

Recent Tax Developments

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Budget Update

The budget proposals of November 12, 1981, as subsequently modified and incorporated in Bill C-139, were enacted on March 30, 1983.

Pursuant to these amendments, paragraphs 110(1)(a) and 110(1)(b) of the *Income Tax Act* were amended to provide a five-year carry forward of donations to qualified donees and Her Majesty in right of Canada or a province, made in a particular year, to the extent that they were not deductible from taxable income of the taxpayer in the year the gift was made. Previously, charitable donations made in a particular year which exceeded 20 per cent of the taxpayer's income for the year (a limitation applicable in respect of most gifts) could be carried forward for one year. Pursuant to the amendment, charitable donations and gifts to Her Majesty which cannot be deducted in the taxation year they were made can be used in any of the five subsequent taxation years to the extent they were deductible in a previous year. This applies to gifts made in the 1981 and subsequent taxation years.

Section 110(1.2) was added to the *Act* and provides that charitable donations, gifts to Her Majesty and gifts of cultural property made in the year of death may be carried back one year if they cannot be deducted fully in the year of death. This amendment applies with respect to donations made in the 1981 and subsequent taxation years.

The April 19, 1983 Budget did not deal with charities. However, subsequent to the Budget, a discussion paper entitled *Charities and the Canadian Tax System* dated May 17, 1983, was released. This paper is discussed in the preceding article beginning on page 38.

Case Update

Since the last issue of *The Philanthropist* one tax case has been reported. In *Cochren Construction Co. Limited v. The Minister of National Revenue* (1982), 82 DTC 1833 (Tax Review Board), Cochren Construction Company Limited made payments to the Reverend H.B. Smith In Trust. Smith was a priest at Holy Rosary Church, Burlington, Ontario and also dean of a diocese. He deposited the cheques under his name in trust and made disbursements on behalf of the appellant to various registered charities. The taxpayer claimed a deduction in respect of the amounts given to Smith on the basis that they were charitable donations made to Holy Rosary Church, a registered charity under the *Income Tax Act*. The Minister disallowed the deduction. The Tax Review Board dismissed the taxpayer's appeal and found that the taxpayer's cheques were gifts made to the priest, who

made further gifts to charities of his choice, and were not gifts to Holy Rosary Church. R. St-Onge found that, according to the evidence adduced, it was obvious that the gifts were not made to the priest personally nor to the parishes he represented, but only to those to whom he chose to give. The gifts were not made to registered charitable organizations within the meaning of the relevant statutory provision and were therefore properly not deductible.

A case of interest which is not a tax case but deals peripherally with organizations exempt from tax under the *Income Tax Act* is a recent (not yet reported) decision concerning the passing of accounts of Laidlaw Foundation in the Surrogate Court, Judicial District of York. In auditing the accounts of the foundation, Her Honour Judge Sidney Dymond was asked by the solicitor for the Public Trustee to disallow donations made to certain sports-oriented organizations which were registered with Revenue Canada as amateur athletic associations but not registered as charities. The foundation by its charter was required to devote its resources for charitable purposes. The judge found five of the six organizations involved to be charitable at law, notwithstanding their registration under the *Income Tax Act* as amateur sports organizations. The sixth was reserved for further study and supplementary submissions have been made by the foundation. The judgment gives substantial guidance on the highly difficult question of amateur sports organizations being entitled to the status of charities at law, regardless of how they are classified for the purposes of the *Income Tax Act*. This case illustrates the dichotomy between trust law and income tax law which is often forgotten and deserves much fuller analysis than space permits.

Sales Tax Update

The seven per cent Ontario retail sales tax was withdrawn from qualifying new residential furniture and from certain household appliances purchased during the period May 11, 1983 to August 8, 1983. The delivery date for furniture and appliances purchased before the deadline has been extended to November 7, 1983.

The wording of the exemption included "Furniture of a type usually acquired to furnish a residential dwelling". The actual end use was not, therefore, a factor. This may be of interest to organizations which maintain homes for the handicapped, aged, disabled, etc. Excluded types of furniture are: office and institutional furniture, household items such as lamps, television sets, radios, works of art, mirrors and decorative items. The exemption for appliances is restricted to major appliances such as refrigerators, ranges, etc. and specifically excludes microwave and convection ovens and appliances designated for commercial use.

The Ontario Retail sales tax is also withdrawn from audio and video education publications purchased for use by schools, school boards, universities and public libraries.

Public museums in Quebec are eligible for refund of the nine per cent Quebec retail sales tax on works of art purchased for collections, effective May 11, 1983. To qualify, the museums must be non-profit institutions devoted primarily to cultural or scientific pursuits.