

Charitable Revocations - Be Aware of the Implications

Throughout 2009 CRA announced the revocation of the charitable status of various charitable organizations. When a charity has its charitable status revoked, it can no longer issue donation receipts and is no longer considered a qualified donee under the *Income Tax Act*. In addition, the charitable organization is no longer exempt from income tax and it may be subject to tax on the full value of its remaining assets (unless it is a non-profit organization)

In the recent past, several donation investment offerings have been created, many of which include the "flipping" of art or other items in return for charitable donation receipts which provide a tax benefit on the investment. The offerings usually worked like this:

- A promoter gives a person the opportunity to purchase one or more works of art or another item of speculative value at a relatively low price. The proposal is that the promoter will work with the person to make arrangements for donating the works of art or other items to a Canadian registered charity or other specified institution.
- The person donates the art or other item and receives a tax receipt from the charity or other specified institution that is based on an appraisal arranged by the promoter. The appraised value of the art is substantially higher than the cost paid by the person.
- When the person claims the receipt on his or her next tax return, it generates a tax saving that is higher than the amount paid for the art in the first place.

CRA takes a dim view of these offerings. To date over 100,000 taxpayers have learned first hand that the Canada Revenue Agency considers the donation schemes a sham, and they want their money back. It is CRA's view that the appraisal generated by the individual associated with these schemes may not represent the fair market value of the acquired property. If it did, then the property would not be sold at the lower price. On December 5, 2003 new legislation was introduced (changes to S. 248) to limit the eligible amount of a gift made after December 5, 2003 to the cost of the property to the taxpayer if the property was acquired within three years of donating it and the property was acquired for the purposes of the donation (i.e. it was acquired under a gifting arrangement as defined in S. 237.1).

CRA advises that anyone considering entering into a tax shelter arrangement should obtain independent professional advice before signing any form of documents related to the donation and:

- know who they are dealing with, and request the prospectus or offering memorandum and any other documents available in respect of the investment and carefully read them;
- pay particular attention to any statements or professional opinions in the documents that explain the income tax consequences of the investment. Often, these opinions will tell the investor about the problems that can be expected and suggest that the investor obtain independent legal advice;
- not rely on verbal assurances from the promoter or others--get them **in writing**; and
- ask the promoter for a copy of any advance income tax ruling provided by the CRA in respect of the investment. Read the ruling given and any exceptions in it.

Individual taxpayers should be aware that their tax return can be reassessed up to three years after the date of assessment. Even if the benefits of the tax shelter were accepted upon initial assessment this should not be interpreted as acceptance of the claim, it may still be subject to audit by the CRA.