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SUBJECT Status of 149(1)(l) entity created by a Charity
SECTION 149(1)(l), 149.1(2)(a), 188.1(1)(b)
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Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA.

Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: Two rulings: (1) Whether Newco will be considered to be organized and operated as a 149(1)(l) entity. (2) Whether the Charity will not be considered to be carrying on a business by virtue of the consignment sale arrangement.

POSITION: Rulings given: (1) Newco will be considered to be organized as a 149(1)(l) entity. (2) The Charity will not be considered to be carrying on a business solely by virtue of the consignment sale arrangement.

REASONS: We can rule that an organization is organized as a 149(1)(l) entity, however, it is a question of fact at a particular point in time whether the organization is operated as such. This must be determined by the TSO.

XXXXXXXXXXXX

2009-035212

XXXXXXXXXXXX , 2010

Dear XXXXXXXXXXXX :

Re: XXXXXXXXXXXX

This is in reply to your letter of XXXXXXXXXXXX , in which you request an advance income tax ruling on behalf of the above-named taxpayer. We also acknowledge your subsequent submissions of XXXXXXXXXXXX .

We understand that, to the best of your knowledge and that of the taxpayer, none of the issues involved in the ruling request:

- (i) is in an earlier return of the taxpayer or a related person,
- (ii) is being considered by a tax services office or taxation centre in connection with a previously filed tax return of the taxpayer or a related person,
- (iii) is under objection by the taxpayer or a related person,
- (iv) is before the courts, or if a judgment has been issued, the time limit for appeal to a higher court has not yet expired; and
- (v) is the subject of a ruling previously issued to the taxpayer by the Directorate.

In this letter, unless otherwise expressly stated, all statutory references are to the provisions of the Income Tax Act (the "Act"), and all terms and conditions used herein that are defined in the Act have the meaning given in such definition unless otherwise indicated.

Our understanding of the relevant definitions, the facts, the proposed transactions and their purpose are as follows:

DEFINITIONS

"Act" means the Income Tax Act (Canada) (R.S.C. 1985, 5th Supplement, c.1, as amended);

XXXXXXXXXX ; and

"Charity" means "XXXXXXXXXX ", incorporated pursuant to letters patent issued under the Canada Corporations Act dated XXXXXXXXXXXX .

FACTS

1. The Charity is registered as a charitable organization pursuant to section 149.1 of the Act. Its charitable registration number is XXXXXXXXXXXX . Its head office is located in the City of XXXXXXXXXXXX .
2. The Charity is established to deliver XXXXXXXXXXXX
3. There are approximately XXXXXXXXXXXX across Canada. Each XXXXXXXXXXXX is separately incorporated, is a corporate member of the Charity, is a charitable organization as defined in section 149.1 and is a registered charity as defined in subsection 248(1).

4. The Charity's income is primarily derived from affiliation fees from its XXXXXXXXXXXX and donations from the public.
5. As part of its ongoing charitable and fundraising activities, the Charity receives a substantial number of in-kind donations ("In-kind Gifts") from donors and corporate sponsors. In-kind Gifts generally include items that are related to XXXXXXXXXXXX
6. When the Charity receives In-kind Gifts from donors, donation tax receipts are regularly issued by the Charity in accordance with the applicable provisions of the Act.

PROPOSED TRANSACTIONS

7. The Charity will incorporate a federal, non-share capital corporation ("Newco") under Part II of the Canada Corporations Act. (endnote 1) The objects of Newco will be:
 - a) To provide non-profit liquidation services for the Charity and its XXXXXXXXXXXX for in-kind gifts they receive;
 - b) XXXXXXXXXXXX ; and
 - c) XXXXXXXXXXXX .
8. Newco will be governed by its board of directors. The members of Newco will consist of the members of the board of the Charity. The members of Newco will elect the directors of Newco. The Charity will not be a member of Newco.
9. The dissolution clause in the articles for Newco will provide that its net assets on dissolution or winding-up will be paid to a registered charity or non-profit organization with similar objects, in the sole discretion of the board of directors of Newco at the time of the dissolution or winding-up.
10. Newco and the Charity will enter into an affiliation agreement, whereby certain key governance and operational decisions of Newco will be subject to the approval of the board of the Charity. This will include amendment of the by-laws and letters patent of Newco. The affiliation agreement will also permit certain trade-marks of the Charity be licensed to Newco.
11. When the Charity or XXXXXXXXXXXX receives In-kind Gifts from donors, donation tax receipts will continue to be issued by the Charity or the XXXXXXXXXXXX in accordance with the applicable provisions of the Act.
12. The Charity or the XXXXXXXXXXXX will enter into a consignment sale arrangement with Newco, whereby the In-kind Gifts will be sold by Newco on a consignment basis to the public at fair market value. This means that Newco will arrange for the sale of the In-kind Gifts to members of the public, receive the gross sale

proceeds, deduct its expenses (which may include reasonable, general overhead costs related to the sale of In-kind Gifts), and pay the balance of the sale proceeds to the Charity, such that the consignment sale arrangement between the Charity and Newco will be operated on a cost recovery basis to Newco. In-kind Gifts may be refurbished in appropriate circumstances before sale. Newco will not manufacture goods from the In-kind Gifts prior to sale.

13. Newco may be operated from premises rented from third parties or premises rented from the Charity at fair market value rent. Newco will be operated by a combination of paid employees and unpaid volunteers. All items for sale by Newco will be derived from the consignment arrangement with the Charity or XXXXXXXXXXXX . Newco will not have other sources of items for sale; in particular, it will not purchase items for re-sale.

14. It is not intended or anticipated that the operations of Newco will generate a profit. In the event that Newco does have any surplus income, the surplus will be used in promoting its objects. The articles of Newco will preclude Newco from making income available for the personal benefit of its members.

15. The Charity will continue to conduct charitable activities, to at least the same degree as at present, that further its charitable purpose, and the solicitation and receipting of In-kind Gifts and the consignment sale arrangement with Newco will only constitute a subordinate and ancillary activity of the Charity. Newco will be operated entirely separately from the Charity. All staff and volunteers who work for both Newco and the Charity will be retained separately by each organization and will be subject to direction from each organization independently. The Charity will not be involved in the sale of the In-kind Gifts by Newco to the public, save and except that the Charity may encourage interested persons to volunteer their time with Newco.

16. Should Newco require any existing assets of the Charity to operate its business (for example, computers, office furniture or fixtures), Newco will acquire such assets (other than the In-kind Gifts to be sold on consignment by Newco) from the Charity at fair market value, in return for a demand, interest-bearing promissory note.

PURPOSE OF THE PROPOSED TRANSACTIONS

17. The purpose of Newco is to assist the Charity and its XXXXXXXXXXXX to liquidate In-kind Gifts they receive as part of the operation of the Charity's charitable programs in an organized and economically efficient manner. The funds raised through the sale of the goods will be used to support the Charity's charitable programs.

RULINGS GIVEN

Provided that the preceding statements constitute a complete and accurate disclosure of all of the relevant facts, proposed transactions and purposes of the proposed transactions, and provided further that the proposed transactions are completed in the manner described above, we rule as follows:

A. Newco will be considered to be an association organized exclusively for any other purpose except profit, with no part of its income payable to or otherwise available for the personal benefit of any member, so that in any year in which it in fact operates on that basis, (this being a matter on which we do not rule, as discussed below), it will qualify for that year as an organization described in paragraph 149(1)(l) of the Act and will be exempt from Part I tax.

B. For purposes of paragraphs 149.1(2)(a) and 188.1(1)(b) of the Act the Charity will not be considered to be carrying on a business solely by virtue of the consignment sale arrangement described in paragraph 12.

COMMENTS

Nothing in this letter should be construed as confirming or implying that the Canada Revenue Agency ("CRA") has reviewed or is making a determination in respect of:

a) Whether Newco will be exempt from tax for any particular period under Part I of the Act pursuant to paragraph 149(1)(l). In this regard, we note that the question of whether Newco does, in fact, operate exclusively for any purpose other than profit with no part of its income payable to or otherwise available for the personal benefit of any member is a question of fact the determination of which can only be made retrospectively for each taxation year. Such determinations fall within the responsibility of the CRA's Compliance Programs Branch.

b) The fair market value or cost of any item or service, or the reasonableness of any particular amount.

c) Any tax consequences in relation to any facts or proposed transactions referred to herein other than those specifically described in the rulings given.

The above advance income tax rulings, which are based on the Act and Regulations in their present form and do not take into account any proposed amendments thereto, are given subject to the general limitations and qualifications set out in Information Circular 70-6R5, "Advance Income Tax Rulings", dated May 17, 2002, and are binding on the CRA provided that the proposed transactions are completed before XXXXXXXXXX .

This letter is based solely on the facts and proposed transactions described above. The documentation submitted with your request does not form part of the facts and

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proposed transactions and any references thereto are provided solely for the convenience of the reader.

Yours truly,

XXXXXXXXXX

Manager

Non-Profit Organizations and Aboriginal Issues Section

Financial Sector and Exempt Entities Division

Income Tax Rulings Directorate

Legislative Policy and Regulatory Affairs Branch

ENDNOTES

1 Depending on the timing, the new Canada Not-for-profit Corporations Act may be used.