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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: Can an individual claim a tax credit for a charitable donation made by his/her deceased spouse's will in the year in which the spouse died?

POSITION: Yes

REASONS: In accordance with subsection 118.1(5) of the Act, charitable gifts made by an individual in his or her will are deemed to have been made by the individual in the year of death. The CRA's administrative practice allows a taxpayer to initially choose which spouse or common law partner will report a donation or gift and allows for the subsequent transfer of any carry-forward balances from one to the other. Since the gift made by an individual's will is deemed to be made in the year of death, the donation is available for the administrative practice of spouses sharing donations.

XXXXXXXXXX

2010-037262
P. Waugh

October 26, 2010

Dear XXXXXXXXXX :

Re: Allowable Charitable Donations from Deceased Spouse's Will

I am writing in response to your letter of June 11, 2010 sent to CRA's Shawinigan-Sud Tax Centre concerning allowable charitable donations. More specifically, you have enquired whether an individual may claim a tax credit for a donation made by his/her deceased spouse's will in the year in which the spouse died.

In the situation you described, the taxpayer's spouse passed away in 2008 and his will provided for a donation of shares to a registered charity which were owned by the deceased. In accordance with the deceased's will, the charitable donation was made in 2009 and a receipt was issued to the estate of the deceased.

Our Comments

Written confirmation of the tax implications inherent in particular transactions may only be provided by this Directorate where the transactions are proposed and are the subject matter of an advance income tax ruling submitted in the manner set out in Information Circular 70-6R5, Advance Income Tax Rulings, dated May 17, 2002. This Information Circular and other Canada Revenue Agency ("CRA") publications can be accessed on the Internet at <http://www.cra-arc.gc.ca>. Where the particular transactions are completed, the inquiry should be addressed to the relevant Tax Services Office. We are, however, prepared to provide the following general comments.

In accordance with subsection 118.1(3) of the Income Tax Act (the "Act"), an individual may claim a donation tax credit with respect to gifts made in the taxation year. While there is no authority in law for doing so, it is CRA's administrative practice to accept gifts made by the spouse or common law partner of that individual as part of an individual's "total charitable gifts" as defined in subsection 118.1(1) of the Act. Pamphlet P113, Gifts and Income Tax 2009, provides information regarding whether a gift would qualify for the donation tax credit.

The CRA administrative policy with respect to donation splitting recognizes that generally donations made by one member of the family unit is tacitly a donation made on behalf of the family unit, regardless of the name necessarily given for purpose of the supporting receipt. Consequently, the policy allows for the most beneficial use of the donation for tax credit purposes between spouses and common-law partners. This policy presumes that a spousal or common-law partnership existed at the time of the donation.

Pursuant to subsection 118.1(5) of the Act, charitable gifts made by an individual in his or her will are deemed to have been made by the individual in the year of death and not by the estate. Accordingly, the donation can be claimed on the terminal year return, even though the transfer is made by the deceased's representatives rather than the deceased, and might not be made until a subsequent taxation year. For the purposes of this subsection, a gift is considered to have been made "by the individual's will" where the executors of the estate are required to transfer a specific property or amount to a recipient that is a qualified donee. An amount is certain, in this regard, if there is no discretion left to the executor(s) as to the whether the gift can be made, or as to the amount of the gift.

Assuming a spousal or common-law relationship existed at the time of death and the donation would otherwise qualify as a gift under the Act for purposes of the charitable donation tax credit, where a donation is made in accordance with the terms of a deceased's will, the surviving spouse and the executor(s) can arrange a tax credit claim that is most beneficial to both parties. This results in a surviving spouse having the option of claiming the donation on his/her return in the year in which the spouse dies.

We trust these comments will be of assistance.

Yours truly,

Randy Hewlett
Manager
for Director
Ontario Corporate Tax Division
Income Tax Rulings Directorate
Legislative Policy and Regulatory Affairs Branch

Cc: James Larochele, Shawinigan-Sud Tax Centre