

NO.: **IT-407R4 (Consolidated)**

DATE: See the “*Bulletin Revisions*” section

SUBJECT: **INCOME TAX ACT**

Dispositions of Cultural Property to Designated Canadian Institutions

REFERENCE: Paragraph 110.1(1)(c), subparagraph 39(1)(a)(i.1), and the definition of “total cultural gifts” in subsection 118.1(1) (also section 207.3, subsections 118.1(1) to (5), (7.1), and (10), and 161(11), and paragraphs 41(2)(a) and 53(1)(n))

Latest Revision – ¶ 15

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Ottawa ON K1A 0L5***

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Bulletin Revisions

Application

This bulletin is a consolidation of the following:

- IT-407R4 dated November 7, 1996; and
- subsequent amendments thereto.

For further particulars, see the “*Bulletin Revisions*” section near the end of this bulletin.

Summary

The *Income Tax Act* provides favourable income tax treatment for dispositions of certified cultural property to institutions and public authorities designated by the Minister of Canadian Heritage. This treatment includes a tax exemption for capital gains realized on the disposition of the cultural properties to those designated institutions and, when the disposition is by way of a gift to those institutions, the provision of a tax credit or a deduction to donors.

This bulletin discusses the requirements to obtain a credit or deduction for gifts of certified cultural property. A certified cultural property is a property of outstanding significance and national importance to Canada, for which a certificate has been issued by the Canadian Cultural Property Export Review Board. Both individual and corporate donors who have made gifts in the year, or in certain circumstances in the five immediately preceding taxation years, are entitled to a tax credit or deduction. The value of an individual’s gifts is converted to a tax credit, as determined by the formula, for purposes of calculating income tax payable, while corporate

donors obtain a deduction in computing taxable income. Any capital gains realized on the disposition of certified cultural properties to designated cultural institutions are exempt from income tax; however, capital losses are deductible within the normal limits. This bulletin also discusses the tax treatment for the cost of an appraisal and the tax imposed in the event that the gift of certified cultural property is disposed of by a designated cultural institution.

Discussion and Interpretation

General

¶ 1. The *Cultural Property Export and Import Act* (CPEIA) contains provisions to encourage the retention of national treasures (cultural property) within Canada. Taxpayers are encouraged to dispose of such property to institutions or public authorities in Canada which are designated under the CPEIA. The institutions which are designated under the CPEIA are publicly owned and established for educational or cultural purposes and, generally, to conserve and exhibit the property.

¶ 2. To benefit from these measures for tax purposes, a taxpayer who disposes of, or proposes to dispose of, a cultural property must obtain from the Canadian Cultural Property Export Review Board (the Review Board) a certificate establishing that the property meets all of the criteria set out in paragraphs 29(3)(b) and (c) of the CPEIA. For the purposes of the rules relating to the tax treatment of a gift of cultural property that is certified by the Review Board (certified cultural property) to an institution or public authority in Canada (a designated cultural institution), subsection 118.1(10) of the *Income Tax Act* (the Act) provides that the fair market value of an object is deemed to be the fair market value determined by the Review Board. However, pursuant to subsection 33.1(1) of the CPEIA, where property has been disposed of by a taxpayer to a designated cultural institution and after its fair market value has been redetermined by the Review Board, the taxpayer may appeal the redetermined amount to the Tax Court of Canada.

A copy of the Canadian Cultural Property Export Review Board's publication *Applications for Certification of Cultural Property for Income Tax Purposes – Information and Procedures* is available from the Secretariat at the following address:

3rd floor
15 Eddy Street
Hull QC K1A 0M5
Telephone: (819) 997-7761
Fax: (819) 997-7757

Capital Gains and Losses

¶ 3. Pursuant to subparagraph 39(1)(a)(i.1) of the Act, there will be no capital gain from the disposition (sale or gift) by a taxpayer of certified cultural property to a designated cultural institution that was at the time of the disposition

designated by the Minister of Canadian Heritage under subsection 32(2) of the CPEIA. The designation by the Minister of Canadian Heritage may be made for either an indefinite or a limited period of time, and either generally or for a purpose related to that certified cultural property.

¶ 4. For dispositions of certified cultural property as a consequence of the death of a taxpayer, subparagraph 39(1)(a)(i.1) of the Act also exempts a capital gain resulting from the bequest of a certified cultural property to a designated cultural institution. The disposition must occur within the period ending 36 months after the death of the taxpayer. However, if the taxpayer's legal representative applies in writing within that period to the Director of the local Revenue Canada tax services office, an extension of the period to what is considered reasonable in the circumstances may be granted.

¶ 5. While capital gains from dispositions of certified cultural property are exempt from tax, a taxpayer will be entitled to deduct capital losses in such transactions within the limits provided in the Act. If such losses arise on the disposition of personal-use property, other than listed personal property, they are deemed to be nil pursuant to subparagraph 40(2)(g)(iii) of the Act. Losses on dispositions of listed personal property can be offset only against gains on listed personal property other than certified cultural property. Any gain realized on the disposition of certified cultural property will not be taken into account in determining the taxpayer's net gain or loss from the disposition of listed personal property. (See the current version of IT-332, *Personal-Use Property*.)

Tax Credits for Gifts – Individuals

¶ 6. An individual calculating tax payable may claim a credit, as determined by the formula in subsection 118.1(3), for the value of the individual's "total gifts." "Total gifts" is defined in subsection 118.1(1) as the total for the year of "total Crown gifts," "total cultural gifts," and (after February 27, 1995) "total ecological gifts" and the lesser of "total charitable gifts" and 20% of the individual's net income for the year. Subsection 118.1(3) provides that the tax credit is calculated by applying the lowest Part I tax rate (17%) to the lesser of \$200 and the individual's total gifts for the year. To that amount is added the highest Part I tax rate (29%) applied to the portion of the individual's total gifts for the year in excess of \$200. Before 1994, the lowest Part I tax rate applied to amounts not in excess of \$250 and the highest Part I tax rate applied to any amount in excess of \$250.

Note: As part of the March 6, 1996 Federal Budget, a Notice of Ways and Means Motion to Amend the Income Tax Act was tabled in the House of Commons. The proposed amendments include one which affects charitable donations. If the amendment is enacted as proposed:

- the general annual limit on charitable donations as a percentage of net income will be raised from 20% to 50%;

- *the limit on gifts by individuals in the year of death and the preceding year, including bequests or legacies, will be raised from 20% to 100%; and*
- *the limit of 50% of net income will be further raised by half of the amount of taxable capital gains resulting from the donation of capital property that are included in calculating the donor's taxable income for the year.*

¶ 7. “Total cultural gifts” means the total fair market value of certified cultural property gifts made to a designated cultural institution by the individual in the year, or in any of the five immediately preceding taxation years, to the extent that the value of those gifts has not been used in determining a tax credit deducted under section 118.1 in calculating tax payable under Part I for a prior taxation year. If a gift is described in two or more of the categories of “total charitable gifts,” “total Crown gifts,” “total cultural gifts” or “total ecological gifts” made after February 27, 1995, it will be considered in the following order: a cultural gift, an ecological gift, a Crown gift, and a charitable gift.

¶ 8. When an individual makes a gift in his or her will of certified cultural property to a designated cultural institution, subsection 118.1(5) provides that, for purposes of determining the tax credit under subsection 118.1(3), the gift is deemed to have been made by the individual in the year of death. In addition, gifts of certified cultural property made (or deemed to have been made) by an individual in the year of death, to the extent that the value of the gift was not applied in computing a tax credit in the year of death, may be so used in the immediately preceding year by virtue of subsection 118.1(4), subject to the normal limits (see ¶s 6 and 7 above).

¶ 9. If an individual makes a gift (by will or otherwise) of property described in the definition of “total cultural gifts” that is a work of art created by that individual (the artist) and that is included in the artist’s inventory, the artist will be deemed, pursuant to subsection 118.1(7.1), to have received proceeds of disposition equal to the cost amount of the work of art to the artist. This means that the artist will be entitled to a credit under subsection 118.1(3) based on the fair market value of the gift, as established by the Review Board, but will reflect neither a profit nor a loss on its disposition in calculating income from the artist’s business for income tax purposes.

Example

An individual who is an artist has made an election under subsection 10(6) to treat inventory as nil for the purpose of calculating income from an artistic endeavour. The individual makes a gift of a work of art from inventory which falls within the definition of “total cultural gifts” in subsection 118.1(1), and which is determined to have a fair market value of \$1,000 by the Review Board. Under subsection 118.1(7.1), the amount required to be included in the income of the individual will be nil. However, the fair market value of the gift (\$1,000) will be included in the

individual’s total cultural gifts for the year for the purpose of determining the amount of the tax credit to which the individual is entitled under subsection 118.1(3).

For more information on artists (including the situation when an artist makes a gift of a work of art that is not a certified cultural property), see the current version of IT-504, *Visual Artists and Writers*.

Deduction of Gifts – Corporations

¶ 10. For the purpose of computing taxable income for a taxation year, a corporation is entitled to deduct, under paragraph 110.1(1)(c), the fair market value of the aggregate of gifts of certified cultural property made during the year to designated cultural institutions, unless a deduction has already been claimed for the same amount under paragraph 110.1(1)(a) or (b) (charitable gifts or gifts to Her Majesty). However, the amount that may be deducted under paragraph 110.1(1)(c) by a corporation in respect of gifts of cultural property made in a taxation year may not exceed the corporation’s income for the year that remains after the deduction of amounts under paragraphs 110.1(1)(a) and (b). In addition to being allowed a deduction in respect of gifts made in the year, a corporation is entitled to deduct those gifts made in the five immediately preceding taxation years to the extent that they were not deducted under any provision of the Act in computing its taxable income in a preceding taxation year.

General Application

¶ 11. When a taxpayer makes a gift of certified cultural property, paragraph 69(1)(b) deems the taxpayer to have received fair market value as proceeds of disposition of the property. A capital loss could therefore arise if the adjusted cost base of the property was higher than its fair market value at the date of the disposition. Such losses will be treated in the manner described in ¶ 5 above. Capital gains will not be taxed, as explained in ¶s 3 and 4 above. Subject to subsection 118.1(7.1) (see ¶ 9 above), there would, however, be an income inclusion if the certified cultural property were a trading asset such as inventory.

¶ 12. Each gift of certified cultural property is required to be evidenced by filing both the receipt from the donee and the certificate provided by the Review Board.

¶ 13. The gift of an “object” as used in the definition of “total cultural gifts” in subsection 118.1(1) and in paragraph 110.1(1)(c) and the disposition of an “object” as used in subparagraph 39(1)(a)(i.1) refers to the gift and disposition of all interests in the object. Consequently, a gift of an interest in an object (including a residual interest) is not viewed as the gift of an object.

Cost of Appraisal

¶ 14. When the property donated was a trading asset to the donor (for example, inventory), the cost to the donor of an

appraisal is deductible in determining income to the extent that it is reasonable in the circumstances. Appraisal costs incurred in respect of donations of capital property are not deductible in determining income since they are not incurred to produce income from a business or from property. However, paragraph 53(1)(n) provides that appraisal costs incurred in connection with, but prior to, the disposition of a property increase the donor's adjusted cost base to the extent that such costs are reasonable in the circumstances.

Tax in Respect of the Disposition of Certain Property by Designated Cultural Institutions

¶ 15. Pursuant to section 207.3 under Part XI.2 of the Act, a designated cultural institution that disposes of a certified cultural property, within ten years (five years, if the property was disposed of prior to February 24, 1998) of the time the

property was first certified by the Review Board and disposed of in favour of a designated cultural institution, will be subject to a special tax equal to 30% of the fair market value of the property at the time of such disposition, unless the disposition is made to another designated cultural institution.

¶ 16. A designated cultural institution that becomes liable in a taxation year to pay the tax described in ¶ 15 above is required to file, within 90 days after the end of that year, a return in prescribed form (T913) and pay the amount of the tax to the Receiver General for Canada. If the return is not filed by the due date or the tax is not paid on time, the designated cultural institution is liable to a penalty. In addition, unpaid tax bears interest at a prescribed rate. In the event that a penalty is levied subsection 161(11) provides for interest to be charged upon the late payment of the penalty.

Bulletin Revisions

Since the issuance of IT-407R4 on November 7, 1996, there have been no revisions to ¶s 1-14 and ¶ 16.

¶ 15 was revised to reflect an amendment to the law increasing the holding period for certified cultural property to ten years. [October 12, 2001]

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