Recent Tax Developments

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Discussion Paper Proposals

In response to criticism by registered charities of its Discussion Paper of May 17, 1983[1] proposals, the federal Department of Finance asked The Canadian Centre for Philanthropy to form a committee consisting of representatives from all major sectors of the charitable field to meet with officials of the Department so that it might obtain a better understanding of the concerns of the operating charities. The Canadian Centre for Philanthropy agreed to facilitate the organization of such a group of representatives of the various segments of the non-profit sector. This group now consists of 15 representatives, nine from operating charities and six lawyers and accountants who have considerable experience in this area. The committee is chaired by Wolfe D. Goodman of Goodman and Carr.

This committee has met with officials of the Department of Finance on two separate occasions to discuss their concerns. Some progress was made during these discussions but no definite decisions had been reached on the changes that could be expected as a result of these meetings and other discussions and meetings arising as a result of the many submissions made to the Department of Finance on the Discussion Paper.[2]

Burns v. M.N.R.

A recent case concerning a gift to an amateur athletic association is of interest to registered charities as it appears to broaden the degree to which a person who makes a gift which is deductible under paragraph 110(1)(a) of the Income Tax Act may benefit from the gift. While the case involved a donation to an amateur athletic association which was not a charity, it should be equally applicable to charities.

In *Burns* vs. *M.N.R.*., 83 DTC 557, Dr. F. Bruce Burns, a dentist in Mississauga, Ontario made donations to the Canadian Ski Association (C.S.A.), a registered amateur athletic association, for which the C.S.A. issued official income tax receipts. In the relevant years, Dr. Burns' daughter was a member of the Southern Ontario Division of the C.S.A., and was training for world-class competition. The C.S.A. is responsible for the selection and training of the National Ski Team which competes in world-wide competitions, including the Olympic Games. The Southern Ontario Division of the C.S.A. is responsible for the training of skiers residing in Southern Ontario. According to the evidence, the C.S.A. when providing income tax deduction receipts for donations kept approximately 10 per cent of the donated amounts for activities directed largely toward the development of the National Ski Team and remitted the remaining 90 per cent to the local or regional

association or club to which the money had been donated. The Minister disallowed the deduction by Dr. Burns of certain amounts which were under appeal contending that the payments he made were not a voluntary transfer of property without consideration, that Dr. Burns made the payments in the expectation that he would receive, and did in fact receive, consideration in the form of ski training provided for his daughter and that the payments were not gifts. In support of his contention, counsel for the Minister referred to *Her Majesty the Queen* v. *John Zansdstra,* 74 DTC 6416, [1974], C.T.C. 503. That case concerned donations to a school attended by the donor's children where it was held by the Federal Court, Trial Division that the donations were not gifts but rather were made for the purpose of providing separate educational facilities for the children of members.

Mr. Taylor distinguished the *Zansdstra* case on the basis that in that case education was available in the public system, and that production of world-class scholars was not an objective of the school while in the case under discussion there was an overall objective—production of world-class skiers. He stated that, "The sole purpose of the C.S.A. was to provide an organization and financial framework within which the potential for world-class competition could be spotted, encouraged and developed. The contributions made by Dr. Burns were directed towards that objective, and as far as the evidence would indicate, were used for that purpose". He concluded that the nature of the payments was basically charitable and that the secondary motive of advancing the taxpayer's daughter's ski training was not sufficient to taint the gift. "The payments at issue here were directed to the general non-profit objective of C.S.A., they were voluntary, not part of a contract, and eligible [sic] for deduction as a gift. I find no reason to dilute that deduction, or eliminate it, because of the secondary, 'personal interest' aspect of the matter relied upon by the Minister." Mr. Taylor was not prepared to reach a conclusion which would eliminate a major incentive to donate to the C.S.A. in direct conflict with the purpose Parliament had when it designated the C.S.A. as a non-profit organization, a time when maximum financial support was required from the parents.

As noted above, the *Burns* case concerned a donation to an amateur athletic association which is not a charity; however, it should be equally relevant to charities. We understand the case has been appealed. If it is upheld or appealed, it appears to form a precedent which might be invoked by taxpayers making donations to charities where the donor receives some benefit, but a benefit that is clearly secondary or ancillary to an overall intention to benefit the charity. One example would be the benefits enjoyed by disabled persons indirectly as a result of donations to various groups assisting the disabled or mentally retarded. Another example might arise from the purchase of a lottery ticket or a ticket to a fund-raising event, such as a dinner or concert, held to benefit a charity. In the latter case, Revenue Canada currently requires that the cost of the benefit received be deducted from the total amount paid for purposes of tax deduction. On the basis of the *Burns* case, it may be possible to argue that the overall intent of a donor to a charity concerned with the disabled who receives some benefit, or the purchaser of a lottery ticket, is to benefit charity and that the full amount of the donation or amount paid for the ticket should be deductible notwithstanding that some ancillary

benefit may be enjoyed by the donor or purchaser. If the benefit is truly ancilliary to the overall charitable intent, one would hope such argument would be successful.

Laidlaw Foundation Update

In our last column, we reported briefly on a decision concerning the passing of accounts of Laidlaw Foundation in the Surrogate Court, Judicial District of York. The Reasons for Judgment and Supplementary Reasons for Judgment pronounced by Her Honour Judge Dymond on April 28, 1983, and on September 8, 1983, re-sectively, have been appealed by the Public Trustee of Ontario. The Public Trustee asks that the Order be reversed and that an Order be entered holding that the disbursements to The Sports Fund for the Physically Disabled, The Thunder Bay Ontario 1981 Jeux Canada Summer Games Society, Canadian Track and Field Association, Commonwealth Games of Canada Inc., and Canadian Olympic Association, including the Olympic Trust of Canada, are not charitable and the disbursements to them ought therefore to be disallowed.

FOOTNOTES

1. See "New Tax Proposals for Charities", *The Philanthropist*, Summer 1983, pp.38-44.

2. See "New Tax Proposals for Charities", p.64, this issue.