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Charity Law Information Program (CLIP)

Canadian Charitable Tax Receipts

December 10, 2009

Mark Blumberg (mark@blumbergs.ca)

Production of this workshop and materials was made possible by
a financial contribution from the Canada Revenue Agency

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Who We Are – Capacity Builders

- Capacity Builders is a division of the Ontario Community Support Association (OCSA) and it runs the **Charity Law Information Program (CLIP)**
- **CLIP provides training, workshops, and webinars to Canadian charities to enhance their understanding of their legal, ethical, and governance obligations**
- <http://www.capacitybuilders.ca/clip>
- CLIP Communiqué – sign up for free
- (416) 256 – 3010 x 232 or 1-877-484-3030
- clip@capacitybuilders.ca
- The Charities Directorate of CRA has provided funding for CLIP



Who We Are – Blumbergs

- Blumberg Segal LLP is a law firm based in Toronto, Ontario
- Mark Blumberg is a partner at Blumbergs who focuses on non-profit and charity law
- Assists charities from across Canada with Canadian and international operations and foreign charities fundraising here
- www.canadiancharitylaw.ca and www.globalphilanthropy.ca
- Free Canadian Charity Law Newsletter. Sign up at: <http://www.canadiancharitylaw.ca/index/php/pages/subscribe>
- (416) 361 – 1982 or 1-866-961-1982
- mark@blumbergs.ca



Charities Directorate of CRA

- Regulates registered charities
- Based in Ottawa and other offices throughout Canada
- Website: www.cra.gc.ca/charities
- E-mail list: www.cra-arc.gc.ca/esrvcsrvce/mlist/sbscrbchrts-eng.html
- Webinars: www.cra-arc.gc.ca/tx/cmmnctn/sssns/wbnrs-eng.html
- Telephone: 1-800-267-2384 (English)
1-888-892-5667 (Bilingual)
- Through CPOP supporting 19 charities conducting educational work on legal and *Income Tax Act* compliance.



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Introduction

- Legal information not legal advice
- Views expressed are our own
- Questions during and at end
- Logistics and timing



Charity Law Basics

- Registered charities are regulated by Charities Directorate of the Canada Revenue Agency (CRA)
- Registered charities fall under both federal and provincial jurisdiction
- Non-profits and charities are both tax exempt
- *Income Tax Act* – concept of “registered charity” can issue “official donation receipt” with income tax savings for donor
- Benefits and restrictions on registered charities
- Doing good and charity are not synonymous



Maintaining Charitable Status

- Conduct allowable charitable activities and avoid prohibited activities
- Keep adequate books and records
- Properly issue official donation receipts
- Meet annual spending requirement (disbursement quota)
- File T3010 Registered Charity Information Return
- Maintain status as a legal entity
- Inform CRA of certain changes



Receipts

- Charities are not required to issue receipts
- But if charity issues receipt it must be done correctly
- Some receipts:
 - Lack required information
 - Have mistakes
 - Include improper fair market value (FMV)



Does a charity have to issue receipts?

- No
- But make donors aware of policies (minimum donations, when receipts will or will not be issued etc.)
- Individuals require “official donation receipt” to reduce personal income tax when they file their personal return each year so let them know if no receipt will be issued



What is a “Gift”

Charities can only issue receipts for a gift.

A gift must be:

1. **Voluntary** – given of free will (not compelled)
2. **Transferred** – from donor to charity/qualified donee
3. **Property** – cash or gifts in kinds (not services)
4. **Financial Sacrifice** on the part of the donor
(donative intent – advantage must be less than 80%
of amount unless Minister agrees)



Don't Issue a Receipt When...

- You cannot determine the value of the donation or the benefit
- Donation of services (donated time, labour, skills) to charity or loans of property, use of a timeshare or lease of premises
- Donation is intended for another organization that is not a registered charity or qualified donee (“lending registration”)



Don't Issue a Receipt When...

- Tuition (except IC 75-23 - private religious schools)
- Business advertising expenses/sponsorship
- Gifts of promises (for example, gift certificates donated by the issuer, hotel accommodation) or pledges
- Payment of basic fee for event (eg. concert)
- Payment for program (eg. daycare)



Don't Issue a Receipt When...

- Membership fees that convey the right to attend events, receive literature, receive services, or be eligible for entitlements of any material value that exceeds 80% of the value of the payment
- Lottery tickets
- Purchase of goods or services from charity
- Donation for which the fair market value of the advantage or consideration provided to the donor exceeds 80% of the value of the donation



Don't Issue a Receipt When...

- Funds or gift in kind from another qualified donee (for example Canadian private foundation gifts or transfers funds to registered Canadian charitable organization)
- Cannot determine the name of the true donor



Mandatory Elements of Receipts

For gifts of cash: (Regulation 3501 of the *Income Tax Act*)

- A statement that it is an official receipt for income tax purposes;
- The name and address of the charity as on file with the CRA;
- The charity's registration number;
- The serial number of the receipt;
- The place or locality where the receipt was issued;
- The day or year the donation was received;



Mandatory Elements of Receipts (cont.)

- The day on which the receipt was issued if it differs from the day of donation;
- The full name and address of the donor;
- The amount of the gift;
- The value and description of any advantage received by the donor (under proposed legislation);
- The signature of an individual authorized by the charity to acknowledge donations; and
- The name and Web site address of the Canadian Revenue Agency (www.cra.gc.ca/charities)



Mandatory Elements for Gifts in Kind

For non-cash gifts (gifts in kind), these additional elements:

- The day on which the donation was received (if not already indicated);
- A brief description of the property transferred to the charity;
- The name and address of the appraiser (if property was appraised); and
- In place of the amount of the gift mentioned above, the deemed fair market value of the property (under proposed legislation).



Sample Official Donation Receipts

Charities and Giving - Sample official donation receipts - Windows Internet Explorer

http://www.cra-arc.gc.ca/tx/chrts/pbs/smpl-eng.html#sample1

sample official donation receipts CRA

File Edit View Favorites Tools Help

Google sample official donation receipts CRA Search

Charities and Giving - Sample official donation receipts

Home Feeds (J) Print Page Tools

Canada Revenue Agency
www.cra.gc.ca

Français Home Contact Us Help Search canada.gc.ca

Sample official donation receipts

Sample # 1 - Cash gift (no advantage)

Receipt # 0001

Charity name	Canadian charity address	Charity BN/Registration #
Date donation received: _____		Donated by: _____ (First name, initial, last name)
		Address: _____
Eligible amount of gift for tax purposes: _____		
	Date receipt issued: _____	
	Location issued: _____	
	Authorized signature: _____	

For information on all registered charities in Canada under the *Income Tax Act* please visit:
Canada Revenue Agency www.cra.gc.ca/charities

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GENERAL



When should receipt be issued?

- No requirement to issue receipt and no requirement as to when
- If charity will issue receipt CRA recommends it be done by end of February for previous year so that donor has time to prepare tax return
- With gifts in kind (non-cash) need separate receipt for each donation
- For cash gifts, eg. Monthly donors, can issue cumulative gift for year



Correcting or Replacing Receipts

- To replace a **lost** receipt, a registered charity can issue a replacement, which must contain all the required information plus the serial number of the lost receipt. The replacement receipt should also state that it “cancels and replaces the lost receipt.” The charity's copy of the lost receipt should be kept and marked “cancelled”.
- For a **spoiled** receipt, a registered charity can issue a new receipt but must keep the original copies (both the donor's and charity's) marked "cancelled".



Computer generated Receipts

- Can be used – must be legible and protected from tampering
- Password protect computer
- Keep copy of non-erasable media (CD-ROM, print out)
- Hard copy must be printable upon request
- Can be sent by e-mail but must be read/print only and non-editable.



Donation received before registration

- Where a registered charity's objects and activities are charitable throughout the year, the charity may issue official donation receipts for all cash gifts it received in the calendar year during which it was registered.
- A registered charity cannot issue an official donation receipt for a gift-in-kind received prior to the charity's effective date of registration.



Donation or Sponsorship?

- **Purpose:** Is one of the purposes of the donation to obtain recognition?
- **Source:** Is the donation from an individual or a business? Generally nil value when individual unless their name “indelibly associated” with a company or product. Is the use of donor’s name a valuable benefit to the donor?
- **Contracting:** Is there a contract (a written or unwritten understanding concerning the benefits the donor will receive in return for the donation)? Does it indicate that the donor expects and receives an economic benefit in return for the donation?



Donation or Sponsorship?

- **Valuation:** Can the value of the exposure (promotion, advertising, sponsorship) be determined? How much is the equivalent exposure worth? See split receipting. If the advantage is not more than 80% of the value of the payment a charity may issue a receipt for the difference.
- **Token recognition or not? Naming.** Is simply being named as a donor necessarily a benefit (e.g., newsletters, plaques, cards)? If a benefit, does it have value.



Rent free space or accommodation

- One of the criteria for a gift is that there be a voluntary transfer of **property**.
- With rent free space or accommodation, no property is being transferred—instead, use of the building is being provided. Since no property is transferred, no “gift” is made. A tax receipt for the value of the loan of property cannot be issued.
- Although the loan of property does not constitute a gift, a charity may pay rent on a property to an individual and later accept a gift of all or part of the payment, as long as the gift is voluntary. The charity may then issue a receipt for tax purposes. The donor would have to report the income earned but would be able to claim the tax relief associated with the gift.



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SPLIT RECEIPTING



Split Receipting

- New legislative idea – from 2002
- Pre-2002 – if donor received any advantage, then no receipt
- Now donors can receive some advantage eg. concerts, golf tournament, gala dinners, etc.
- Charity must determine the eligible amount of that gift for receipting purposes in order to issue an official donation receipt
- Eligible amount is gift minus advantage
- <http://www.cra-arc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.pdf>



Advantage is broad

Possible advantages include:

- property (for example, cash, non-cash gifts);
- the use of or enjoyment of property;
- the provision of services; and
- other benefits (for example, assumption of debt by donee, sponsorship)



More information on Split Receipting

Income Tax – Technical News No. 26 Dec. 24, 2002

- fund raising dinners
- charity auctions
- lotteries
- concerts, shows and sporting events
- golf tournaments
- membership fees
- charitable annuities
- mortgaged property
- http://www.cra-arc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.html#P153_16472



Receipting and Golf Tournaments

- **Green fees** are calculated at the rate (group or individual) normally charged to non-members playing the course at the time of the event. However, no amount is allocated to members where members are not normally required to pay green fees.
- **Cart rentals** are valued at their regular cost.
- **Meals** are valued at the price (group or individual rates) that would be charged if the meals were purchased separately at the course.
- **Complimentary items** are valued at the amount that would have to be paid to acquire the merchandise at the donating retail outlet or the outlet from which the merchandise was obtained.
- **Door and achievement prizes** are valued at the retail value of all such prizes, totalled, and allocated pro rata to all attendees.
- **Hole in one prizes** can be excluded. The CRA accepts that for any particular participant the value of the chance to win the prize is nominal.
- <http://www.cra-arc.gc.ca/tx/chrts/prtng/rcpts/fndrsng-eng.html>



What is fair market value?

the highest price, expressed in dollars, that property would bring in an open and unrestricted market, between a *willing buyer* and a willing seller who are both *knowledgeable, informed, and prudent*, and who are *acting independently of each other*.



Why is FMV important?

- For valuing gift in kind (non-cash) gift
- For valuing any advantages received
- If you cannot determine fair market value then cannot issue receipt
- Onus on charity to determine – major consequences for mistakes.



Determining FMW of gift in kind

- If under only one gift under \$1000 then someone affiliated from charity with sufficient knowledge may determine value
- If over \$1000 then recommended that professional appraisal by third party who is not associated with either charity or donor
- If appraisal include name and address of appraiser on the official donation receipt



What is “deemed” FMV?

- In certain circumstances receipt for a gift in kind (non-cash gift) must be issued for the lesser of
 - the gift's fair market value and
 - its cost to the donor (or in the case of capital property, its adjusted cost base) immediately before the gift is made.



When is “deemed” FMV used?

Circumstances

- gifts after December 5, 2003; and
- the gift received by the charity was initially acquired by the donor as part of a **tax shelter arrangement**; or
- the gift was **acquired less than three years** before the time of donation; or
- the gift was acquired less than **ten years before** the time of donation, with one of the **main purposes** being to gift the property to a qualified donee (for example, a registered charity).



Determining FMV of Advantage

- advantage = what donor *may* receive in return for his or her donation (for example, food at gala dinner)
- must be deducted when determining the eligible amount of a gift for receipting purposes
- Similar but different to determining fair market value of a gift in kind (non-cash gift).
- While only donations of *property* can be receipted as gifts in kind, the fair market value of any type of advantage (for example services, accommodation, meals) must be used to reduce the eligible amount of a gift for receipting purposes.



Is there donative intent?

- If advantage is
 - 80% or less of the fair market value of the donation, then a receipt may be issued for the difference
 - greater than 80% of the value of the donation, no gift is deemed to have been made (no donative intent), and a receipt cannot be issued.



If “Nominal” Value of Advantage

If advantage is the lesser of \$75 and 10% of the value of the donation, it is considered nominal (“de minimis”) and it need not be deducted from the eligible amount of the gift for receipting purposes.



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If Cannot Determine Value of Advantage

- If the FMV of the advantage cannot be determined, a receipt cannot be issued.



Example 1

- Individual donates \$500 to a charity and receives a theatre ticket worth \$90 from the charity.
- **Nominal threshold:** 10% of \$500 is \$50. Therefore the advantage must be \$50 or less to be considered de minimis.
- **Advantage threshold:** 80% of \$500 is \$400. Therefore the advantage must be less than \$400 for a receipt to be issued.
- This example not de minimis, and must be deducted from the value of the gift, but advantage does not exceed 80% value so a receipt can be issued. Eligible amount⁴¹ for which a receipt can be issued is **\$500 - \$90 = \$410.**



Example 2

- Individual donates \$300 to a charity and receives a TV set worth \$250 from the charity.
- **Nominal threshold:** 10% of \$300 is \$30. Therefore the advantage must be \$30 or less to be considered de minimis.
- **Advantage threshold:** 80% of \$300 is \$240. Therefore the advantage must be less than \$240 for a receipt to be issued.
- This example is not de minimis and advantage exceeds 80% value so a receipt cannot be issued.



Example 3

- Individual donates \$500 to a charity and receives a base pen worth \$4.95 from the charity.
- **Nominal threshold:** 10% of \$500 is \$50. Therefore the advantage must be \$50 or less to be considered de minimis.
- **Advantage threshold:** 80% of \$500 is \$400. Therefore the advantage must be less than \$400 for a receipt to be issued.
- This example is de minimis and therefore \$4.95 is not deducted from the value of the gift, and advantage does not exceed 80% value so a receipt can be issued. Eligible amount is **\$500**.



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SPECIAL ISSUES



Gift Certificates

- A gift certificate is “a certificate having a stated monetary value that entitles the recipient to purchase goods and/or services in the establishment of the issuer”.
- Charities can issue an official donation receipt when the donor is
 - a) not the issuer of the gift certificate; **and**
 - b) has obtained the gift certificate for valuable consideration either from the issuer or other third party.
- Cannot issue official donation receipt to issuer of gift certificate because it is promise to pay.



Gifts by Business from Inventory

- A registered charity can issue an official donation receipt to a business for the market value of a gift out of inventory.
- The charity's responsibilities are
 - determining that it has in fact received a gift;
 - determining the value of the gift.
- If sponsorship, then no official donation receipt



How does business treat donation

“It is the Canada Revenue Agency's responsibility to ensure that businesses comply with the provisions of the *Income Tax Act*, not the charity's. If asked, the charity may advise a business of the tax implications as follows:

- The business can, of course, deduct the cost of acquiring or producing the item given to the charity from its income.
 - If the business does make a true gift out of inventory, it must add the fair market value of the item to its income per subparagraph 69(1)(b)(ii) of the *Income Tax Act*, and then claim a charitable tax deduction.
 - If the business obtains a material benefit from the transaction, it can probably write off the cost as a business expense.”
- <http://www.cra-arc.gc.ca/tx/chrts/plcy/cpc/cpc-018-eng.html>



Volunteer Expenses

- A charity can reimburse a volunteer for the expenses incurred on behalf of the charity and later accept the return of the payment as a gift, provided that the amount is returned voluntarily.
- Best to do cheque exchange – keep proper financial records
- Should have written direction from volunteer if issuing official donation receipt in lieu of reimbursement.

<http://www.cra-arc.gc.ca/tx/chrts/plcy/cpc/cpc-012-eng.html>

<http://www.cra-arc.gc.ca/tx/chrts/plcy/cpc/cpc-025-eng.html>



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CONCERNS



Religious School Tuition Receipts

- If religious schools (either exclusively religious or dual (secular or religious)) are issuing tax receipts, they must ensure that they are only issuing receipts for religious portion of tuition, which, in the case of dual capacity schools, is based on the calculation set out in IC 75-23.
- Concern regarding inflated receipts

<http://www.cra-arc.gc.ca/E/pub/tp/ic75-23/ic75-23-e.txt>



Fraudulent Tax Receipts

- Tax receipts are sold for a small percentage of their face value
- No donation, or small donation, to charity
- No complicated scheme
- Keep tight control over receipts
- Advise CRA of any concerns



Abusive Gifting Tax Shelters

- People can donate to registered charities in Canada and get an official donation receipt which is very valuable and can be costly to the tax system.
- Usually “investor” or “donor” is told that the tax benefits and deductions arising from the scheme will equal or exceed the costs of entering into the arrangement or the property.
- Promoters and “charities” cannot, through various games and tricks, abuse the tax system to issue whatever receipt they wish.



CRA Taxpayer Alerts on Tax Shelter Gifting

Canada Revenue Agency / Agence du revenu du Canada

Canada

Canada Revenue Agency
www.cra.gc.ca

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Individuals
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Search CRA

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Taxpayer Alert

Warning: Participating in tax shelter gifting arrangements is likely to result in a tax bill!

Notice to the reader:
This Taxpayer alert is also offered in a variety of languages: [Arabic \(PDF, 150 KB\)](#), [Chinese - simplified version \(PDF, 242 KB\)](#), [Chinese - traditional version \(PDF, 259 KB\)](#), and [Punjabi \(PDF, 90 KB\)](#). These versions were translated from the English version.

Despite numerous warnings and audit actions by the Canada Revenue Agency (CRA), taxpayers are still participating in tax shelter gifting arrangements. The CRA is urging taxpayers to avoid these schemes.

The CRA is auditing all gifting arrangements

Taxpayers should be aware that the CRA plans to audit all tax shelter gifting arrangements. Every audit completed to date has resulted in a reassessment of tax, plus interest. In many cases the CRA has denied the "gift" completely. Penalties will be considered, especially where an investor was audited and reassessed for previously participating in a gifting arrangement.

Stats and Facts

- To date, the CRA has reassessed over 26,000 taxpayers who participated in these schemes, and denied about \$1.4 billion in donations claimed.
- Audits of another 20,000 taxpayers involving \$550 million in donation claims are just about complete.
- Audits on other arrangements involving over 50,000 taxpayers are about to begin.

Current Promotions

New schemes are being marketed that claim to be different from those for which the CRA has previously issued warnings. Taxpayers should avoid all schemes that promise donation receipts for 3 to 4 times the cash payment. It is the CRA's position that the proposed legislation, effective since 2003, will apply to reduce the donation credit to no more than the actual cash payment. Furthermore, as indicated above, completed audits have shown that there was effectively **no gift** being made in many cases, and as a result, the donation was reduced to zero.



Tax Shelter Gifting – Charity Concerns

1. Undermine public confidence in charities
2. Depletes tax revenues needed for basic services, many of which are delivered by charities
3. They are often illegal or fraudulent, usually unethical
4. Your donor will be audited (175,000 donors are currently being audited)
5. Determining the correct amount for the donation receipt



Tax Shelter Gifting – Charity Concerns (cont.)

6. Disbursement quota problems
7. Fundraising by using commissions may violate codes of ethics
8. Tax Shelter Identification Numbers – is not CRA approval
9. You don't want to be considered a Promoter
10. Lawsuits



Tax Shelter Gifting – Charity Concerns (cont.)

11. Questionable legal opinions
12. Civil penalties
13. Professional advisors
14. Advanced tax rulings from CRA usually not applicable
15. CRA's fundraising guidelines



Tax Shelters

- “If it sounds too good to be true, it probably is.”
- There are consequences
- Almost all schemes market themselves as being “different” from other schemes that CRA has warned about and promising that they are safe
- The CRA audits all charity gifting arrangements



Is this an Abusive Tax Scheme?

1. Person donates \$100 to charity, receives no benefit and charity issues \$100 tax receipt.
2. Person donates \$100 to charity and receives \$10,000 tax receipt.
3. Person buys pharmaceuticals in India as part of a scheme for \$100, pharmaceuticals donated to charity and valued for purposes of tax receipt, at \$10,000, and tax receipt issued for \$10,000.



Suspensions and Revocation

- CRA may give notice to a registered charity that its tax-receipting privileges have been suspended.
- A suspension is for one year from the day that is seven days after the notice is mailed.
- If your charity is revoked you cannot issue receipts.



Consequences for Improper Receipts

- Incomplete or incorrect information: Penalty equal to 5% of the eligible amount stated on the receipt. Penalty increases to 10% for a repeat infraction within 5 years.
- If no gift or deliberately false information then charity is liable to a penalty equal to 125% of the eligible amount stated on the receipt where the total penalty does not exceed \$25,000
- When penalty over \$25,000 the charity gets penalty equal to 125% and the suspension of tax-receipting privileges.
- Can also have registration revoked.



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OTHER RECEIPTING ISSUES



Ecological gifts

- Gift of land, including a covenant or an easement, or, in the case of land in Quebec, a real servitude.
- Land must be certified by the Minister of the Environment or a person designated by the Minister to be ecologically sensitive land whose conservation and protection is important to preserving Canada's environmental heritage.
- Recipient is Federal, Provincial or Municipal government or certain registered charities that have been approved by the Minister of the Environment.
- See Registered Charity Newsletter 22, 24.

<http://www.cws-scf.ec.gc.ca/egp-pde/>



Auctions

- Can issue receipt for some items donated for sale at an auction but must be “property” (not services), fair market value of the property must be determined before a receipt can be issued.
- **Generally successful bidder gets no receipt for purchase**
- Can issue official donation receipt if:
 - If fair market value can be determined
 - Value of item posted before the start of the auction
 - Successful bidder pays more than FMV and
 - the item bidder receives does not exceed 80% of the purchase price.



Certified Cultural Property Gifts

- Cultural property certified by the Canadian Cultural Property Export Review Board to be of “outstanding significance and national importance” to Canada and for which the Board has issued a tax certificate for the fair market value.
- Certified cultural property can include art, archival material, decorative arts, musical instruments, military objects, technological objects, etc.
- Can get favourable tax treatment if certified

<http://www.pch.gc.ca/pgm/bcm-mcp/desgntn/index-eng.cfm>



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February 22 & 23, 2010

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For more information, visit <http://www.capacitybuilders.ca/clip>

Location: Toronto Board of Trade



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Evaluation

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- If you have any additional feedback contact clip@capacitybuilders.ca
- Thank you for your participation today!