

Association Taxes: Are You Paying More Than You Should?

Early each year most Canadians file an annual tax return – during this time they invest in RRSPs or similar plans in an attempt to minimize the amount of tax they have to pay. Unlike individual situations, it's always tax season for associations – as a consequence we should be constantly on the lookout for ways in which we can reduce the amount of taxes we also need to pay.

Is your association paying too much tax? The answer is most likely yes, and, I suspect, many would be extremely surprised at the amount of tax rebate they are entitled to. Little attention is paid to taxes by not-for-profit organizations. Charities, trade, special interest and professional associations have somehow come to believe that taxes are of little or no concern to them. This myth needs to be dispelled.

Taxes are a concern from two key perspectives. The first perspective relates to ensuring, through ongoing advocacy, that not-for-profits or public benefit organizations do in fact deserve to retain special income tax exemption status. The second perspective pertains to administration and tax recovery in individual organizations just like yours.

The Canada Customs and Revenue Agency (CCRA) is responsible for legislation that provides not-for-profits with income tax exempt status. In general terms, the Income Tax Act provides that the taxable income of an association is exempt from tax for a period throughout which the association complies with certain conditions. These conditions require not-for-profits to commit themselves to public benefit activities, and restrict distribution of income to individuals or organizations.

Whether a particular association meets the conditions and qualifies as a tax-exempt NPO is a question that can only be answered after review of the purposes and activities of the organization. And even though an association qualifies as tax-exempt it may still be subject to tax on certain income such as tax on property income, certain taxable capital gains and excessive income generating activities with limited distribution.

Administrative Activity

While an association may be exempt from taxes in most cases it is still required to file an annual return. These returns can get complicated as a result of special reporting requirements. Some not-for-profits don't have to report at all, some need corporate tax returns, others need registered charity returns, and still others need non-profit information reporting returns. Some organizations may be required to use more than one of these types of returns. Understanding reporting requirements is important to ensure compliance.

Charities must ensure that gift and official donation receipts are in compliance with interpretation bulletins from CCRA. The bulletins specify conditions for a variety of transactions.

For example, there is nothing to prohibit a charity from paying for services and later accepting the return of all or part of the payment provided it is returned voluntarily. However, since the donor must also account for the taxable income that would be realized as remuneration, there is no real tax benefit to the donor and one must question the donor's motives for requesting a receipt. In this case a receipt is not provided.

A receipt, however, can be issued for gifts in kind based on fair market value as determined on the date of donation. In some cases, where the item is over \$1,000, an independent appraiser should be consulted.

In addition, registered charities and foundations have quotas to ensure disbursement of a portion of their income each year. Meeting quotes can only occur with proper planning and, as a result, tax issues need to be a concern, tracked and dealt with as required.

Accumulating Excessive Assets

While it is rare for an association to face a challenge around the accumulation of excessive assets, and ultimately be required to pay income taxes, it can indeed happen. I thought it was a joke when an Executive Director informed me, fourteen years ago, that his association was going to have to pay income tax. My thinking was like that of other association executives of the day and many current students in the AME program – our perceptions of taxes were faulty. Through discussion and reading, AME students come to realize that there are tax issues and possible recoveries that require attention.

Thomas Kriens' article in the May/June 2002 issue of Association™ (Are Your Assets Jeopardizing Your Non-Profit Status?) did a great job of outlining the risks inherent in excessive asset accumulation. It can be accessed at www.associationmagazine.com.

Guidance can also be found by reviewing CCRA publications available at www.ccra-adrc.gc.ca:

- Interpretation Bulletin IT-110R3 - Gifts and Official Donation Receipts
- Interpretation Bulletin IT-297R2 - Gifts in Kind to Charity and Others
- Tax Guide RC4108 - Registered Charities and the Income Tax Act (Draft)
- Registered Charities Newsletter - Winter 1992-93 - No. 3.
- Interpretation Bulletin IT-83R3 and IT-496 –Accumulation of Assets
- Income Tax Guide to the Non-Profit Organization (NPO) Information Return.
- CCRA's Guide on "Completing the Registered Charity Information Return"
- GST Guide RC4081 for Non-Profit Organizations

Reporting requirements and taxes go beyond income tax. For example, it is important to ensure GST payments and filings occur on a timely basis as directors can be held personally liable for

unremitted GST. It is also important to determine what municipal, provincial and federal rebates might be applicable to your association.

Some key tax questions to ask:

- Are the association's required filings being submitted on a timely basis?
- Does the association have the appropriate tax status (registered charity or non-profit) in light of its purposes and
- Is the association undertaking any activity that could be considered as conferring a personal monetary benefit on its members?
- If the association is a charity, is it meeting its disbursement quota and complying with regulatory requirements relating to receipting of donations?
- Do existing contemplated revenue-generating activities require that a different tax status be sought, or that an interlocking organizational structure be created to facilitate them?
- Do existing or contemplated advocacy/political activities require that a different tax status be sought, or that an
- Are the assets that you have accumulated greater than your annual budget or beyond the association's reasonable needs?
- Is the association engaged in carrying on a trade or business beyond your membership, competing with taxable entities, and making significant profits as opposed to cost recovery?

Tax Recovery of Rebates

Associations can receive tax rebates at the federal, provincial and municipal levels. There are so many different types of rebates available, depending on your location and the type of services your association provides, that it is simply not possible to list them here. If you are in doubt have a qualified professional (an individual knowledgeable about the tax system) look over your association transactions to determine if any rebates might be available to you.

Large associations with professional accountants on staff often pay close attention to the tax file to ensure recovery of eligible rebates. Medium and smaller associations without these professional resources often miss out on the recovery of rebates. In some cases however, the association's audit firm files the annual return, determines tax recovery possibilities and initiates recovery.

In response to the fact that a large number of associations are missing out on tax rebates, a number of specialized firms are cropping up to help you recover rebates. Generally, these types of firms charge a percentage of the rebates recovered, which means your association will get back money or have to pay nothing.

Jim Brakel from Robert Brakel & Associates Ltd. has provided some examples of rebates in the not-for-profit sector:

- For GST (Goods and Services Tax), HST (the Harmonized Sales Tax in Nova Scotia, New Brunswick and Newfoundland) and QST (Quebec Sales Tax) purposes, registered charities are eligible for a rebate of 50% of the GST, HST and/or QST they pay. Non-profit associations that receive at least 40% government funding may also claim a 50% rebate.
- Charities acquiring goods for export may claim a 100% rebate of the GST/HST or QST paid on these goods. Charities operating a public lending library, as well as certain prescribed charities and NPOs whose primary purpose is the promotion of literacy, may claim a 100% rebate for the GST paid on printed books, as well as audio recordings of printed books.
- The provinces that operate provincial retail sales taxes (i.e. BC, SK, MN, ON and PEI) also provide various rebates and exemptions. For example, in Ontario, there is a rebate for Ontario retail sales tax paid by a religious, charitable or benevolent organization in respect of tangible personal property that is incorporated into real property. The rebate is based on the actual tax paid on the materials used in the contract, or as a percentage of the overall contract -- 3% for GST-included contracts, 3.4% where the price is GST extra. Certain elements of the contract must be excluded from the calculation, including land, building permit fees, demolition charges, etc.
- Rebate opportunities for goods moving from taxable to non-taxable jurisdictions (e.g. from Ontario to Alberta) and the general exemptions available to all, including the various exemptions for publications, custom computer software and 1-800 services. Note that these rules vary by province and territory.

Rob Pearce, from William Squibb & Associates, demonstrates the value professionals can have for associations when it comes to tax rebates. Over the last five years, their firm has performed reviews for 130 different non-profit organizations. From these reviews, a total of \$700,000 was found that these organizations were entitled to in terms of rebates.

From these findings, the rebates were broken down as follows:
 PST – 53%, GST/HST - 36 %, QST – 4%, and Payroll taxes - 7%

The amount of money recovered for these clients are as follows:

- 17 clients recovered less than \$ 1,000
- 33 clients recovered between \$ 1,000 and \$ 10,000
- 11 clients recovered between \$ 10,000 and \$ 20,000
- 2 client recovered between \$ 20,000 and \$ 30,000
- 4 clients recovered between \$ 30,000 and \$ 40,000
- 4 clients recovered between \$ 50,000 and \$ 70,000

Another area often neglected, likely a direct result of inconsistencies throughout Canada, are municipal tax rebates. Some cities provide rebates based on rent. A call to city hall can quickly determine if you have been missing out on any municipal rebate.

Now is the time to ensure your association is not paying more taxes than it should. Talk to a professional that specializes in taxes as your association may be eligible for rebates going back a number of years. If you do recover taxes, I would highly urge you to place this money in an account to fund creativity and innovation within your association. Who knows - you may double or triple the unexpected tax windfall!

This column features innovation and practical solutions applied to challenges, trends, issues, and opportunities for the association community. Column editor Jim Pealow, MBA, CMA, CAE is a consultant and the Association Management Education Program Lead Instructor/Coach for CSAE. He can be reached at jim@amces.com.