capital is owned by municipalities or public bodies performing a function of government. We note that paragraph 149(1)(d.5) does not apply to an organization that is only funded, not owned, by a municipality. Paragraph 149(1)(d.5) does not preclude a municipal corporation from having a profit purpose, which may allow for more funding flexibility. Paragraph 149(1)(d.5) imposes a restriction that no more than 10% of income may be earned from activities carried on outside the geographical boundaries of the municipality or municipalities; however this restriction may not be a concern for a municipal housing organization.

* An affordable housing provider may be a registered charity. In Policy Statement CPS-020 for "Applicants that are Established to Relieve Poverty by Providing Rental Housing for Low-Income Tenants", the Charities Directorate has determined that, on the basis of the Act and the common law, certain low-income housing organizations may be considered to be established for the purpose of relieving poverty and are eligible for registration. A registered charity is exempt from tax under paragraph 149(1)(f) and as a charity, cannot qualify for the NPO exemption provided by paragraph 149(1)(l). An affordable housing provider that is a charity must generally be registered in order to be exempt from tax (assuming that one of the other provisions noted does not apply).

* Corporations that are "constituted exclusively for the purpose of providing low-cost housing accommodation for the aged" are exempt from tax under paragraph 149(1)(i). This provision does not specifically preclude a profit purpose, although it does require that income not be available for the personal benefit of proprietors, members and shareholders.

* Paragraph 149(1)(n) exempts from Part 1 tax the taxable income of a person for a period when that person was a limited-dividend housing company (within the meaning of that expression as defined in section 2 of the National Housing Act), all or substantially all of the business of which is the construction, holding, or management of low-rental housing projects where the dividends payable are limited by its charter or instrument of incorporation to five per cent per year or less.

I trust the above will be of assistance.

Yours truly,

R. Filion, CPA, CA

Manager

Non-Profit Organizations and Aboriginal Issues Section

Business and Employment Division

Income Tax Rulings Directorate

Legislative Policy and Regulatory Affairs Branch