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SUBJECT Capital Gain on Sale of Property by NPO

SECTION 149(5), 149(5)(e)(ii)

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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: 1. Is the main purpose of the NPO to provide dining, recreational, and sporting facilities? 2. Does the capital gain resulting from the sale of the real property qualify for the exemption of tax under subparagraph 149(5)(e)(ii)?

POSITION: 1. Question of Fact. 2. Yes

REASONS: A NPO is not deprived of the exemption from the capital gain and loss provisions of subparagraph 149(5)(e)(ii) by reason only of occasional rental of its property to non-members

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2012-046090

A. Townsend

April 12, 2013

Dear XXXXXXXXXXXX:

Re: Capital gain on disposition of real property by a non-profit organization

This is in response to your letter inquiring whether subsection 149(5) of the Income Tax Act (the "Act") will apply to tax a capital gain incurred by an organization exempt from tax under paragraph 149(1)(l) of the Act on the sale of its real property. Your question concerns an organization (the "Club") that was incorporated in the XXXXXXXXXXXX to XXXXXXXXXXXX. Its objectives include XXXXXXXXXXXX. The Club's real property includes a clubhouse and XXXXXXXXXXXX. In recent years, the Club has reported revenue from bar sales to members and hall rentals to non-members.

In this letter, unless otherwise expressly stated, all statutory references are to the provisions of the Act.

The situation outlined in your email appears to relate to a factual one, involving a specific taxpayer. Written confirmation of the tax implications inherent in particular transactions is given by this Directorate only where the transactions are proposed and are the subject matter of an advance income tax ruling request submitted in the manner set out in Information Circular 70-6R5, "Advance Income Tax Rulings". This Information Circular and other Canada Revenue Agency ("CRA") publications can be accessed on our website at <http://www.cra-arc.gc.ca>. Although we cannot comment on your specific situation, we are prepared to provide the following general comments. We trust that these comments will be of some assistance.

Paragraph 149(1)(l) provides an exemption from Part I tax for a club, society, or association that is not a charity and that is organized and operated exclusively for social welfare, civic improvement, pleasure or recreation, or for any other purpose except profit. In addition, no part of the income of the club, society or association can be payable or be available for the personal benefit of any of its members. However, when the main purpose of an association is to provide dining, recreational or sporting facilities to its members, subsection 149(5) applies to deem the existence of an inter vivos trust. The property of the organization is deemed to be the property of the trust and income tax is payable by the trust on its property income and certain capital gains. The trust may deduct \$2,000 in computing its taxable income, in addition to any other permitted deductions.

Where subsection 149(5) applies, subparagraph 149(5)(e)(ii) will exempt the capital gains arising from the disposition of property that was used exclusively for and directly in the course of providing the dining, recreation and sporting facilities to its members. The CRA's general views regarding subsection 149(5) can be found in Interpretation Bulletin IT-83R3, "Non-profit organizations - Taxation of income from property".

The Club that you have described appears to be providing recreational and sporting facilities to its members, however whether this is the Club's "main purpose" is a question of fact. There is no definition of "main purpose" in the Act. The dictionary meaning seems to be synonymous with "chief in size or extent" or "pre-eminent importance" or "primarily". The CRA will generally consider that the main purpose of an organization is to provide recreational, dining or sporting facilities to its members where more than 50% of its assets, revenues, time, attention and efforts are expended in providing these facilities to its members. In addition, when determining the main purpose of an organization, reference should be made to the instruments creating the organization that will normally include any documents of incorporation, bylaws and a constitution.

It is our understanding that subsection 149(5) of the Act is intended to tax income from property (including capital gains) earned from investments and other assets that are not exclusively and directly used in providing the services of the organization. Thus, while an organization may own several assets, in our view, it is only the capital gains arising on the disposition of those assets which are required and used to ensure that the organization's objects are met that are not subject to tax. Additionally, as mentioned in IT-83R3, generally "a club is not deprived of the exemption from the capital gain and loss provisions [of subparagraph 149(5)(e)(ii)] by reason only of occasional rental of its property to non-members". However, the active pursuit of rental income from non-members could indicate a profit purpose resulting in a club being disqualified as an organization exempt from tax under paragraph 149(1)(l).

Yours truly,

P. Burnley, CA

A/Manager

Non-Profit Organizations and Aboriginal Issues Section

Business and Employment Income Division

Income Tax Rulings Directorate

Legislative Policy and Regulatory Affairs Branch