



**Charity
Law
Information
Program**

RECEIPTING KIT FOR CANADIAN REGISTERED CHARITIES

By Mark Blumberg¹ (September, 2011)

It is important that Canadian charities issue official donation receipts according to the rules set out in the *Income Tax Act* (Canada) and according to the guidance of the Charities Directorate of the Canada Revenue Agency (“CRA”). Unfortunately, according to the CRA, when it audits Canadian registered charities approximately 89% of charities are issuing inappropriate receipts².

This receipting kit is to assist a volunteer or staff person of a Canadian registered charity who is assigned the task of issuing receipts. This kit provides information with respect to receipting in general but it is not legal advice tailored to the factual situation of your charity. You can obtain electronic copies of this receipting kit at the Charity Law Information Program (CLIP) website.³ This receipting kit is accompanied by an attachment of in depth policy documents, legislation and CRA bulletins related to receipting.

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² Page 34 of the CRA report “Small and Rural Charities: Making a Difference for Canadians 2008” <http://www.cra-arc.gc.ca/E/pub/tg/rc4457/rc4457-e.pdf>

³ <http://www.capacitybuilders.ca/clip/clip.php>

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No Obligation to Issue Receipts

Just a reminder that charities are not obliged to issue tax receipts. It is important for public confidence in charities that charities are upfront in explaining to donors what their policy is with respect to donations and the issuance of tax receipts. Therefore, if your charity will not issue official donation receipts for small donations you should be upfront about that. If for a particular event or type of donation, receipts will not be issued you should advise the public of that policy. Furthermore, if at an event you will be providing an advantage, such as a meal, to the guests, in advertising the event you may wish to include a statement essentially warning donors that they will not be getting a receipt for the full amount that they are giving to the charity, but only for the “eligible amount”, which involves subtracting the advantage received by the donor.

Whether receipted or not it does not affect funds

Another misconception that charities have, is that if funds are received without issuing a receipt those funds can be spent outside the normal rules that apply to registered charities. Whether receipted or not, once funds are received by a Canadian registered charities they can only be spent in accordance with the charity’s objects, subject to the *Income Tax Act*, CRA’s guidance as well as provincial trust law and other applicable law.

If in doubt, Don’t Receipt

Be very careful about receipts issued by your registered charity. If you are unsure review this Receipting Kit, the attachments to it, call or write to CRA or contact a knowledgeable charity lawyer. If Canadian charities cannot determine how to appropriately receipt then their mantra should be “if in doubt don’t receipt”.

Preliminary Matters

- a) Is your organization a registered charity under the Income Tax Act? To ensure that it is currently listed check the CRA website at: <http://www.cra-arc.gc.ca/chrts-gvng/lstngs/menu-eng.html> If your organization is not a registered charity is it another category of qualified donee? If not then this receipting kit is not relevant to your organization and your organization should not be issuing official donation receipts.

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- b) Are you authorized by the charity to sign official donation receipts? If not you should get the board to pass a resolution appointing you as authorized to sign official donation receipts or you should not be signing the receipts.
- c) Where is the receipt book or electronic file/system from which receipts are issued?
- d) What is the last sequential number of the receipts issued?
- e) Do you know where your charity keeps copies of receipts issued?
- f) Does your charity have a gift acceptance policy that may for example restrict the issuance of receipts to gifts over say \$20 and are you aware of the content of such policy?

STEPS TO ISSUING APPROPRIATE RECEIPTS**1. Prepare a template receipt that contains all mandatory information**

For an easy way to create template receipts jump to Step 2 and CRA sample receipts.

For a cash receipt provided when a donation of cash is made to a charity the *Income Tax Act* requires that there be mandatory information on the official donation receipt. If you are missing any of the mandatory information then your official donation receipts are not complying with the rules. Charities should ensure that the template receipt they are using contains all the necessary information. There are additional elements for gifts-in-kind donations when preparing those receipts, as noted below. CRA has provided sample receipts⁴ that will help charities understand how the receipt can be laid out depending on whether it is a cash/non-cash gift and whether there is an advantage.

All official donation receipts for income tax purposes must contain the following⁵:

- 1) a statement that it is an official receipt for income tax purposes;
- 2) name and address of the charity as on file with the Canada Revenue Agency;
- 3) charity's registration number;

⁴ <http://www.cra-arc.gc.ca/chrts-gvng/chrts/pbs/rcpts-eng.html>

⁵ <http://www.cra-arc.gc.ca/chrts-gvng/chrts/chcklsts/rcpts-eng.html>

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- 4) serial number of the receipt;
- 5) place or locality where the receipt was issued;
- 6) day or year donation was received;
- 7) day on which the receipt was issued if it differs from the day of donation;
- 8) full name, including middle initial, and address of the donor;
- 9) amount of the gift;
- 10) value and description of any advantage received by the donor;
- 11) eligible amount of the gift;
- 12) signature of an individual authorized by the charity to acknowledge donations;
and
- 13) name and Web site address of the Canada Revenue Agency -
www.cra.gc.ca/charities.

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

- 14) day on which the donation was received (if not already indicated);
- 15) brief description of the property transferred to the charity;
- 16) name and address of the appraiser (if property was appraised); and
- 17) deemed fair market value of the property in place of amount of gift above.

ELEMENTS ON RECEIPT	What They Mean
Official Donation Receipt For Income Tax Purposes	Statement that the receipt is official for tax purposes.
Receipt # 0001	Sample serial number of receipt. CRA expects receipts to be issued in a reasonably serial manner. One can have a set of numbers for physical receipts and another for electronic or other receipts but all numbers in the series need to be accounted for
Charity name	Name of charity as recorded with the Minister.
Canadian charity address	Canadian address of charity as recorded with the Minister.
Charity BN/ Registration#	The registration number as assigned by

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	the Minister.
Date donation received	<p>If the donation is a cash donation, use either the day on which or the year during which the donation was received.</p> <p>If the donation is a non-cash gift, use the day on which the donation was received.</p>
Total amount received by charity	The fair market value of property received from the donor.
Fair market value	Generally means the highest price, expressed in dollars, that a property would bring in an open and unrestricted market, between a willing buyer and a willing seller who are knowledgeable, informed, and prudent, and who are acting independently of each other.
Value of advantage	Total amount of all benefits provided to donor or any other person for the gift. (i.e., value of books, meals, golf tournaments etc.)
Eligible amount of gift for tax purposes	This is a new term used in the Income Tax Act to refer to the amount that the donor can claim for tax purposes for the donation.
Description of property	A brief description of property received by charity.
Appraised by	<p>Name of appraiser if property is appraised.</p> <p>It is recommended that property be appraised if the value is over \$1,000. However, there is no legal requirement to have property appraised. If the property has been appraised, the name and address of the appraiser must be provided. If the property has not been appraised, the</p>

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	charity must be able to substantiate the value of the property.
Address of appraiser	Address of appraiser if property appraised. It is recommended that property be appraised if the value is over \$1,000. However there is no legal requirement to have property appraised. If the property has been appraised, the name and address of the appraiser must be provided. If the property has not been appraised, the charity must be able to substantiate the value of the property.
Donated by	Name of the donor including, in the case of an individual, the donor's first name and initial.
Address	Address of the donor.
Date receipt issued	The date on which the receipt was issued when the receipt is issued on a date subsequent to the actual receipt.
Location receipt issued	Place or location receipt was issued.
Authorized signature	The signature of an individual who has been authorized by the charity to acknowledge donations.
Canada Revenue Agency www.cra.gc.ca/charities	A listing of all registered charities under the Income Tax Act.

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2. CRA Sample Receipts

The CRA on its website has 4 sample receipts depending on whether the gift involves a cash or non-cash gift and whether there is an advantage or not. For most charities the easiest way to create a template receipt is to cut and paste the CRA receipt. It is hard to go wrong with the mandatory elements if you are just copying what the CRA has suggested.

The most basic receipt is a cash gift without advantage:

<i>Official Donation Receipt For Income Tax Purposes</i>		
		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: _____	
<p>For information on all registered charities in Canada under the <i>Income Tax Act</i> please visit: Canada Revenue Agency www.cra.gc.ca/charities</p>		

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Probably the most complicated receipt is a non-cash gift (gift-in-kind) with an advantage:

Official Donation Receipt For Income Tax Purposes		
		Receipt # 0001
Charity name	Canadian charity address	Charity BN/Registration #
Date donation received: _____		Donated by: _____ (First name, initial, last name)
		Address: _____
Total amount received by charity = _____ A (fair market value of property)		Date receipt issued: _____
Value of advantage = _____ B (cash/fair market value of property or services)		Location issued: _____
Eligible amount of gift for tax purposes: = _____ C (line A minus line B)		Authorized signature: _____
Description of property received by charity: _____		
Appraised by: _____		
Address of appraiser: _____		
<p>For information on all registered charities in Canada under the <i>Income Tax Act</i> please visit: Canada Revenue Agency www.cra.gc.ca/charities</p>		

If you want to see all four sample receipts visit the CRA website at:

<http://www.cra-arc.gc.ca/chrts-qvng/chrts/pbs/rcpts-eng.html>

Some registered charities send a letter to donors and include the receipt at the bottom of the letter. This is acceptable, but make sure that there is a division between the letter and the receipt and that all the mandatory elements are included in the receipts. Here is an example of what some charities put in the letter above the receipt:

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[LETTERHEAD- ADDRESS and CONTACT INFORMATION OF CHARITY]

Dear Mr. [DONOR],

Thank you for your recent gift of \$[AMOUNT] to the [NAME OF CHARITY]. I hope you take pride in the fact that your generous support makes a significant difference to the >>>>.

We appreciate your commitment to >>>>>>>> and to the important work carried out at by >>>>>>. I have enclosed your official donation receipt for your records.

For purposes of donor listings your name will appear as:
[FULL NAME OF DONOR]

Please contact us at [E-mail] or [TELEPHONE NUMBER] if you have any questions or concerns.

Sincerely,

Joe Smith
President

Official Donation Receipt For Income Tax Purposes

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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3. Is it a “gift”? Not everything that is valuable and given to a registered charity is receiptable.

There are a large number of valuable payments or transfers from a person to a charity that do not qualify as being a “gift” for purposes of the *Income Tax Act* and therefore one cannot in those circumstances issue an official donation receipt.

Charities can only provide an official donation receipt for something that is considered a “gift”. In order for a ‘donation’ to be considered a gift to a charity and therefore receiptable it must involve a voluntary and complete transfer of property from an entity to a registered charity with the intention of making a gift.

There are four elements for a “gift” namely, it must be

1) **voluntary** (If a donation is made as a result of a contractual or other obligation (for example, a court order), it is not eligible for a receipt);

2) a **complete transfer** (it is not enough to pledge that you will one day give something to the charity or provide the object but not do everything required to change the ownership. For example, it is not sufficient to provide a house and key to a charity – someone needs to actually arrange that the house is completely transferred over to the charity at the land titles or registry office);

3) **property** (property includes cash/cheques/credit card/money order/wire transfer and certain tangible items such as computers, furniture, cars, land, but does not include services as discussed in step 8 below); and

4) **intention to make a gift.**(under the *Income Tax Act* if a donor receives an advantage that is greater than 80% then generally it is assumed that there is no donative intent and the person does not receive a receipt)

If any one of the above four elements is not present a receipt should not be issued. If a person makes a donation because he is forced to – he is legally obligated, for example, by court decision, then it is not a gift. If a donor gives, for example, a car and the car keys to a charity but does not sign over the ownership papers then there has not been a complete transfer. If a person volunteers for the charity or provides services to the

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charity then such time or effort may be valuable but it is not “property” transferred but instead a service to the charity and is not receiptable.

4. Common transfers to Registered Charities that are not receiptable

As CRA notes, the following payments to registered charities do not qualify as gifts:

- the payment of a **basic fee** for admission to an event or to a program (e.g. fees for day-care or nursery school facilities);
- the payment of **membership fees** that convey the right to attend events, receive literature, receive services, or be eligible for entitlements of any kind (e.g. free access to facilities the public has to pay for). However, membership fees are considered as gifts if they confer no more than the right to vote at a meeting and to receive reports of the charity's activities, unless such reports are otherwise available for a fee;
- any portion of the purchase price of a **lottery ticket** or other chance to win a prize, even though the lottery proceeds benefit one or more charities;
- the payment of **tuition fees** (except as permitted by Information Circular 75-23, Tuition Fees and Charitable Donations Paid to Privately Supported Secular and Religious Schools);
- contributions of **services** (i.e. time, skills, effort). Contributions of services are not property and do not qualify. However, a charity can pay for services rendered and later accept the return of all or a portion of the payment as a gift, provided it is returned voluntarily;
- a payment from a business for which the business receives a material advantage such as promotion or **advertising** in return. For taxation purposes, the business may be able to claim the contribution as an advertising expense;
- a gift subject to a direction by the donor that the charity transfer the funds to a **specified person** or family. In such an instance, the donor has made a gift to the person or family and not to the charity; and
- a gift subject to a direction by the donor that the charity give the funds to a **non-qualified donee**.

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5. Determining fair market value of gift-in-kind

If your charity only receipts cash gifts and never provides a donor with an advantage then you don't have to concern yourself with determining fair market value.

However, some donors want to give tangible property, sometimes referred to as gifts-in-kind and some charities are prepared to accept them. Examples of gifts-in-kind include cars, furniture, computers, blankets, food, shares, clothes, art, books, land etc.

There are sometimes advantages to receiving gifts-in-kind such as: it may save the charity from purchasing such an item or similar item; by reusing an item it may save some goods from landfill; it may not be exactly what the charity wants but it is what the donor has and is prepared to give; the charity may be quite efficient at sorting, discarding and selling items; some items such as donations of buildings, land etc can result in the charity having valuable property or assets; certain types of gift-in-kind are tax preferred such as public company shares and sometimes accepting such a gift may promote donor relations and stewardship

However, often there are concerns with gift-in-kind donations including but not limited to:

- Often charities are pressured into accepting items they don't want or need;
- Often it is receipt driven and has nothing to do with helping charity and its mission;
- Gifts in kind can create significant legal and ethical issues for the charity such as environmental concerns with land, toxic or dangerous products such as children's toys that have been recalled, expired or inappropriately labeled pharmaceuticals etc.;
- The process of dealing with gifts-in-kind including valuation, storage, transportation, disposal can use up a lot of time and resources of the charity and in many cases are a net loss for the charity;
- Problems of establishing fair market value and receipting;
- Ethical concerns about certain items being donated to a particular charity;
- A few of the charities that issue the largest amount of gift-in-kind receipts are abusive tax avoidance schemes or charity scams; or
- Financial disclosure and reporting in both financial statements and T3010.

A charity may issue an official donation receipt if the fair market value ("FMV") of the gift can be determined.

The Courts and CRA have used the following definition of FMV:

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Fair market value is normally 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.

The factors that are implicit in the definition of fair market value are⁶:

1. Highest price means the highest price that is consistently achieved.
2. The transaction occurs in the market where such properties are most commonly and consistently sold to the public.
3. The public is the customary purchaser or ultimate consumer.
4. An ultimate consumer is a person, institution or corporation who does not hold the item for subsequent resale.
5. The appropriate or relevant market for a determination of fair market value is the most active market for the particular asset and is determined by the frequency and aggregate number of sales.
6. The buyer and seller are typically motivated, where neither is under compulsion to buy or sell.
7. Each party is knowledgeable, informed of all of the relevant facts and acting in their own best interests.
8. An unrestricted and open market is one that is available to the public.
9. The property has been exposed to an unrestricted and open market for an adequate amount of time.
10. The transaction is not influenced by time restrictions that would have a significant effect on the price; for example, fair market value cannot be determined by a forced sale.
11. Payment is made in terms of Canadian dollars. To convert currency to Canadian dollars, appraisers should consult the rates published by the Bank of Canada, and take the higher of the noon and closing nominal rates. This information is available at <http://www.bankofcanada.ca/en/rates/exchange.html>.

In some cases the fair market value may be less than 1% of the “highest price” when you have a wholesale market or there is a prudent and knowledgeable buyer.

When the FMV of either a gift-in-kind or an advantage cannot be determined, an official donation receipt cannot be issued. Charities cannot rely on donors to advise them of the FMV. The onus is on the charity to determine FMV and the consequences of improperly determining FMV can be substantial. Charities must remember that some donors may have a vested interest in having the amount of the gift be inflated, as well

⁶ There is information on the website of the Canadian Cultural Property Export Review Board at <http://www.pch.gc.ca/pgm/bcm-mcp/pol/abc-ccp-2010-eng.cfm> on how to determine fair market value

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donors may not know the complexity of determining FMV and they can also just be mistaken about the value of an item.

Do we need an appraisal of the item? CRA's position is that for items over \$1,000.00 they recommend that there be an appraisal of the value by someone who is knowledgeable and independent of both the charity and the donor.

Some quick thoughts on appraisal:

- a sale price is often not an accurate reflection of the fair market value
- determining fair market value for an item can be difficult and some charities and donors inappropriately ignore the legal definition and focus on what is “the highest price”.
- more than one appraisal may be necessary with large or difficult donations
- the eligible amount of the receipt is not for the appraised value but appraised value minus any benefit or advantage receipt by the donor or someone related to the donor.
- Appraisals are for fair market value as defined above and not appraisals “for insurance purposes”, “for probate purposes”, “value”, or other purposes.
- Appraisals must be arms-length and prepared in an objective manner without any pressures from the donor, vendor, institution/public authority, or other appraisers and appraisers should disclose if they had any interest in the appraised property or have had any ‘personal or commercial intent or bias with respect to the parties involved (client or creator).⁷

Determining Fair Market Value of Marketable Securities or shares traded on a public stock exchange

When a donor donates shares on certain stock exchanges the CRA has, “as a general rule, accepted the use of the closing bid price of the share on the date it is received or the mid-point between the high and the low trading prices for the day, whichever provides the best indicator, given the circumstances, of fair market value on normal and active market trading.” In some cases such as thinly traded shares this may not be appropriate.

⁷ <http://www.pch.gc.ca/pgm/bcm-mcp/pol/abc-ccp-2010-eng.cfm>

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Deemed fair market value rule

In 2002, responding to the increase in charity art flip schemes and other abusive gifting tax schemes the Department of Finance introduced the deemed fair market value rule. The rule provides that in certain circumstances a receipt issued for a non-cash gift (gift-in-kind) must be issued for the lesser of the gift's fair market value and its cost to the donor immediately before the gift is made. In other words, a charity cannot in certain circumstances use either fair market value or cost to the donor for the item – the charity needs to work out which of the two is lower and use the lower one. Sometimes the lower amount is fair market value and sometimes it is cost to donor.

The deemed fair market value rule applies in three (3) circumstances namely when:

- 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 for any reason; 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).

An example of Deemed Fair Market Value

A donor purchases a work of art at a garage sale for \$50, and six months later donates the work to a charity. The charity would like to provide a receipt. Prior to giving the art to the charity, the charity has the work appraised at a value of \$1,000. Because the donor is gifting the art within three years of having purchased it, the charity must issue a receipt for the gift at the lesser of its fair market value and its cost to the donor immediately before the gift was made. In this example, the official donation receipt must be made out for \$50. If the donor who received a receipt fails to notify the charity that the work of art was purchased for \$50 and is subject to the deemed fair market value rule, the value of that donor's gift could be reduced to nil by the CRA.

The following types of gifts are exempt from the deemed fair market value rule and then normally assessed at fair market value:

- gifts made as a consequence of a taxpayer's death;
- gifts of inventory;
- gifts of real property situated in Canada;
- gifts of certified cultural property (special valuation procedures apply);
- gifts of certain publicly-traded securities; and
- ecological gifts.

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6. “Split Receipting” – subtracting the advantage from the gift

Charities need to ensure that the eligible amount of the gift on the receipt is correct. However, at times this is more difficult than one may think. The CRA has rules on what they call “split receipting”. Essentially, if a donor receives an advantage, the amount of the advantage generally needs to be deducted from the value of the gift when calculating the eligible amount of the receipt.

For example, if John pays \$250 for a gala ticket the charity cannot issue a \$250 official donation receipt to John. The charity needs to subtract the advantage, e.g. meal, gift bag, entertainment, door prizes, etc. If the advantage works out to be for example \$100 then on the receipt it will show amongst the mandatory elements:

Total amount of cash received by charity	= \$250
Value of advantage	= \$100
Eligible amount of gift for tax purposes	= \$150

The definition of advantage is very broad and some of the many possible advantages include:

- property (for example, cash, non-cash gifts also called gifts-in-kind);
- the use of or enjoyment of property;
- the provision of services; and
- other benefits including but not limited to assumption of debt by charity, sponsorship, non-recourse loans, etc.

There are also *de minimis* rules if the value of an advantage is the lesser of \$75 and 10% of the value of the donation. In such cases the value of the advantage would be considered nominal and would not have to be deducted. If the amount of the advantage is over 80% of the value of the donation, then in fact generally a donation receipt cannot be issued.

CRA provides detailed descriptions of how advantages need to be calculated with different types of events such as gala dinners or golf tournaments. Unless a charity only receives cash donations, and never gives any advantages or benefits to the donor, a charity would need to be aware of the split receipting rules and how to calculate advantages. If you cannot determine the amount of the gift or the advantage then no official donation receipt can be issued.

7. Services (time, expertise, skills) are not property and not receiptable

Donations of time, skill and effort are services and not property and therefore are not a transfer of “property” from the volunteer to the charity and they do not qualify as gifts for donation receipt purposes. Therefore, donations of services, such as professional advice by a lawyer, accountant or other volunteer, cannot be receipted. As well, a local contractor building a shed with supplies from the charity cannot have the value of their

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time receipted. Other types of services that do not qualify as gifts are: lending a piece of equipment, or allowing the charity to use a time-share or apartment. CRA takes the view that a loan of property is not a voluntary transfer of property to the charity and the mere granting of a right to use the property for a limited period of time is not considered a gift.

Cheque exchanges. The charity can issue a receipt for work done in the following circumstance: A service is rendered to the charity, the charity is billed for the service, and the charity pays for the service. Then, without any obligation to do so, the person who provided the service makes a donation to the charity of X amount of dollars and the charity then issues to the person a receipt for X amount of dollars. This “crossing of cheques” or “cheque exchange” is very different than just issuing a receipt. When the person receives funds from the charity, they have to include the amount they receive in income which increases the taxes they have to pay and all the receipt does is offset that increased amount of taxes. The cheque exchange works both for donation of time and lending of property.

8. Make sure that you have the correct date of the donation.

The date of donation needs to be correct. The exact dates can be very important in a number of circumstances. First, whether a donation is made in one calendar year or another affects the timing of tax benefits. Second, the date is also important for gift-in-kinds which have to be valued on a particular date and we all know that some types of gifts in kind such as public company shares can fluctuate considerably depending on the exact date that they are valued. Third, depending on the date that revenue is recorded it can affect the charity’s financial statements.

9. Make sure you have the correct name of the donor on the receipt

Who is the donor? It is a factual issue and it is important that the charity provides the receipt to the correct donor. For example, if a charity receives a cheque from a corporation with a subsequent call requesting from the president of the corporation that the charity should prepare the receipt in his spouse’s name. If the funds are actually those of the corporation and not the spouse then this is not permissible. On the other hand if the president sends a letter on the stationary of the corporation noting that the funds are actually his spouse’s funds and the receipt should be issued in the spouses name then may be appropriate if in fact true.

Another example is Jack and Jill organize a third party fundraising event for the charity at which there are 20 individuals who each makes a \$100.00 donation and receives no advantage for their donation. Jack and Jill collect the 20 x \$100.00 cash donations and submit them to the charity. The charity should obtain from Jack and Jill a list of the donors so it can issue a tax receipt to each of the individual donors. It would be inappropriate for the charity to issue a \$2,000.00 tax receipt to Jack or Jill. If in doubt a

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charity can ask a person or corporation to provide a declaration as to who the donor is or the charity can refuse to issue a receipt.

10. Electronic Receipts

As long as charities follow certain rules they can either issue physical receipts from a receipting book, use a computer program to issue receipts that are printed and mailed or they can issue electronic receipts from a website or by e-mail.

In the past pre-printed receipting books were very common. There are advantages to using them in that they may have the requisite fields and they are numbered sequentially. However, with changes to the mandatory elements on the receipts it can be costly to replace them.

Many charities use a program such as a word processing program or spreadsheet program to prepare receipts. These receipts are then printed out. For a small number of receipts this may be adequate.

Some other charities use a computer program to issue the receipts. Still others have set up internet based systems that can automatically issue the receipts and in some cases the donor can be provided with a receipt in seconds.

Any system of electronic receipts must ensure that if receipts are sent electronically they cannot easily be altered. Therefore, sending a regular word processing file to a donor with the receipt would be inappropriate because the donor could change the amount of the donation or the name of the donor or the date on the receipt. On the other hand sending an unalterable PDF would be acceptable.

11. Properly replace lost or incorrect receipts

Charities should ensure that if replacing a lost receipt that such replacement receipt has all the same required information as the lost receipt with a note stating that it "cancels and replaces receipt No. X". The charity must ensure that in its records the copy of the original lost receipt is kept and marked "cancelled."

When a charity has issued an incorrect receipt, for example, it does not contain all the required information or there is a typographical mistake on the receipt, then the charity must keep both the incorrect receipt and the charity's copy of such receipt and both should be marked "cancelled." The charity can then prepare a correct receipt.

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12. Keep copies of receipts

CRA requires that charities keep copies of tax receipts for a minimum of two years from the end of the calendar year in which the donations were made. With respect to ten-year gifts, charities need to keep the donor's directions for as long as the charity is a registered charity and two years after that date. Most other records are required to be kept for seven years. I would strongly recommend that charities in fact keep their official donation receipts for longer than the prescribed time in case they are ever needed by the donor or CRA. As well, if official donation receipts are produced electronically, a copy of the receipts should either be printed or kept in an unalterable format such as burned to a CD.

13. Make sure you keep your system protected

Official donation receipts are like bags of cash and should always be securely kept by the charity. Irrespective of what system you use make sure that the donation receipts are adequately secured or supervised otherwise they may be used nefariously by some for their own private interests. For computers used to issue or store the receipts make sure that they are password protected. If using receipting books make sure they are kept locked up during off hours and are not accessible to anyone not issuing receipts. Inform the CRA or local police immediately if you have a concern with respect to false receipting.

14. Do not lend your registration to other organizations

Charities are sometimes approached by people who are interested in contributing to a foreign charity or Canadian non-profit that is not a registered charity. The only reason (or an important reason) the funds are donated to the Canadian registered charity is that while the Canadian individual wants the funds to be sent to the foreign entity they also want to receive an official donation receipt for tax purposes instead of donating the funds directly to the foreign charity and not receiving the receipt for Canadian income tax purposes. CRA refers to this as the registered charity being a "conduit". While charities are allowed to conduct foreign activities, and I have a whole website devoted to foreign activities at www.globalphilanthropy.ca, they are not allowed to lend their registration or act as conduit.

CRA has issued this warning:

Caution: Lending registration numbers

Under no circumstances should a registered charity lend its registration number to another organization for receipting purposes. A registered charity is responsible for all tax receipts issued under its name and number and must account for the corresponding donations on its annual information return. A charity that lends its registration number risks losing its charitable registration.

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A charity wishing to work with a foreign charity as part of an appropriate structured arrangement with direction and control can do so as long as it follows the requirements as set out in CRA's Guidance "Canadian Registered Charities Carrying out Activities Outside Canada"⁸.

15. Returning Gifts – Be very careful

Generally, a registered charity cannot return a gift. Once a charity owns the property it should be used for the charity's charitable purposes. Charities must be very careful when accepting gifts with conditions attached to them, or fundraising for a particular purpose. The issue is not just whether an official donation receipt was issued for the gift in question, but also common law obligations about dealing with charitable property.

Charities, when fundraising for a particular cause, whether it be building a new hospital wing or dealing with a disaster in a particular locale, should always identify what will happen if too little funds are raised, there is excess funds raised, or the project is no longer practicable. For example, the charity could advise that the board of directors of the charity could reallocate the funds to another charitable purpose.

If a charity is accepting a conditional gift, in some cases it would be best to not issue a tax receipt until the donor agrees that the conditions have been fulfilled.

Before returning a gift, charities should obtain legal counsel to determine the best course of action and it may be appropriate to also advise the Charities Directorate or provincial Public Guardian and Trustee. In some cases the restrictions or conditions surrounding the gift may in fact be non-binding or it may be possible to obtain a *cy pres* order from a Court varying such conditions.

If a donor is upset with a charity or wants the donation to go to another charity, CRA suggests that one solution to such a problem in some cases may be for the charity to offer, in order to retain the goodwill of the donor, to transfer the gift to another qualified donee instead of returning it.

⁸ <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/tsd-cnd-eng.html>

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16. Inappropriately providing receipting for volunteer travel

A lot can be written on volunteer international travel (“mission trips”) and the appropriateness of issuing receipts. CRA has been auditing charities that are inappropriately issuing receipts with certain types of trips or travel involving volunteers. While in some cases it may be appropriate to issue such receipts in many cases it is not.

As CRA notes:

“In the case of expenses incurred by volunteers on behalf of registered charities, the facts of each case will determine whether they qualify as a gift. To determine whether there is a gift, certain factors are taken into consideration, including: whether the expenses are incurred voluntarily or whether the volunteer was compelled to assume them. ... whether the consideration accruing to the volunteer negates donative intent (i.e., intention to give). ... whether the amenities that are being provided to the volunteer that works for the charity are reasonable, are provided in the context of the work with the charity, and are priced at market rates or lower.”⁹

There are clear-cut examples of when it is acceptable, and not acceptable, and also grey areas. The promotional materials, itinerary, purpose and practices around mission trips need to be carefully reviewed to know whether it is acceptable to issue such receipts.

17. Issuing fraudulent receipts

There are some people issuing fraudulent tax receipts. Sometimes they are involved with the charity, such as a director or employee, and sometimes they have nothing to do with the charity and may, for example, be a tax preparer. According to the CRA “between 100,000-135,000 donors have been involved between 2004 and 2009”.¹⁰ These fraudulent receipts have been worth hundreds of millions of dollars. CRA has successfully prosecuted people involved with fraudulent receipting.

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http://www.canadiancharitylaw.ca/index.php/blog/comments/mission_trips_and_receipting_for_volunteers_travel_expenses_costs/

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http://www.globalphilanthropy.ca/images/uploads/CRA_presentation_Compliance_Overview_-_Major_Non-Compliance_Issues_by_Danie_Huppe-Cranford_for_ICFO_May_2010.pdf

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18. Participating in abusive charity gifting tax shelters

Some promoters have created tax shelters that provide a tax receipt for an amount larger than the cash investment of the donor/investor. These schemes use various approaches such as buy-low, donate-high arrangements, gifting trust schemes and leveraged cash donations. Some schemes involve the valuation of art, pharmaceuticals, or computer software. A donor may invest \$1,000 and receive, through a convoluted scheme, a receipt for perhaps \$5,000. These schemes generally have a tax shelter number but such a number certainly does not entitle the investor to tax savings but merely administratively makes it easier for CRA to audit all participants.

CRA considers these abusive charity gifting tax shelters and in many cases has reassessed the “gift” to zero. Investors usually lose their investment and have to pay the foregone taxes as well as interest and substantial penalties. Some of these schemes have lawyers providing opinion letters on the transaction, which may or may not have any resemblance to the transactions that actually occur. There have been class action lawsuits against law firms for allegedly providing negligent opinions. Pleadings of pending matters are available on the internet and these cases have yet to go to trial.¹¹ Professional advisors who refer clients to these schemes can be responsible for the whole cost of the scheme to their clients.¹²

Probably the most important charity gifting tax shelter case is *F. Max E. Maréchaux v. The Queen* 2010 FCA 287¹³ in which the FCA noted “F. Max E. Maréchaux participated in a “leveraged donation” scheme. The essence of the scheme was that, for an expenditure of \$30,000, he received a charitable donation tax receipt for \$100,000, and claimed a tax credit of \$44,218, a potential return on his outlay of nearly 50% in a matter of months. Very little of the money was retained by charities to advance their purposes.” The Federal Court of Appeal dismissed an appeal from Mr. Maréchaux and noted in their decision “Mr Maréchaux had not made a “gift”.“ It was subsequently appealed to the Supreme Court and the Supreme Court declined leave to appeal and the Federal Court’s decision stands.

¹¹ For example a class action lawsuit against various parties including Fraser Milner Casgrain LLP at <http://www.classactionlaw.ca/content/claims/Rochester/Rochester.htm> and a class action lawsuit against Cassels Brock & Blackwell http://www.canadiancharitylaw.ca/index.php/blog/comments/major_canadian_law_firm_sued_for_negligent_rcaa_tax_opinion/

¹² See *Lemberg v. Michael George Perris* at http://www.globalphilanthropy.ca/index.php/blog/comments/accountant_liability_for_recommending_charity_tax_shelter_gifting_scheme_-_/

¹³ <http://decisions.fca-caf.gc.ca/en/2010/2010fca287/2010fca287.html>

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CRA has been warning potential investors by providing Taxpayer Alerts and Fact Sheets on tax shelters. According to CRA approximately \$6 billion in receipts have been issued for these schemes between 2002 and 2009 and only approximately 1% of that amount was spent on charitable activities.

Suggestions for reducing the likelihood of inappropriate receipting:

- Know the rules for proper receipting;
- Access webinars and other publicly available resources on receipting;
- Make sure staff, volunteers, board members who are involved with receipting also know these rules;
- Ensure receipts have all mandatory fields;
- Have good governance and bring the board into the receipting discussion;
- Have a gift acceptance policy for the charity and follow through with it;
- Be careful with gifts-in-kind and inflated valuations;
- Stay alert and avoid abusive gifting tax shelters and fraud;
- Have good controls over who prepares and signs receipts and make sure if possible there is segregation of duties and more than one person is involved in the process;
- Have adequate books and records;
- Obtain legal advice when necessary or call CRA.

Consequences of inappropriate receipting

Failure to prepare proper donation receipts can result in the suspension of receipting privileges and revocation of charitable status. However, there are also intermediate sanctions. If incorrect information is placed on a receipt a charity can be fined or provided with a penalty equal to 5% of the eligible amount on the receipt for a first infraction. If the charity places deliberately false information on a tax receipt it is liable to a penalty equal to 125% of the eligible amount stated on the receipt. Furthermore, there are Third-Party Civil Penalties that can be assessed.

In the recent press release from CRA they noted that “Promoters and other third-party representatives are penalized when they make false statements involving schemes that are against the law. Currently, there are 71 audits involving promoters. Recent examples include...a tax shelter gifting arrangement case where the Canada Revenue Agency (CRA) proposed two penalties of \$24 million against the promoters involved.”¹⁴

¹⁴ <http://www.cra-arc.gc.ca/nwsrm/rlss/2010/m03/nr100316-eng.html>

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There can be significant reputational harm to a charity and its board if there is inappropriate receipting. In some cases, CRA has put out press releases on charities that have been suspended as a result of improper receipting or have lost their registered status. Newspapers have also covered this problem. As mentioned above, in some cases of fraudulent receipting CRA has been successful in obtaining criminal prosecutions.

Conclusion

One of the most valuable privileges that a registered charity has is the ability to issue official donations receipts. The issuance of such receipts costs the Federal and Provincial governments significant lost tax revenue. After some of the recent scandals involving receipting some commentators have either called for the curtailing of receipting privileges or ending the tax subsidy for charitable donations all together. Inappropriate receipting can undermine the public's confidence in charities.

It is important that charities carefully issue receipts according to the rules. There is now a large amount of publicly available information on appropriate receipting that charities and their advisors should be aware of including but not limited to resources contained in "Additional Resources" below.

Receipting is not simple but if in doubt call CRA, get legal advice or just don't receipt.

FURTHER RESOURCES

There are a number of valuable resources on receipting, including the following:

CRA's Operating a Registered Charity – Issuing Receipts

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/menu-eng.html>

CRA Webinar on Gifting and Receipting

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/wbnrs/wtchwbcsts-eng.html?clp=v20100415-eng>

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Capacity Builders Resource Section including Kit, Webinars and Articles

<http://www.capacitybuilders.ca/clip/clip-resources.php>

Blumbergs CanadianCharityLaw.ca section on receipting

http://www.canadiancharitylaw.ca/index.php/blog/category/blog/category/receipting_by_charities/

Various Webinars on legal issues, including receipting, for Canadian registered charities by Mark Blumberg

http://www.globalphilanthropy.ca/index.php/blog/comments/webinars_on_canadian_charity_law_-_charity_law_information_program_clip_by_/

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To communicate with CLIP please contact the CLIP office at 1-877-484-3030 or 416-256-3010 x 232 or by email at clipreception@capacitybuilders.ca. For further information, please see <http://www.capacitybuilders.ca/clip>.

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