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Common Pitfalls in Receiving Charitable Gifts

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Overview

1. CRA Powers
2. Receipting
3. Best Practices
4. Sponsorship
5. Perpetuity
6. Lotteries
7. Third Party Fundraising
8. Gift Acceptance Policies
9. Compliance Checklist
168 (1) Notice of Intention to revoke registration – Where a registered charity or a registered Canadian amateur athletic association...

(d) Issues a receipt for a gift or donation otherwise than in accordance with this Act and the regulations or that contains false information...

The Minister may, by registered mail, give notice to the registered charity or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.
Receipting Penalties

• Inadvertent receipting errors:
  – 188.1(7) Incorrect Information – … every registered charity that issues, in a taxation year, a receipt for a gift otherwise than in accordance with this Act and the regulations is liable for the taxation year to a penalty equal to 5% of the amount reported on the receipt…
Receipting Penalties

• “Culpable Conduct” receipting errors:
  – 1881.(9) False Information – If at any time a person makes … a false statement … on a receipt issued by, on behalf of or in the name of another person … the person (or, where the person is an officer, employee, official or agent of a registered charity, the registered charity) is liable … to a penalty equal to 125% of the amount reported on the receipt …
Definition of Gift

“Voluntary transfer of property without consideration”:

– No obligation
– Not services
– Split receipting rules in Income Tax Act – allow for consideration (reduces value of receipt)

TIP: Do not receipt for services
Split Receipts

Pizza Lunch

• Receipt amount paid to attend minus the benefit:
  – Minus the cost of Pizza divided by the numbers of attendees
  – Gift must be greater than 20% of the payment to get receipted
Receipt the Right Person

- Who actually made the gift?
  - Individual
  - Estate
  - Corporation
  - Not through another charity, the school or the municipality

TIP: Receipt gifts to the Foundation and receipt the right person
Proper Receipts

Checklist on CRA’s website

• http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtnng/rcpts/whtnf-eng.html
• Signed
• Replacements procedure
• Split receipts
Sample Receipt for Cash

Charity Name
Charity Address

OFFICIAL RECEIPT NO:
CHARITY REGISTRATION NO: ● RR0001
DATE OF GIFT:
DATE RECEIPT ISSUED:
ELIGIBLE AMOUNT:
NON-ELIGIBLE AMOUNT:
NAME AND ADDRESS OF DONOR:
LOCATION ISSUED:

______________________________
Signature of Authorized Person

Official Donation Receipt For Income Tax Purposes
Canada Revenue Agency www.cra.gc.ca/charities
Sample Receipt for Property

Charity Name
Charity Address

OFFICIAL RECEIPT NO: 
CHARITY REGISTRATION NO: ● RR0001
DATE OF GIFT: 
DATE RECEIPT ISSUED: 
DESCRIPTION OF DONATED PROPERTY: 
NAME AND ADDRESS OF APPRAISER: 
ELIGIBLE AMOUNT: 
NON-ELIGIBLE AMOUNT: 
NAME AND ADDRESS OF DONOR: 
LOCATION ISSUED: 

__________________________________________
Signature of Authorized Person

Official Donation Receipt For Income Tax Purposes
Canada Revenue Agency www.cra.gc.ca/charities
Best Practices

• Fraud Prevention
• Gifts in Kind
• Due Diligence
• Gift Acceptance policies
Fraud Prevention

• Do you have control measures:
  – Policy to deposit all donations
  – Who has access to receipts?
  – Comparison of receipts against deposits (separate person, regular and random checks)
  – Yearly audit
  – Ask auditor for best practices
  – Policy on cash fundraising
Gifts in Kind

• Do you want the gift?
  – Needed by charity or easily sold?
  – Consider potential costs: environmentally damaged land, insurance premiums, maintenance costs on equipment

• Under $1,000 – can someone at the charity value it?

• Appraisals for $1,000+ (donor pays)
CRA Approach to Tax Shelters

• Audit all charities, donors and promoters:
  – Reassess most donors
  – Revoke most charities
  – Penalize promoters
    • Contrast with US criminal charges
  – Prevent appeals
    • FCA supports
Due Diligence

• Ask donor and document:
  – Confirm not part of a tax shelter
  – Where did they get the property?
  – How long ago?
  – Does the gift make sense? Could the charity sell for same value?
  – Big gift / great offer – Do background research online
  – Reward points, credits etc. – make sure can redeem before issuing receipts, consider value of items for receipt value
Designated Funds

• If a charity accepts a gift for a specific purpose or raises funds for a specific purpose
• Then, the funds must be used for that purpose
• Best practice to have an alternative use clause in agreement or campaign:
  – If too much is raised
  – If you cannot carry out the project
  – General ability to use otherwise
Designated Funds – Encroachment

• Do the terms of the gift or fund permit encroachment?

• Consider:
  – Terms of Gift – donor perspective
  – Terms of Restriction – internal or external
  – Common law / trust law issues
  – Public reputation / donor relations
If trust exists, cannot encroach unless

- The terms of the “trust” permit encroachment or
- Court Order to vary the trust:
  - S.13 Charities Accounting Act (Ontario)
    - Public Guardian and Trustee of Ontario has the authority in Ontario over the regulation of charities
    - Must be served if court application required to vary terms of endowment
  - Attorney General in other provinces
Perpetuity

• Perpetuity is a long, long time
  – To hold, to name, to carry out the activity

• Consider 100, 1000, 1 million years

• Is perpetuity necessary?
  – Income tax requirements (DQ) - gone
  – Donor
  – Charity
Sponsorships

- Business expense, deduct from taxes, same impact as charitable receipt

- Can be differences for split receipting rules:
  - Split receipting suggests business receipt is better for corporation if getting a benefit.

- For charities, no preference for sponsorship or receipted gift
Transfers among Charities

- Transfers between non-arm’s length charities:
  - 100% spending obligation in the year of gift or following year, unless designated
- Penalty: 110% of amount of gift not expended and/or revocation
- No definition of “non-arm’s length” for charities

TIP: Remember to designate all intra-group transfers
Gambling Is Illegal in Canada

Lotteries are a Criminal Code offence if:

• Consideration to play;
• An element of chance; and
• A prize
Exception for Charities

- Charitable or religious organization
- A licence issued by the Lieutenant Governor in Council or authorized person
- Proceeds from the lottery scheme are used for a charitable or religious object or purpose
- Paragraph 207(1)(b) of the *Criminal Code*
Legal Events without a Licence

• No element of chance:
  – Games of skill

• No consideration to play:
  – Caution if charging for another aspect of the event (ie. dinner)
  – Make as separate as possible
  – Skill testing question
  – No purchase option

• No prize
Tax: Charitable Receipts

• Cannot receipt lottery tickets

• Alternative: sell lottery ticket and request a donation:
  – Donation must be voluntary
  – Advertising rules apply
  – Charitable gaming license
Gift Acceptance Policy

• Goal: practical and legal
• Update periodically for changes in legislation and admin policy
• Sets out rules
• Helpful to staff, board and volunteers wanting to fundraise
Third Party Fundraising

- Where a party other than the Foundation raises funds (i.e. A parent hosts a fundraising dinner)
- Can accept the funds,
- but CRA policy suggests that it cannot be receipted unless there is a written agreement between the parties

Third Party Fundraising (cont’d)

• Issue: can you verify who gave what?
  • Consider using cheques
  • Or encouraging people to donate online

• Was there a benefit?
  • Were people required to donate to attend the dinner?
  • Were donations optional and everyone attended dinner regardless of donation?
Compliance Checklist

1. Do receipts meet all requirements
2. File the T3010
3. Check T3010 on CRA’s website
4. Provide CRA with updated information:
   - Address, governance, request fiscal year end changes
5. Books and records are adequate and in Canada:
   - IC78-10R5 Books and Records Retention
6. Consider fundraising guidance and ratios
Compliance Checklist (cont’d)

7. No tax shelters
8. Don’t receipt for services
9. Split-Receipts if there is a benefit
10. Fraud Prevention measures