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DONATION OF A FOSSIL. Whether the transfer of the custody of a fossil to a qualified donee can be considered a charitable gift.

Past News

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DOCNUM 2014-0526131E5
REFDATE 140522
SUBJECT Donation of a fossil
SECTION 118.1; 248(30); 248(31); 248(32)

Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA.
Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: Whether the transfer of the custody of a fossil to a qualified donee can be considered a charitable gift.
POSITION: Question of fact and law.
REASONS: There must be a transfer of property.

XXXXXXXXXXXX

2014-052613
Sylvie Danis
(613) 957-3496

May 22, 2014

Dear XXXXXXXXXXXX:

Re: Donation of a fossil

This is in response to your letter dated March 12, 2014 wherein you requested our views on the eligibility of claiming a donation tax credit in the circumstances described in your correspondence. More specifically, you asked us whether the value of the custody of a fossil transferred to a qualified donee can be considered a charitable gift for purposes of the Income Tax Act (the "Act").

Our comments

This technical interpretation provides general comments about the provisions of the Act and related legislation (where referenced). It does not confirm the income tax treatment of a particular situation involving a specific taxpayer but is intended to assist you in making that determination. The income tax treatment of particular transactions proposed by a specific taxpayer will only be confirmed by this Directorate in the context of an advance income tax ruling request submitted in the manner set out in Information Circular IC 70-6R5, Advance Income Tax Rulings.

Section 118.1 of the Act provides that individual taxpayers may claim a credit against taxes payable, within specified limits, for an eligible

amount of a gift made to a qualified donee, if supported by an official receipt. The term "gift" is not defined in the Act and therefore assumes its common law meaning. Under common law, a bona fide gift is a voluntary transfer of property from a donor, who must freely dispose of his or her property, to a donee, who receives the property given with no right, privilege, material benefit or advantage conferred on the donor or any person designated by the donor in exchange for the donor making the gift. Subsections 248(30) to (32) of the Act allow for the recognition of a gift for tax purposes in certain situations where a donor, or a person or partnership who does not deal at arm's length with the donor, receives consideration or other advantages for property transferred. Pursuant to subsection 248(31) of the Act, the eligible amount of a gift is the excess of the fair market value of the property transferred to a qualified donee over the amount of the advantage provided. A qualified donee is defined in subsection 149.1(1) of the Act and includes municipalities in Canada registered by the Minister of National Revenue and registered charities.

As noted above, one of the requirements for a gift is that there must be a transfer of property. The definition of "property" in subsection 248(1) of the Act is very broad and includes a right of any kind whatever. However, whether or not the custody of a fossil would be considered a right or other property is a question of law. This determination may only be made based on a review of the legal agreements, the applicable provincial legislation, and the facts of the particular situation. In this regard, you may want to consult with your legal advisor.

Subject to subsection 248(35) of the Act which sets out special rules to limit the fair market value of a gifted property, where a taxpayer disposes of a property by way of gift inter vivos, the taxpayer is generally deemed by subparagraph 69(1)(b)(ii) to have received proceeds of disposition equal to the property's fair market value. As explained in Interpretation Bulletin IT-297R2, Gifts in Kind to Charity and Others, the taxpayer may have to account for (a) income under section 9 if the property was inventory of a business, or (b) capital gain or capital loss under section 39 if the property was a capital property, and (c) recapture of capital cost allowance under section 13 if the property was depreciable property.

Subsection 118.1(2) of the Act requires a receipt issued in prescribed form in order for an individual to claim a donation tax credit. Section 3501 of the Income Tax Regulations provides that the official receipt in respect of a gift issued by a qualified donee must contain certain information which includes, for a gift of property other than cash, "the amount that is the fair market value of the property at the time that the gift was made". A qualified donee may not issue a donation receipt if it cannot reasonably determine the value of the property gifted.

We trust our comments will be of assistance.

Yours truly,

Jenie Leigh
Section Manager
for Division Director
Financial Industries and Trusts Division
Income Tax Rulings Directorate
Legislative Policy and Regulatory Affairs Branch