

Recent Tax Developments

M.L. DICKSON

Member, The Ontario Bar

LAURENCE C. MURRAY

Thorne, Ridell, Chartered Accountants

Since publication of the last issue of *The Philanthropist*, a revised Information Circular on registered charities and the proposed legislation implementing the Notice of Ways and Means Motion of May 23, 1985 relating to political activities has been released. In addition, there has been a recent change in Ontario Retail Sales Tax as it relates to fund-raising events.

May 23, 1985 Budget Provisions Relating to Charitable Activities

The May 23, 1985 Budget proposed that for the 1985 and subsequent taxation years, registered charities be permitted to engage in political activities (other than the direct or indirect support of, or opposition to, any political party or candidate for public office) that are ancillary and incidental to their charitable purposes provided that substantially all of their resources are devoted to their charitable activities or purposes. Bill C-84 implements the Budget resolution by amending subsection 149.1(1.1) to provide that, in addition to a specified gift made by a registered charity not being considered in determining whether the charity has met its annual disbursement quota, for the 1985 and subsequent taxation years, any expenditures on political activities made by a registered charity will not be considered to have been spent on charitable activities.

Also, two provisions have been added to the *Act*. New subsections 149.1(6.1) and (6.2) provide that a registered charity may use part of its resources for political activities as long as such activities are ancillary and incidental to its charitable purposes and do not include the direct or indirect support of, or opposition to, any political party or candidate for public office. The notes to Bill C-84 indicate that permitted activities would include advertising and rental of facilities for meetings or mass mailings designed to influence public opinion to support the charity's views on matters of law or government policy related to its charitable purposes. This will be welcome news, especially for those charities which wish to lobby for social change.

Bill C-84 also provides amendments to section 110 of the *Income Tax Act* to permit gifts of shares or other intangible capital property to be made to a charity after 1984, at an elected amount which can be less than the fair market value, and to remove the requirement that the property be suitable for direct use by the donee in its activities. That section has also been amended to allow artists to donate works of art created by them, out of their inventory, to a charity and also to permit them to designate the amount to be treated as both the proceeds and the

gift, provided the amount is not greater than the fair market value, and not less than the cost, of the property. This amendment is effective after 1984.

Revised Information Circular No. 80-10R

In late December, 1985 Revenue Canada, Taxation released its long-awaited revised Information Circular related to registered charities. Information Circular 80-10R *Registered Charities: Operating a Registered Charity* replaces Information Circular 80-10 which was dated August 29, 1980. The following is a brief outline of the major differences between the two information circulars.

The first two parts of the original Information Circular No. 80-10, relating to charitable purposes and objects and application for registration have been incorporated into an information letter entitled "Registering your Charity". This letter will be published and released some time in the future and, as a result, these two parts have been deleted from the revised Information Circular No. 80-10R. The remaining two parts of the original Information Circular No. 80-10, relating to operational requirements of a registered charity and revocation of such registration, have been almost completely changed because of the revisions that were enacted in late 1984, effective for taxation years commencing after 1983.

Revised Information Circular No. 80-10R reflects all of the changes that were enacted in late 1984, including such changes as the establishment of the three categories of registered charities, operational requirements, and penalties for non-compliance. In addition, Part III, relating to donations and receipts, has been added as well as Part VI dealing with the reinstatement of "registered charities status" where registration has been revoked. The seven appendices to Information Circular No. 80-10R state most of the provisions in the *Income Tax Act* relating to registered charities, including the principal section (149.1) as well as the penalties provided in sections 188 and 189 of the *Income Tax Act*. In total, this information circular is 39 pages but there are only 17 pages of commentary with the balance devoted to a reproduction of the actual legislation which covers most of the rules affecting registered charities.

Ontario Retail Sales Tax

Effective June 5, 1985, the annual taxable sales limit of \$75,000 in respect of fund-raising events by charitable and non-profit organizations is removed. However, effective January 1, 1986, these same organizations are required to pay tax on prepared food products purchased for sale at such fund-raising events.

In order to qualify under this exemption, the events in question must not be held on a regularly scheduled basis; furthermore, the organization will be required to pay sales tax on any taxable goods including prepared food products, as indicated above. Also the exemption does not apply to a charitable or non-profit organization that is competing with commercial operators at the same location, e.g., a fair.