



Under a Microscope – Transactions that Draw the Attention of the CRA

More Ways to Serve You!

Pour vous servir encore mieux !



Canada Customs
and Revenue Agency

Agence des douanes
et du revenu du Canada

Canada

Tax Shelters

- Buy-Low Donate High Schemes, Limited Recourse Debt Arrangements, Gifting Trusts
- 100% audit coverage of tax shelters
- CRA has now reassessed thousands of taxpayers for hundreds of millions of dollars
- Will result in the application of False Information penalties against charities

Non-Arm's Length Transactions

Includes:

- Non-Qualifying Securities (Gift is nil)
- Loanbacks (Reduce by the FMV of the property used)
- Loans of money or property to Directors or other non-arms length individuals
- Business transactions between registered charity and companies of Founder or Director

Non-gifts

- Receipts issued for services provided to the charity (e.g., consulting fees, rental space)
- Receipts issued for payments for services offered by the charity (e.g., tuition fees, daycare)
- Receipts issued for payments that are not voluntary (e.g., contractual obligations, court ordered payments)
- Receipts issued for non-transfers (e.g., loans of property)
- Receipts issued for lotteries or draws

Benefits provided by Charities

- 248(32) requires that any benefits (advantage) provided with respect to a gift must be deducted from the eligible amount of the receipt
- Registered charities that provide some recognition, with respect to donations, in the form of advertising and sponsorship need to deduct this from receipts
- Benefits provided by third-parties are also covered

Common Problems

Properly establish FMV

- Vital in order to issue a receipt – knowing the value of what you have received (and what you give back)
- Simply accepting the FMV advanced by the donor without question is fraught with peril
- The deemed FMV rule will apply where a donor gifts property acquired within the last 3 years or through a gifting arrangement
- Failure to take the proper steps to ensure the FMV is correct may result in the reassessment of the donor, monetary penalties to the charity or both

Common Problems

Timing is often key

- A registered charity must issue its receipts reflective of the actual date of the gift
- If the donation was made in a particular taxation year, it must be issued for that particular taxation year
- A charity that receives non-cash gifts must establish the value at the time of donation. It is not what an item subsequently sells for (e.g., at auction) that establishes the FMV. It is also not necessarily what the value of the property is at the time the charity actually receives it

Common Problems

Who is your donor?

- A registered charity must issue its receipts in the name of the actual donor
- The CRA does not support after-the-fact tax planning. Once a donor has made a gift the charity cannot subsequently alter or re-issue receipts to accommodate more individuals
- Where a corporation or business makes a donation, the receipt should be issued in its name

Common Problems

You Can't Give it Back

- Property, once received, can only be used to further the charitable purposes of the organization. Perfected gifts are irrevocable
- Property can generally only be returned to a donor through a court direction. It is not sufficient that both parties agree (this applies equally to varying the terms of a trust or direction)
- If you are collecting funds for a particular purpose, inform donors in advance what will become of property if the original purpose becomes impossible to fulfill

Common Problems

Remember your DQ

- Every receipt issued will have an effect on a charity's disbursement quota. Advance planning is key to avoiding a disbursement quota shortfall
- Relief is available – 10 year gift directions, permission to accumulate property, permission to reduce the DQ
- 10 year gift directions must be sought in advance. As the name suggests, 10 year gifts must be held for 10 years

Common Problems

Do you even want it

- Many charities accept property just because it is offered. Charities need to ask whether they can use the property and/or afford to accept it
- Has to be (in some reasonable sense) used in your charitable programs. Simply giving it away may run you afoul of the CRA

Contact Us

- **Charities Information Line**
 - 1-800-267-2384 (English)
 - 1-888-892-5667 (bilingual)
- **Charities Information on the Web**
 - WWW.CRA.GC.CA/CHARTIES
- **Charities Electronic Mailing List**
 - To connect, follow instructions on CRA's Charities Web site (Electronic Mailing Lists link in left menu)