

When is A Gift A Gift?

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When it is given, of course. But when does that happen? Legally there are two elements to a gift: an intent to give and the transfer of the property. For registered Canadian charities, the rules relating to gifts are very important.

- Only a gift entitles the donor to a charitable receipt; and
- Only the value of receipted income is included in the calculation of the charity's disbursement quota. Canada Revenue Agency (CRA) applies the following rules when dealing with these matters.

To Give or Not To Give

Reflecting a large number of supporting court cases, CRA takes the position that a gift is a voluntary transfer of property without valuable consideration. In other words, other than the issuing of a receipt, there is no value given for the gift. Generally a cash gift is made if all three of these conditions are met:

- some property — usually cash — is transferred by a donor to a registered charity;
- the transfer is voluntary; and
- the transfer is made without expectation of return. No benefit of any kind may be provided to the donor or to anyone designated by the donor, except where the benefit is of nominal value.

Where a charity offers an item, privilege or other benefit in return for a donation, the benefit is generally considered to have a nominal value where its fair market value does not exceed \$50.00, or 10% of the amount of the gift whichever is the smaller number. The exceptions to this general rule first relate to tickets for dances and banquets and then a series of sub-rules relating to annuities, insurance, and tuition fees available from CRA or on the internet at www.cra-arc.gc.ca/tx/chrts/menu-eng.html.

Related problems arise where a donor transfers something valuable and imposes some conditions. One condition — the so called ten-year rule — is provided for under the *Income Tax Act* definition of Disbursement Quota. This rule allows the charity to give a receipt but not include the value of the receipt in calculating its disbursement quota for 10 years. Other kinds of conditions, arising frequently in the museum community, create what are often called conditional gifts or long term loans. Neither term has a precise meaning. In each situation, the gift is either a trust or not a gift at all.

So long as the property has transferred, the charity might be agreeing to act as a trustee subject to enforceable restrictions. (This was at the centre of the recent case in Ontario dealing with the McMichael Gallery — where the Group of Seven paintings were supposedly donated on trust conditions that they be displayed in certain ways. It was held there were no trust conditions.) On the other hand, the charity might not be receiving a transfer in the property at all. The donor takes the position on the terms of the arrangement that the donor is entitled to have the property returned in specified circumstances at some future time. In that case, the receipt should not be issued.

When Should A Receipt Be Issued?

Even where there is a true gift (an intention to make a gift coupled with the transfer of property), Revenue Canada requires the charity meet two conditions before a receipt is issued: the charity must be registered with Revenue Canada and it must not issue receipts for funds that the charity will not be directly responsible for spending.

Once these two conditions are satisfied, the *Income Tax Act*, by Regulation, requires that each official receipt that a charity issues to acknowledge a donation must contain at least the following information:

- a statement that it is an official receipt for income tax purposes;
- the charity's registration number, name, and address in Canada as recorded with CRA, Charities Directorate;

- the place or locality where the receipt was issued;
- the day on which or the year during which the donation was received or, where property other than cash is received, the actual date of receipt;
- the day on which the receipt was issued when it differs from the date of the donation;
- amount of the gift; and
- the name and the address of the donor.

Every receipt must be prepared at least in duplicate because the charity is required to keep a copy of every official receipt issued on file. The receipt must be signed by an authorized person, and, importantly, it must bear a unique serial number .

Where the donation is a gift of property other than cash, (called a gift-in-kind) the fair market value of the property at the time the gift was made, as well as the date of the gift, a description of the property, and the name and address of the appraiser (if any) of the property, is required. (See the current version of IT297, *Gifts in Kind to Charity and Others* , www.cra-arc.gc.ca/E/pub/tp/it297r2/README.html). On this last point, the fair market value of a gift in kind as of the date of the donation must be determined before the amount can be recorded on the receipt. The person who determines the fair market value of the property must be competent and qualified to evaluate the particular property being transferred by way of a gift. Property of little or only nominal value to the donor will not qualify as a gift in kind. Used clothing of little value would be an example of a non-qualifying contribution.

Like so much else in the world of charities, the rules about gifts and receipts are complex. Charities should have current copies of the relevant Interpretation Bulletins and Circulars. At a minimum every charity should have a copy of the current version of IT-110 - Gifts and Official Donation Receipts, currently in its third revision (www.cra-arc.gc.ca/E/pub/tp/it110r3/README.html). The best rule is that if there is any question about a receipt, find out the answer before it is issued. Cancelling a receipt can have serious consequences for both the charity and the donor.

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