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Income Tax Interpretation Bulletin

Gifts in Kind to Charity and Others

NO: **IT-297R2**

DATE: March 21, 1990

SUBJECT: INCOME TAX ACT
Gifts in Kind to Charity and Others

REFERENCE: Subsections 118.1(1) and 110.1(1) (also sections 9, 13 and 39, subsections 110.6(3) and 118.1(3), and subparagraph 69(1)(b)(ii))

Application

This bulletin cancels and replaces Interpretation Bulletin IT-297R dated February 20, 1984. Current revisions are designated by vertical lines.

Summary

This bulletin discusses the tax consequences of making a gift in kind to charity or others and the valuation of that gift.

Discussion and Interpretation

1. A gift includes a gift in kind. The definition of a gift, the deducting provisions applicable to both individuals and corporations, and the requirements for official donation receipts are explained in the current version of IT-110 and the related Special Release.

2. The general rule in 4 below does not apply where the Act provides special rules for gifts in kind. These special rules are discussed in the current version of the following Interpretation Bulletins:

IT-244 - Gifts of Life Insurance Policies as Charitable Donations,
IT-288 - Gifts of Capital Property to a Charity and Others,
IT-407 - Disposition of Canadian Cultural Property, and
IT-504 - Visual Artists and Writers.

3. Gifts in kind of a taxpayer include capital property, depreciable property, personal-use property including listed personal property (see the current version of IT-332), a leasehold interest, a residual interest (see the current version of IT-226), a right of any kind whatever, a licence, a share, a chose in action and inventory of a business. A gift in kind, however, does not include a gift of services.

Where the property gifted was held jointly by a husband and wife, other than as partners in a partnership, whether the gift was made by the husband, wife or both parties, they may choose whichever allocation is most advantageous to them for the purpose of a claim by each of them under the deducting provisions. This discretionary allocation applies as well to subsequent year claims in respect of any unused portion of the donation. Such donation claims should be adequately explained upon filing of the applicable income tax returns, particularly in the case of the individual who uses a copy of the original receipt to support the claim.

4. Generally, when anything is disposed of to any person by way of a gift inter vivos, the taxpayer (donor) is deemed to have received proceeds of disposition equal to the fair market value of the property pursuant to subparagraph 69(1)(b)(ii). Where the property was held jointly by a husband and wife, the proceeds of disposition must be allocated between them on the basis of the relative interest each spouse held in the property regardless of the discretionary allocation that may be made in respect of their claims under the deducting provisions as described in 3 above. Each taxpayer must therefore account for any

(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. It should be noted that although the gifts in kind discussed in the current versions of IT-288, IT-407 and IT-504 referred to in 2 above, are subject to special rules for the determination, if any, of capital gains, any recapture of capital cost allowance with respect to such gifts of depreciable property is reported in the usual manner.

The fair market value of a gift in kind is also the relevant amount for the purposes of calculating the non-refundable and non-transferable federal tax credit under subsection 118.1(3) for individuals after 1987 and the deductible gift under subsection 110.1(1) for corporations after 1987, as well as the deductible gift under the legislation as it applied to all taxpayers prior to the 1988 taxation year.

5. If the taxpayer making the donation is an individual (other than a trust) and realizes a capital gain, the provisions of subsection 110.6(3) may apply. If the capital gains deduction has not been fully utilized, the individual may be able to fully or partially offset the capital gain referred to above with the subsection 110.6(3) deduction.

6. The fair market value of a gift in kind as of the date of the donation (the date on which beneficial ownership is transferred from the donor to the donee) must be determined before an amount can be recorded on a receipt for tax purposes. If the property was owned on Valuation Day (December 31, 1971), a valuation as of that date may also be required for capital gains purposes. 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.

7. Gifts to Her Majesty in right of Canada and Her Majesty in right of the provinces include gifts to an agent of the Crown. Whether a particular entity is an agent of the Crown in right of Canada or a province depends on whether the law creating the entity (a corporation, commission, gallery, etc.) expressly makes it an agent of the Crown or the entity is an agent of the Crown at common law.

8. Section 118.1 and subsection 110.1(1) are not applicable to donations of property where its cost has been or should be charged as a business expense. For example, if a taxpayer transfers merchandise or supplies to a charity in consideration of a right, privilege, material benefit or advantage such as promotion or advertising for the taxpayer's business, then the transfer would not be a gift. For further information, see the current version of IT-110.

9. A pamphlet entitled "Gifts in Kind", available at District Taxation Offices, provides a general discussion of this topic.

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