# Recent Tax Developments

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## Donations of Life Insurance Policies

Interpretation Bulletin IT-244R3, *Gifts by Individuals of Life Insurance Policies as Charitable Donations*, dated September 6, 1991 was issued to cancel and replace IT-244R2, dated March 3, 1986. The Bulletin discusses the income tax implications of the donation by an individual of a life insurance policy to a registered charitable organization or a charitable foundation, and the tax consequences of the life insured continuing to pay the premiums on the policy. The Bulletin has been amended to reflect changes to the *Income Tax Act* for 1988 and subsequent taxation years which provide that donations made by an individual to a charity qualify for a tax credit instead of a deduction for the purpose of computing taxable income.

## *Ballard Estate* v. *Ballard Estate*

A recent case of interest is not a tax case, but is noteworthy because it deals with the relatively obscure *Charitable Gifts Act* of Ontario. In *Ballard Estate* v. *Ballard Estate* (1991), 3 O.R.(3d) 65, one of the issues before the Court concerned an option granted to a company in which one of the trustees was a principal. The company was to be given an option to purchase shares of Harold E. Ballard Ltd. owned by the Estate of Harold E. Ballard. The estate ultimately vested in a charitable foundation. Sections 2 and 3 of the *Charitable Gifts Act* provide, in effect, that where an interest in a business that is carried on for gain or profit is given to, or vested in, a person in any capacity for charitable purposes pursuant to a will, such person must dispose of the amount of the business interest within seven years after the death of the testator. Section 5 of the *Charitable Gifts Act* requires a court to approve the sale of such an interest to a trustee where the interest is held by an estate.

One of the trustees in the *Ballard* case alleged that the option should be characterized as a disposition of trust property under Section 5 of the *Charitable Gifts Act*. The question was whether the disposition took place when the option was given to the company or when the option was exercised. The Court noted that the purpose of the *Charitable Gifts Act* was to prevent charitable corporations and trusts from holding more than a 10 per cent interest in a business. The will provided that the shares of the company did not vest in

a charitable foundation until the "division date" defined as 21 years after the death of the testator. The Court found that the mere giving of the option did not constitute a present disposition of the shares within the meaning of Section 2 of the *Charitable Gifts Act* and, therefore, Section 5 of the *Act* did not apply and the approval of a judge was not required. The result is that the application of the *Charitable Gifts Act* in this particular case could be deferred for up to 21 years after the death of the testator.

### *O'Brien* v. *M.N.R.*

In *O'Brien* v. *M.N.R.* Tax Court of Canada (91 DTC 1349), dated October 10, 1991 (Court File No. 89-558(IT)) a taxpayer died on August 4, 1983 leaving a will providing a life interest for his nephew followed by a residuary disposition on the nephew's death to a registered charity. The will did not contain a power to encroach on capital during the nephew's lifetime. The terminal tax return filed in respect of the deceased claimed charitable donations of $18,000 in respect of his terminal period and $24,184 in respect of the taxation year prior to the deceased's death, relying on subsection 110(2.1) and (1.2), respectively, of the *Income Tax Act*. The Minister disallowed both of the deductions but, on appeal, the Tax Court of Canada allowed the appeal and allowed the deductions. The absence of a receipt from the registered charity was not allowed to defeat the legislative intention behind subsections 110(2.1) and (1.2) of the *Act*. The Court held it was unrealistic to expect the registered charity to produce a receipt for amounts not received and deductions were allowed even though the *Act* specifically required the production of receipts. For once, it is heartening to see a commonsense approach to the treatment of gifts to charity where a specific requirement that would have allowed the gift to be deductible could not technically have been met.