



Can U.S. Nonprofits Raise Funds in Canada?

Q:

Is it legal for U.S. nonprofit organizations to raise funds in Canada? Is it a good idea to do so? We are a 501(c)(3) nonprofit organization, and we think Canadians would be interested in donating to our cause, but we're not sure how to proceed—or if we should.

A:

Canadian tax law lets U.S. nonprofits raise funds in Canada. However, the Canadian Income Tax

Act denies to non-resident organizations the tax benefits it provides to Canadian registered charities. To clarify this matter, let's take a brief look at the Canadian tax system governing charities.

Can a U.S. Nonprofit Register in Canada?

The Canada Customs and Revenue Agency ("Revenue Canada") enforces the Income Tax Act, and is thus the main regulator of charities in Canada. To register a charity so that it can accept donations, it requires two things. First, the charity must be established in Canada. Second, it must be a resident of Canada.

Thus, it isn't possible for a U.S. nonprofit to be registered as a charity in Canada. Even if it became a

Canadian resident, it still wouldn't have been established in Canada.

Can a Donation to a U.S. Nonprofit Result in a Canadian Tax Credit?

A Canadian registered charity is exempt from income tax in Canada. Donors to a Canadian registered charity get an official tax receipt. When Canadian individual donors attach this official tax receipt to their Canadian income tax returns, they receive a tax credit equal to approximately 25% of the first \$200 of donations and 45% of remaining donations up to a limit of 75% of the donor's income for the taxation year. Corporate donors may deduct donations to registered charities from corporate income.

These individual and corporate tax deductions are available only if the donation is linked to an official donation receipt received from a registered charity. Donations to unregis-

tered charities (even if they are religious organizations) are not recognized for tax purposes in Canada.

Since U.S. nonprofits can't be registered as charities in Canada, they can't give donors official tax receipts. Donors are less inclined to give to a charity if they can't receive a tax deduction for their gift.

The Canada/U.S. Tax Treaty offers limited relief for a Canadian resident who contributes to a U.S. nonprofit organization. The treaty permits a deduction to the Canadian resident who makes the gift if the organization would qualify as a charity if it was created and established in Canada. (Note that not all 501(c)(3) organizations would qualify as charitable under the Canadian definition of charity.) However, the deduction is only permitted against Canadian taxes on U.S. income. Since few Canadian residents have significant U.S. income, this provision in the Treaty is of little practical importance.

The Income Tax Act also allows tax credits and tax deductions for gifts made to a foreign university which is prescribed by regulation to be a university that Canadian students ordinarily attend. The list of prescribed universities includes most universities in the U.S. Universities that aren't prescribed can request that they be added to the list.



What Does This Mean for U.S. Charities?

As a result of the Canadian rules, a U.S. organization is at a serious tax disadvantage in attracting Canadian donors. Some U.S. organizations (for example, some prominent museums and universities) address this issue by creating a Canadian nonprofit corporation and registering it with Revenue Canada. This new Canadian organization's mission is similar to that of the U.S. organization. The new Canadian organization may receive donations from Canadian residents and issue donation receipts for them.

However, a Canadian charity is limited by the Income Tax Act to spending funds in one of two ways. First, it can transfer its funds to other Canadian registered charities. Second, it can carry on charitable activities. But it can't transfer its assets to a non-Canadian charity.

A Canadian charity which spends money improperly can lose its charitable registration, forfeiting its assets to Revenue Canada. While Revenue Canada may be flexible in some cases, a Canadian charity which improperly transfers money to a U.S. nonprofit could lose all its assets.

The only way a Canadian charity may transfer funds to foreign charities is if it engages those charities to carry on activities on its behalf. It may do so directly or by entering into a joint venture agreement with the foreign charity.

Revenue Canada recently released "Registered Charities: Operating Outside Canada" (available at <http://www.ccr-aadrc.gc.ca/tax/charities/drafts/4106dis-e.html>). This draft pamphlet explains the legal requirements for Canadian charities conducting foreign activities or transferring funds to foreign charities. Revenue Canada requires that such arrangements be entered into only through written and legally binding agreements. The Canadian charity

must, through the written agreement, control the activity performed on its behalf. To verify this control, Revenue Canada insists that the Canadian charity obtain regular financial and operational reports from the foreign agent or joint venture partner. Revenue Canada looks carefully at all transfers to foreign entities.

So, What Should You Do?

Your organization is at a disadvantage in raising funds from Canadian residents, because you can't provide receipts they can use for tax credits. You might, however, consider establishing a new Canadian charity to accept Canadian donations. While you can't simply transfer these Canadian donations to your organization in the United States, you can create a contract between your

organization and the new Canadian organization. This contact would allow your U.S. nonprofit to conduct some activities on behalf of the new Canadian charity. Be sure to obtain Canadian legal advice before establishing any such structure.

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Note: The Miller Thomson Charities and Not-for-Profit Practice Group publishes a charity law newsletter. For a free subscription, contact Robert Hayhoe. ■

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