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ARCHIVED - Gifts by Individuals of Life Insurance Policies as Charitable Donation

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NO: **IT-244R3**

DATE: September 6, 1991

SUBJECT: INCOME TAX ACT

Gifts by Individuals of Life Insurance Policies as Charitable Donation

REFERENCE: Section 118.1 (also subsections 148(1) and 248(5), paragraph 149.1(2)(b), subparagraph 149.1(12)(b)(i) and clause 149.1(1)(e)(i)(B))

Application

This bulletin cancels and replaces Interpretation Bulletin IT-244R2 dated March 3, 1986. Current revisions are designated by vertical lines.

Summary

This bulletin discusses the tax consequences arising from the donation by an individual of a life insurance policy to a charitable organization or a charitable foundation registered with the Minister of National Revenue. When an individual absolutely assigns a life insurance policy to a registered charity and makes the charity the registered beneficiary of the policy, the individual qualifies for the tax relief applicable to charitable gifts in respect of such a donation. Furthermore, if the individual continues to pay the premium on the life insurance policy, each amount so paid also qualifies as a charitable gift in the year. For 1988 and subsequent taxation years, donations made by an individual are no longer deductible in computing taxable income; tax relief is now provided to individuals in the form of a non-refundable tax credit.

Discussion and Interpretation

1. A gift by an individual of a life insurance policy (both "whole life" and "term life") to a registered charity or any other donee described in any of paragraphs (a) to (g) of the definition of "total charitable gifts" in subsection 118.1(1) of the Income Tax Act is considered to be a charitable gift within the context of that subsection. Therefore, such a gift entitles the donor to a tax credit (within the limits provided by the Act) in respect of the value of the gift, as discussed in 3 below, provided the policy has been absolutely assigned to the donee and the donee has become the registered beneficiary of the policy. (For 1987 and prior taxation years, the value of such a gift was deductible in computing taxable income for the year as was then provided under the Act.) In order for the gift of a life insurance policy to represent a bona fide charitable gift, no right, privilege, benefit or advantage can accrue to the donor as a result of the gift (excluding, of course, any income tax relief resulting from the donation).

2. Where these conditions are met, an amount donated to a donee referred to in 1 above to enable the donee to pay the premiums of the life insurance policy is also a charitable gift. If the premiums on the policy are paid directly to the insurance company at the request of, or with the concurrence of, the donee, this action is considered to be constructive payment of a donation to the donee and therefore a charitable gift for the purposes of the Act. Furthermore, the fact that a donor makes a cash contribution to a donee and specifies that it be used to pay a premium on a life insurance policy does not influence the determination of whether or not the donation qualifies as a gift under subsection 118.1(1).

3. When a taxpayer has taken out a life insurance policy and later makes an absolute assignment of the policy to a qualified donee under subsection 118.1(1), the amount of the charitable gift is equal to the value of the policy (i.e., the amount by which the cash surrender value of the policy at the time of the absolute assignment exceeds any policy loan outstanding) and any accumulated dividends and interest which are also assigned at that time. If the policy has no value, there is no charitable gift when it is transferred, but donations of subsequent premium amounts will qualify as charitable gifts in accordance with 2 above. It should be noted that the increase in the cash surrender value of the policy as a result of the subsequent payments of policy premiums has no effect in determining the amount of the donation once the policy has been absolutely assigned to the qualified donee. However, the repayment of any outstanding policy loans by the donor after the policy has been absolutely assigned to the qualified donee will entitle the donor to a tax credit in respect of the amount repaid.

4. When a life insurance policy is absolutely assigned to a qualified donee, any consents that are required by provincial regulations to be signed to change a beneficiary must be signed before there is a valid charitable gift.

5. A donor who assigns a life insurance policy in accordance with the terms of this bulletin must consider the implications of section 148 of the Act. For the purpose of subsection 148(1), it is considered that the donor's proceeds of disposition of the life insurance policy will be the value of the policy at the time of the assignment (see 3 above). To the extent that the proceeds of disposition exceed the adjusted cost basis of the policy, there will be an income inclusion. (Any accumulated dividends assigned would have been proceeds of disposition of the policy at the time of entitlement, as discussed in the current version of IT-87, Policyholders' Income from Life Insurance Policies.)

Receipt by Certain Qualified Donee

6. Where a registered charity receives a gift subject to a trust or direction by a donor that the property given, or property substituted therefor, is to be held by the charity for a period of not less than 10 years, the gift is excluded from the income of the charity by virtue of subparagraph 149.1(12)(b)(i) of the Act. Clause 149.1(1)(e)(i)(B) referred to in that subparagraph provides a specific exemption of such property from the disbursement quota of a charitable foundation and paragraph 149.1(2)(b) effectively extends the same provision to a charitable organization's spending requirements. Therefore, provided that a trust stipulates, or the donor directs, that the gift be held for at least 10 years, the value of a life insurance policy and the proceeds from the policy, whether on voluntary disposition or upon the death of the life insured, will be exempt from the disbursement quota set out in the Act. The rules respecting such directions are discussed in the current version of Information Circular 80-10 under the heading "Ten Year Gifts".

7. By virtue of subsection 248(5), the phrase "property substituted therefor" in clause 149.1(1)(e)(i)(B) is not limited to one substitution but will apply to any subsequent substitution therefor.

8. Where a gift of a life insurance policy qualifies for exclusion from the charity's income and disbursement quota as discussed in 6 above, the amount of subsequent premiums donated relative to that life insurance policy (see 2 above) will also qualify for such exclusions. It should be noted, however, that since each payment of a premium is itself a gift, each payment must be subject to a direction that it be retained for 10 years if that gift is to be excluded from income or from the disbursement quota. One way of achieving this is for the donor, at the time the policy is given, to require the charity to keep the policy, or property substituted from the policy, for at least 10 years after the last premium is paid by the donor.

Date modified:

2002-09-04