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June 1, 2007

Mr. Larry Hughsam
Director, Finance and Treasurer
Toronto Public Library
789 Yonge Street
Toronto ON M4W 2G8

Dear Mr. Hughsam:

Re: Charitable Gift of Rental Space

You requested our opinion on whether it is financially advantageous for a landlord to charge a rental rate below market rates for leased premises and receive a tax receipt from the Toronto Public Library (the "Library") for the difference between the market rate and the amount of rent charged, if any, to the Library.

Summary of Opinion Provided

Based upon the current provisions of the *Income Tax Act* (Canada) (the "Act"), related case law and the administrative policies of the Canada Revenue Agency (CRA) published to date, in our opinion, there is no financial advantage for a landlord to provide office space for a below-market rate to a charity in return for a receipt.

Analysis

The Library currently rents or leases the space from the landlord. While the analysis of these two scenarios differs, the financial result to the landlord remains unfavourable. For purposes of this letter, renting is defined to be an agreement to use certain space for a fee but the Library will not have any right under the Agreement to make improvements to the space or facility. Leasing contemplates an agreement under which the Library leases vacant unimproved space and has the right to make leasehold improvements (which in most instances would be shown as on the financial statements as assets of the library.) Although the distinction between the two types of agreements is often vague, technically the reason behind the conclusion in each scenario is different and the analysis below highlights the differences.

Rent or Reduction in Payment

Under the common law a gift is defined as a voluntary transfer property for no consideration. A landlord renting a premise to another person is not considered to have transferred a property interest. Similarly, a reduction in the amount of a rent or lease payment is not a transfer of property. If there is no transfer of property, then the landlord is not considered to have made a gift and the Library cannot provide a charitable tax receipt.

CRA agrees with this conclusion in Technical Interpretation 2003 – 0018595 dated December 3, 2003. In considering whether a charity could issue receipt to a landlord that allowed a charity to occupy office space rent-free, CRA took the view that the charity cannot issue a receipt since that "a transfer of property does not include a grant of a right to use the donor's property."

Similarly, CRA's Policy Commentary CPC-017 dated March 29, 2000 states that a charity cannot issue an official donation receipt for contributions of services rendered free of charge, since services are not property. However, CRA notes that a charity can pay for the service and the service provider can contribute the payment back to the charity in exchange for a receipt. Under this approach, the service provider will have to include the payment in income. CRA Information Letter CIL 2001–010 dated April 2, 2001 applies the same analysis to a mortgage holder who waves interest payable to a charity. A charity cannot receipt the non-payment of the interest, but if the charity pays the interest and the mortgage holder gifts it back, the charity can receipt the amount the mortgage holder gifts back to the charity.

In our opinion, the Library cannot provide a receipt to the landlord for the provision of rental space for free or for the reduction of the amount charged for rent. Therefore, this is no financial advantage to the landlord offering free rent.

Lease

Unlike rental space or a reduction in fees, a lease of property is considered a property interest. Therefore, a person can gift a lease.

Under the proposed split-receipting rules in the Act[1] a donor can obtain a receipt for the value of a gift minus the value of an advantage received from making the gift, as long as the advantage does not exceed 80% of the value of the gift. Thus, the gift of a lease in exchange for less than 80% of the value of the lease may be eligible for a charitable tax receipt for the market value of the lease minus any amount received by the landlord.

However, subparagraph 69(1)(b)(ii) of the Act provides that where a taxpayer has disposed of anything to any person by way of *inter vivos*[2] gift the taxpayer is deemed to have received proceeds of disposition equal to the fair market value of the property disposed. Thus, the

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[1] Proposed to be retroactive to gifts after December 20, 2002.

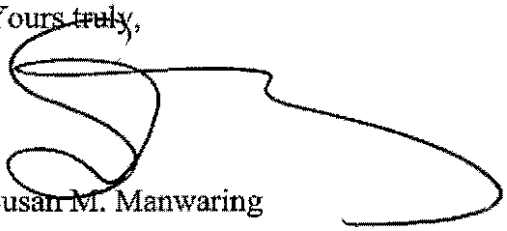
[2] A gift during the lifetime of the person.

landlord would be deemed to have disposed of the lease or the portion thereof gifted for its fair market value. These deemed proceeds would have to be included in the landlord's income and tax paid thereon.

Therefore, in our opinion, while the Library can issue a charitable tax receipt for the gift of a lease, the landlord must pay taxes on the deemed disposition of the lease. The amount included in income would generally be equal to the amount of the receipt. As a result, there is no financial advantage to the landlord of offering to lease the space for a normal amount in return for a receipt.

We would be pleased to discuss this with you.

Yours truly,



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