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**RECEIPTING FOR CANADIAN CHARITIES
To Issue or Not to Issue an Official Donation
Receipt**

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Charities Directorate of CRA

- Regulates registered charities
- Based in Ottawa
- Website: www.cra.gc.ca/charities
- E-mail list: <http://www.cra-arc.gc.ca/esrvc-srvce/mlst/sbscrbchrts-eng.html>
- Webinars: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/wbnrs/menu-eng.html>
- Telephone: 1-800-267-2384 (English)
1-888-892-5667 (Bilingual)

Introduction

- Legal information not legal advice
- Views expressed are my own
- Questions during and at end
- Logistics and timing

Maintaining Charitable Status

- Conduct allowable charitable activities and avoid prohibited activities
- Keep adequate books and records
- Properly issue official donation receipts
- Meet annual spending requirement (disbursement quota)
- File T3010 Registered Charity Information Return
- Maintain status as a legal entity
- Inform CRA of certain changes

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Why Receipt?

- Can offset federal and provincial income tax
Exact amount depends on which province, which marginal bracket a person is in that year and the type of property (e.g. appreciated marketable securities)
- Can carry forward for next five years
- Can donate up to 75% of your net income each year.

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Does a Charity Have to Issue Receipts?

- No
- But make donors aware of policies (minimum donations, when receipts will or will not be issued, gift acceptance policies, etc.)
- Individuals require “official donation receipt” to reduce personal income tax when they file their personal return each year so let them know if no receipt will be issued
- If in doubt, DON'T RECEIPT

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How Much is a Donation Receipt for?

- What is the “eligible amount of a gift” for official donation receipting purposes
- If the donor has received an “advantage” in return for his or her donation then the “value” of the “advantage” must be subtracted from the value of the “gift”.

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What is a “Gift”?

Charities can only issue receipts for a “gift”.

A “gift” is a:

1. **Voluntary** – given of free will (not compelled, not court ordered, etc)
2. **Transfer** – from donor to charity/qualified donee (complete transfer)
3. **Property** – cash or gifts in kinds (not services)
4. **Financial Sacrifice** on the part of the donor (donative intent – advantage must be less than 80% of amount unless Minister agrees)

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Mandatory Elements of Receipts

For gifts of cash: (Regulation 3501 of the *Income Tax Act*)

- A statement that it is an official receipt for income tax purposes
- The name and address of the charity as on file with the CRA
- The charity’s registration number
- The serial number of the receipt
- The place or locality where the receipt was issued
- The day or year the donation was received

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Mandatory Elements of Receipts (cont.)

- The day on which the receipt was issued if it differs from the day of donation
- The full name and address of the donor
- The amount of the gift
- The value and description of any advantage received by the donor (under proposed legislation)
- The signature of an individual authorized by the charity to acknowledge donations, and
- The name and Web site address of the Canadian Revenue Agency (<http://www.cra.gc.ca/charities>)

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Mandatory Elements for Gifts in Kind

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

- The day on which the donation was received (if not already indicated)
- A brief description of the property transferred to the charity
- The name and address of the appraiser (if property was appraised), and
- In place of the amount of the gift mentioned above, the deemed fair market value of the property (under proposed legislation)

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Don't Issue a Receipt When...

- Tuition (except IC 75-23 - private religious schools)
- Business advertising expenses/sponsorship
- Gifts of promises (for example, gift certificates donated by the issuer, hotel accommodation) or pledges
- Payment of basic fee for event (e.g. concert)
- Payment for program (e.g. daycare)

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Don't Issue a Receipt When...

- Membership fees that convey the right to attend events, receive literature, receive services, or be eligible for entitlements of any material value that exceeds 80% of the value of the payment
- Lottery tickets
- Purchase of goods or services from charity
- Donation for which the fair market value of the advantage or consideration provided to the donor exceeds 80% of the value of the donation

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Don't Issue a Receipt When...

- Funds or gift in kind from another qualified donee (for example Canadian private foundation gifts or transfers funds to registered Canadian charitable organization)
- Cannot determine the name of the true donor
- Gift directed to specific person or family unless charity has already decided that person or family is recipient of its charitable program and charity has full discretion to reallocate and person or family is arms-length from donor

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Split Receipting

- New legislative idea – from 2002
- Pre-2002 – if donor received any advantage, then no receipt
- Now donors can receive some advantage eg. concerts, golf tournament, gala dinners, etc.
- Charity must determine the eligible amount of that gift for receipting purposes in order to issue an official donation receipt
- Eligible amount is gift minus advantage
- <http://www.cra-arc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.pdf>

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Advantage is Broad

Possible advantages include:

- Property (for example, cash, non-cash gifts)
- The use of or enjoyment of property
- The provision of services
- Other benefits (for example, assumption of debt by donee, sponsorship)

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Determining FMV of Advantage

- Advantage = what donor *may* receive in return for his or her donation (for example, food at gala dinner)
- Must be deducted when determining the eligible amount of a gift for receipting purposes
- Similar but different to determining fair market value of a gift in kind (non-cash gift)
- While only donations of *property* can be receipted as gifts in kind, the fair market value of any type of advantage (for example services, accommodation, meals) must be used to reduce the eligible amount of a gift for receipting purposes

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Is There Donative Intent?

If advantage is

- 80% or less of the fair market value of the donation, then a receipt may be issued for the difference
- Greater than 80% of the value of the donation, no gift is deemed to have been made (no donative intent), and a receipt cannot be issued

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If “Nominal” Value of Advantage

If advantage is the lesser of \$75 and 10% of the value of the donation, it is considered nominal (“de minimis”) and it need not be deducted from the eligible amount of the gift for receipting purposes

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If Value of Advantage Cannot be Determined

If the FMV of the advantage cannot be determined, a receipt cannot be issued

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Working Out the Receipt

- Is advantage 80% or less of the fair market value of the donation?
- Is advantage nominal in which case do not need to deduct from amount of receipt?

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Example 1 –Nominal and Threshold

- Individual donates \$500 to a charity and receives a theatre ticket worth \$90 from the charity.
- **Nominal threshold:** 10% of \$500 is \$50. Therefore the advantage must be \$50 or less to be considered nominal.
- **Advantage threshold:** 80% of \$500 is \$400. Therefore the advantage must be less than \$400 for a receipt to be issued.
- This example is not nominal, and must be deducted from the value of the gift, but advantage does not exceed 80% value so a receipt can be issued. Eligible amount for which a receipt can be issued is **\$500 - \$90 = \$410**.

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Example 2

- Individual donates \$300 to a charity and receives a TV set worth \$250 from the charity.
- **Nominal threshold:** 10% of \$300 is \$30. Therefore the advantage must be \$30 or less to be considered nominal. As well advantage over \$75.
- **Advantage threshold:** 80% of \$300 is \$240. Therefore the advantage must be less than \$240 for a receipt to be issued.
- In this example advantage is not nominal and exceeds 80% value so a receipt cannot be issued.

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Example 3

- Individual donates \$500 to a charity and receives a pen worth \$4.95 from the charity.
- **Nominal threshold:** 10% of \$500 is \$50. Therefore the advantage must be \$50 or less to be considered nominal.
- **Advantage threshold:** 80% of \$500 is \$400. Therefore the advantage must be less than \$400 for a receipt to be issued. \$4.95 is less than \$400.
- In this example advantage is nominal and therefore \$4.95 is not deducted from the value of the gift, and advantage does not exceed 80% value so a receipt can be issued. Eligible amount of receipt is **\$500**.

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More Information on Split Receipting

Income Tax – Technical News No. 26 Dec. 24, 2002

- Fundraising dinners
- Charity auctions
- Lotteries
- Concerts, shows and sporting events
- Golf tournaments
- Membership fees
- Charitable annuities
- Mortgaged property

http://www.cra-arc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.html#P153_16472

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Receipting and Golf Tournaments

- **Green fees** are calculated at the rate (group or individual) normally charged to non-members playing the course at the time of the event. However, no amount is allocated to members where members are not normally required to pay green fees
- **Cart rentals** are valued at their regular cost
- **Meals** are valued at the price (group or individual rates) that would be charged if the meals were purchased separately at the course

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

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Receipting and Golf Tournaments

- **Complimentary items** are valued at the amount that would have to be paid to acquire the merchandise at the donating retail outlet or the outlet from which the merchandise was obtained
- **Door and achievement prizes** are valued at the retail value of all such prizes, totalled, and allocated pro rata to all attendees
- **Hole in one prizes** can be excluded. The CRA accepts that for any particular participant the value of the chance to win the prize is nominal

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

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Celebrities at Events

“The attendance of celebrities at fundraising events will not be viewed as an advantage per se. However, any incremental amount paid for the right to participate in an activity (for example, dinner, golf) with a particular individual will not be viewed as a gift.”

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

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Meals at Events

- Fair market value of a meal at fundraising dinner is cost of a comparable meal provided by a comparable facility
- If meal at restaurant, then price regular customer would pay
- If meal at banquet facility then use group or banquet rates
- If meal donated to charity, it is still advantage and does not change amount of advantage

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

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Lottery Tickets

“It is the view of the Canada Revenue Agency (CRA) that no part of the cost of a lottery ticket is a gift. Therefore, a lottery ticket is not eligible for an official donation receipt.”

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

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Receipting of Membership Fees

“Whether or not there is an eligible amount associated with the payment of membership fees or other amount to a registered charity of which an individual is a member will be determined on the basis of whether the membership fee or other amount exceeds the amount of the advantage. If the amount of the advantage is 80% or less of the payment to the charity, a tax receipt may be issued for the eligible amount.”

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Receipting of Membership Fees

Generally not advantage:

- Recognition as a donor in the charity's newsletter;
- A subscription to the charity's quarterly newsletter (otherwise available free of charge)
- The right to attend annual meetings
- A monthly calendar of performances (otherwise available free of charge)
- An advance invitation to certain performances
- An invitation to dress rehearsals (open to the general public)

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Receipting of Membership Fees

Must deduct as advantage from membership fees paid for various items including but not limited to:

- Complimentary items of value provided to member
- A discount on products or services offered by charity
- Parking vouchers
- Burial plot discounts

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Split Receipting and Concerts, Shows

“Where the amount of the advantage (including the usual and current ticket price) is 80% or less of the actual ticket price, a tax receipt may be issued for the difference. If there is no reasonably comparable event, then no portion of the ticket price can be viewed as an eligible amount for receipting purposes.”

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

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Why is FMV Important?

- For valuing gift in kind (non-cash) gift (“eligible amount of a gift”)
- For valuing any advantages received
- If you cannot determine fair market value of either gift or advantage then cannot issue receipt
- Onus on charity to determine – major consequences for mistakes.

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What is Fair Market Value?

“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.”

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What is Fair Market Value?

- What is “open and unrestricted market”?
- What is “knowledgeable”?
- What is “informed”?
- What is “prudent”?
- What is “acting independently of each other”?

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FMV and Taxes

- The fair market value of an item does not include taxes paid on purchasing the item
- If you pay \$100 plus \$13 HST then the FMV is \$100 for purposes of the receipt
- Why? Person who owns item and sells it does not get to keep the taxes – just passes it on the government

<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cpc/cpc-006-eng.html>

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What is “Deemed” FMV?

In certain circumstances receipt for a gift in kind (non-cash gift) must be issued for the lesser of

- The gift's fair market value and
- Its cost to the donor (or in the case of capital property, its adjusted cost base) immediately before the gift is made

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When is “Deemed” FMV Used?

For gifts after December 5, 2003 use deemed FMV if any applies:

- 1) The gift received by the charity was initially acquired by the donor as part of a **tax shelter arrangement**, or
- 2) The gift was **acquired less than three years** before the time of donation **for any reason**, or
- 3) 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)

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Exemption from Deemed FMV

- 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

If exempt, then just use regular FMV

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

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Deemed Fair Market Value

If a donor attempts to avoid the limitations described under the "[Deemed fair market value](#)", with the acquisition or disposition of a property before gifting it, the eligible amount of the gift is deemed to be nil. This rule applies to gifts made after July 17, 2005.

Gifts and Income Tax P113(E) Rev. 09

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Deemed Fair Market Value

Important Note: If the property was donated within ten years of acquisition or was acquired through a tax shelter arrangement, the "[deemed fair market value rule](#)" may also apply.

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

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Example of Deemed Fair Market Value

- Person buys piece of art for \$500
- Six months later piece of art is valued at \$1000
- As gift within 3 years so only issue tax receipt for \$500
- If donor does not advise charity of deemed FMV issue then receipt should be for zero

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

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Gifts In Kind

- Why accept gifts in kind?
- Can your charity 1) use it or 2) easily sell it?
- Gifts in kind can create significant legal and ethical issues
- In many cases best to decline offer of gifts in kind

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Gifts In Kind

- Is gift-in-kind donation for mission?
- Is product appropriate?
- Do you have policies on gift-in-kind donations?
- What “fees” are being charged for gifts-in-kind?
- What disclosure of valuation, source, and use is made in your financial statements?

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Appraisal and Gifts In Kind

- If under only one gift under \$1000 then someone affiliated from charity with sufficient knowledge may determine value
- If over \$1000 then CRA recommends that professional appraisal by third party who is knowledgeable about specific marketplace and not associated with either charity or donor
- If appraisal include name and address of appraiser on the official donation receipt

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Appraisal and Gifts In Kind

- May need more than one appraisal
- Responsibility of charity to determine FMV
- Many cases of courts not accepting exaggerated appraisals
- Gifts under \$1000 without valuation – still keep supporting documents.

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When Should a Receipt be Issued?

- No requirement to issue receipt and no requirement as to when
- If charity will issue receipt CRA recommends it be done by end of February for previous year so that donor has time to prepare tax return
- With gifts in kind (non-cash) need separate receipt for each donation
- For cash gifts, e.g. monthly donors, can issue cumulative gift for year

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Correcting or Replacing Receipts

- To replace a **lost** receipt, a registered charity can issue a replacement, which must contain all the required information plus the serial number of the lost receipt. The replacement receipt should also state that it “cancels and replaces the lost receipt.” The charity's copy of the lost receipt should be kept and marked “cancelled”
- For a **spoiled** receipt, a registered charity can issue a new receipt but must keep the original copies (both the donor's and charity's) marked "cancelled”

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Gift Certificates

- A gift certificate is “a certificate having a stated monetary value that entitles the recipient to purchase goods and/or services in the establishment of the issuer”
- Charities can issue an official donation receipt when the donor is
 - a) Not the issuer of the gift certificate, **and**
 - b) Has obtained the gift certificate for valuable consideration either from the issuer or other third party
- Cannot issue official donation receipt to issuer of gift certificate because it is promise to pay

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Name of Donor

- Can receipt be issued in a name other than the “donor”?
- Question of fact whether property donated from one individual to a registered charity is the property of that individual and/or another
- Can be trustee or agent
- Where cheque written on an account held jointly by spouses charity can issue the official donation receipt in either or both names, regardless of who signed

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Name of Donor (cont.)

- Cheque from a corporation and is subsequently asked to issue the official donation receipt in the name of an individual who controls the corporation, obtain evidence to show that the individual is the true donor
- Other circumstances – charity can request written declaration as to the identity of the true donor from the party providing the donation

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How Big of a Problem is Inappropriate Receipting?

- For some abuses we know and others not
- May find OECD *Report on Abuse of Charities for Money Laundering and Tax Evasion* interesting
<http://www.oecd.org/dataoecd/30/20/42232037.pdf>

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Abusive Gifting Tax Shelters

- People can donate to registered charities in Canada and get an official donation receipt which is very valuable and can be costly to the tax system
- Usually “investor” or “donor” is told that the tax benefits and deductions arising from the scheme will equal or exceed the costs of entering into the arrangement or the property
- Promoters and “charities” cannot, through various games and tricks, abuse the tax system to issue whatever receipt they wish

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CRA Taxpayer Alerts on Tax Shelter Gifting

The screenshot shows the Canada Revenue Agency (CRA) website with a prominent "Taxpayer Alert" banner. The alert is titled "Warning: Participating in tax shelter gifting arrangements is likely to result in a tax bill!". Below the title, there is a "Notice to the reader" section, followed by a paragraph explaining that the CRA is auditing all gifting arrangements. A "Stats and Facts" section lists several key points: over 26,000 taxpayers have been reassessed, about \$1.4 billion in donations were denied, and audits of 20,000 taxpayers involving \$550 million in claims are nearly complete. A "Current Promotions" section mentions new schemes being marketed that differ from previous ones.

Canada Revenue Agency
www.cra.gc.ca

Taxpayer Alert
Warning: Participating in tax shelter gifting arrangements is likely to result in a tax bill!

Notice to the reader:
This Taxpayer alert is also offered in a variety of languages: Arabic (PDF, 150 KB), Chinese – simplified version (PDF, 242 KB), Chinese – traditional version (PDF, 239 KB), and Punjabi (PDF, 50 KB). These versions were translated from the English version.

Despite numerous warnings and audit actions by the Canada Revenue Agency (CRA), taxpayers are still participating in tax shelter gifting arrangements. The CRA is urging taxpayers to avoid these schemes.

The CRA is auditing all gifting arrangements

Taxpayers should be aware that the CRA plans to audit all tax shelter gifting arrangements. Every audit completed to date has resulted in a reassessment of tax, plus interest. In many cases the CRA has denied the gift completely. Penalties will be considered, especially where an investor was audited and reassessed for previously participating in a gifting arrangement.

Stats and Facts

- To date, the CRA has reassessed over 26,000 taxpayers who participated in these schemes, and denied about \$1.4 billion in donations claimed.
- Audits of another 20,000 taxpayers involving \$550 million in donation claims are just about complete.
- Audits on other arrangements involving over 50,000 taxpayers are about to begin.

Current Promotions

New schemes are being marketed that claim to be different from those for which the CRA has previously issued warnings. Taxpayers should avoid all schemes that promise donation receipts for 3 to 4 times the cash payment. It is the CRA's position that the proposed legislation, effective since 2003, will apply to reduce the donation credit to no more than the actual cash payment. Furthermore, as indicated above, completed audits have shown that there was effectively no gift being made in many cases, and as a result, the donation was reduced to zero.

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Abusive Gifting Tax Shelters

- There are generally 3 types of tax shelter schemes involving charities and /or RCAAAs:
 - Buy low, donate high, where an individual buys property for \$3,000, then donates the property at a “fair market value” of \$10,000, and receives a \$10,000 receipt
 - Gifting trust arrangements, where an individual donates \$3,000 cash to a charity, receives property with a purported fair market value of \$7,000 from a trust which is also donated to charity, and receives a donation receipt of \$10,000
 - Leveraged cash donations, where an individual borrows \$8,000 (from an organization involved in the scheme) to donate to a charity and donates \$2,000 out of pocket to the charity for a \$10,000 donation receipt

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Tax Shelter Gifting – Charity Concerns

1. Undermine public confidence in charities
2. Depletes tax revenues needed for basic services, many of which are delivered by charities
3. They are often illegal or fraudulent, usually unethical
4. Your donor will be audited (175,000 donors are currently being audited)
5. Determining the correct amount for the donation receipt

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Tax Shelter Gifting – Charity Concerns

6. Disbursement quota problems
7. Fundraising by using commissions may violate codes of ethics
8. Tax Shelter Identification Numbers – is not CRA approval
9. You don't want to be considered a promoter
10. Lawsuits

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Tax Shelter Gifting – Charity Concerns (cont.)

11. Questionable legal opinions
12. Civil penalties
13. Professional advisors
14. Advanced tax rulings from CRA usually not applicable
15. CRA's fundraising guidance
16. 1% goes to charitable activities according to CRA.

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Example

- Example: A Montreal-area foundation
- Registered in 2004 to grant scholarships to students in post-secondary institutions
- Became involved in a tax shelter arrangement
- Issued tax receipts for \$10,000,000 and retained approximately 1% (\$100,000)
- Issued one scholarship for \$10,000

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2009 Update – further decline

2008:

Number of “Donors”/Investors: 17,301 donors;

Amount of “donations” \$484,150,482

Number of schemes: 9

2009:

Number of “Donors”/Investors: 10,813 donors

Amount of “donations”: \$285,946,839

Number of schemes: 7

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Tax Shelters

- “If it sounds too good to be true, it probably is.”
- There are consequences
- Almost all schemes market themselves as being “different” from other schemes that CRA has warned about and promising that they are safe
- The CRA audits all charity gifting arrangements

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Fraudulent Tax Receipts

- Tax receipts are sold for a small percentage of their face value
- No donation, or small donation, to charity
- No complicated scheme
- CRA advises that between 100,000-135,000 donors have been involved between 2004 and 2009 and hundreds of millions in donations.
- Keep tight control over receipts and advise CRA of any concerns

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CanAfrica International Foundation

- Audit conducted for FPE 2002-2005
- Charity reported \$2,203,364 as receipts on 2004 T3010
- CRA seized records showing Charity issued \$21,555,427 in receipts to 3,700 donors in 2004
- Estimated \$38,127,696 in false receipts issued – (low)
- One of directors - Ambrose Danso-Dapaah issued receipts
- File referred to Enforcement
- Charity revoked September 8, 2007
- Director pled guilty on December 15, 2008 to one count of fraud over \$5,000. Sentenced to 51 months in jail.

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Consequences for Improper Receipts

- Incomplete or incorrect information: Penalty equal to 5% of the eligible amount stated on the receipt. Penalty increases to 10% for a repeat infraction within 5 years
- If no gift or deliberately false information then charity is liable to a penalty equal to 125% of the eligible amount stated on the receipt where the total penalty does not exceed \$25,000
- When penalty over \$25,000 the charity gets penalty equal to 125% and the suspension of tax-receiving privileges
- Can also have registration revoked

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Auctions

- Can issue receipt for some items donated for sale at an auction but must be “property” (not services), fair market value of the property must be determined before a receipt can be issued
- **Generally successful bidder gets no receipt for purchase**
- Can issue official donation receipt if:
 - Fair market value can be determined
 - Value of item posted before the start of the auction
 - Successful bidder pays more than FMV and
 - The item bidder receives does not exceed 80% of the purchase price

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Third Party Fundraiser

- CPC – 026 Third-party fundraisers for the benefit of a particular registered charity
- Can be volunteer or paid third party
- Very big difference between volunteer and paid
- Do not casually farm out or relinquish receipting function
- Maintain control over funds and receipting

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Who Handles Receipting in Your Charity?

- Who collects information?
- Who prepares receipts?
- Who signs receipts?
- Who makes sure they are stored appropriately?

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Avoiding Improper Receipting

- Know the rules for proper receipting
- Make sure other volunteers, board etc involved with receipting also know rules
- Ensure receipts have all mandatory fields
- Have good governance and bring board into receipting discussion
- Have gift acceptance policy and follow through

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Avoiding Improper Receipting (cont.)

- 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
- Have adequate books and records
- Obtain legal advice when necessary or call CRA

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Thank you!

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