

Recent Tax Developments

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Report of the Task Force on Funding of the Arts, June, 1986

Funding of the Arts in Canada to the Year 2000, the report of the Task Force on Funding of the Arts which was chaired by Edmund C. Bovey, C.M., was published by the Government of Canada in June, 1986. The Task Force made 60 recommendations. Recommendations 47 to 60 relate to tax incentives for support of the arts. These recommendations fall into three categories:

A. Arts Patrons

47. A tax credit for donations to charities should be established in lieu of their deduction from income. For individuals the tax credit should be equal to the maximum marginal tax rate; for large and small businesses, the tax credit should be equal to the top level of corporate tax.
48. (a) Donations to arts endowment funds should be eligible for an income tax deduction of 125 per cent of the value of the donation.

(b) Three-year pledges for the operations of the arts should be eligible for an income tax deduction of 125 per cent of the annual amount of the pledge.
49. The purchasers of life insurance policies, in which arts endowment funds are named beneficiaries, should receive an additional tax benefit, on death, equal to the difference between the face amount of the policy and an indexed figure for the premiums previously paid and deductible in calculating taxable income.
50. Gifts of Canadian cultural property should be specifically excluded from the computation of net income under the alternative minimum tax.
51. The appreciation on tangible and intangible property donated to non-profit arts organizations should be exempt from capital gains tax.
52. The *Canadian Cultural Property Export and Import Act* should be amended to provide specifically for the deduction of gifts of undivided interest in designated cultural property.
53. The *Income Tax Act* should provide for the deduction of certain non-reimbursed volunteers' expenses.

B. Arts Consumers

55. (a) Fifty per cent of the cost of individual subscriptions to Canadian performing arts series of non-profit arts organizations and to Canadian literary and art periodicals, and of the cost of individual and family memberships in Canadian museums and public art galleries, should be deductible from income tax.
- (b) Fifty per cent of the cost of the purchase by an individual of an original work of art of a living Canadian artist that has not been previously sold, should be a deductible expense for income tax purposes, up to a total of \$2,500 in any one calendar year.
56. (a) Original prints by Canadian artists should be exempt from federal sales tax.
- (b) Provincial sales tax should not apply to purchases of Canadian works of art.
- (c) Publicly supported arts organizations should be exempt from amusement taxes.
57. Sponsorship by business of the expenditures of arts organizations, up to an amount of \$10,000, should be eligible for a tax credit of 50 per cent, such a credit to be offset against the corporation's deductible allowance for such expenses.

C. Artists and Arts Organizations

58. (a) Artists should be allowed to average their incomes on a five-year basis for income tax purposes.
- (b) Musicians with employee status should be eligible for a capital cost allowance for the capital value of their instruments, and a deduction for the cost of the instruments' upkeep.
59. (a) Governments should allow for the payment of a deceased person's taxes with works of art, assessed at fair market value.
- (b) Artists should be allowed to pay their income taxes during their lifetime with works of art they have created, assessed at a fair market value.
60. The *Income Tax Act* should be amended to include registered Canadian arts organizations as eligible recipients of tax-deductible charitable donations.

The report includes a discussion of the cost of implementing the tax proposals. It points out that a number of the tax proposals will not be costly to implement and will create an environment of goodwill towards the arts and artists. The following proposals are included in this category.

- “Life to the Arts”: an insurance-policy tax incentive;
- Exemption of gifts of Canadian cultural property from minimum tax;
- Gifts of undivided interest in tangible property;
- Removal of the tax limit on charitable donations;
- Exemption of original artists’ prints from federal sales tax;
- Income-averaging on a five-year basis for artists;
- Capital cost allowances for musical instruments;
- Amendment to the *Income Tax Act* specifically to include arts organizations as eligible recipients of tax-deductible charitable donations.

Other proposals, the report acknowledged, would be implemented at some cost but it is hoped that it would be possible to harmonize implementation of the proposed changes between the two levels of government so that the maximum benefit would be derived from each proposal.

Even though it is likely the government will not be responsive to these recommendations, the report provides an interesting view of the arts as seen from a businessman’s perspective.

Definition of Charity

In a recent case, *Native Communications Society of B.C. v. M.N.R.*, 86 DTC 6353, the Federal Court of Appeal considered the definition of “charity” and found charitable a non-profit corporation whose main objects were the production of radio and television programs of relevance to native people in British Columbia; the training of such people as communications workers; and publication of a newspaper devoted to subjects of interest to native people. The corporation also had a number of subsidiary objects, one of which was “to procure and deliver information on subjects relating to the social, educational, political and economic issues facing native people of British Columbia”. The Federal Court of Appeal found that the corporation’s purposes were beneficial to the Indian community of British Columbia and therefore charitable within the spirit and intention of the Preamble to the Statute of Elizabeth.

The case is interesting both because of the decision, which confirms that assisting native people is charitable, and also because of the Court’s approach to determining the charity of the purposes. In his Judgment, Stone, J. stated at page 6358, “In my judgment it would be a mistake to dispose of this appeal on the basis of how this purpose or that may or may not have been seen by the Courts in the decided cases as being charitable or not. This is especially so of the English decisions relied upon, none of which are concerned with activities directed toward aboriginal people. If, as Lord Wilberforce says (and I agree) ‘the law of charity is a moving subject’, then our duty must be to see whether in the circumstances disclosed by the record before us the appellant’s purposes at this point in time fall within Lord Macnaghten’s fourth head of charities in *Pemsel’s* case.”

New Regulations

It is understood that regulations concerning the disbursement quota for registered charities are nearly complete and should be released in the fall. It is also expected that an *Information Circular* concerning political activities of charities and a number of other information pamphlets will be released in the near future.

Special Notice for Ontario Non-Profit Corporations

On June 16, 1986, Special Notices issued under section 5 of the *Corporations Information Act* were mailed to all Ontario non-profit corporations on record with the Companies Branch. The notices are for the purpose of updating the public records and contain a form which was to be completed and returned to the Companies Branch, Ministry of Consumer and Commercial Relations, within 30 days.

Non-profit corporations which have not compiled with the 30-day time limit will be sent a Notice of Default informing them that unless the required document is mailed within 180 days from the date set out in the Notice of Default, the Letters Patent of the corporation will be cancelled. Subsequent to the cancellation, a corporation may apply for an order reviving the corporation within two years of the date of dissolution.

The Companies Branch is using the last mailing address provided by the corporation and, in some instances, that address may no longer be accurate.

If your organization is a non-profit corporation registered with the Government of Ontario Companies Branch and you have not yet received a Special Notice, you should get in touch with the Examination and Notice section of the Companies Branch at (416) 963-0544 to request the necessary form for completion.