



October 29, 2002

Charities Directorate, CCRA
Tower A
320 Queen Street
Ottawa ON K1A 0L5

RE: Consultations on Proposed Policy: Guidelines for Registered Charities on Related Business

The Association of Fundraising Professionals (AFP) is pleased to submit formal comments regarding the Canada Customs and Revenue Agency's (CCRA) proposed guidelines for registered charities on related business. Given the budget cutbacks occurring at all levels of government, many charities are feeling pressure to obtain additional funding from new avenues such as related businesses. AFP applauds the CCRA for beginning public consultations on this issue and looks forward to working with the Agency to craft appropriate guidelines that will help ensure a more self-sufficient charitable sector in Canada.

If you have any questions regarding these comments, please contact Brian Duclos, chair, AFP Canadian Government Relations Committee, at 403/232-7770 or briand@calgaryzoo.ab.ca, or Michael Nilsen, Director Public Affairs, AFP, at mnilsen@afpnet.org or (800) 666-3863.

Organization Background

For more than forty years, the Association of Fundraising Professionals (AFP) has provided guidance and standards to those engaged in the philanthropic process. AFP's considerable expertise in the legislative field is based upon the combined experience of its 26,000 members, including more than 2,100 in 12 chapters across Canada coast to coast.

The membership of AFP represents virtually every segment of the charitable sector including social services, environmental, educational, cultural, religious, and health organizations. AFP's members work for large national and international organizations, as well as provincial, local and grassroots entities. Nearly half of AFP's members are responsible for annual fundraising campaigns of one million dollars or more. This broad diversity of members provides a unique provincial and national perspective on the proposed guidelines.

AFP members are required annually to sign our Code of Ethical Principles and Standards of Professional Practice, which were first developed in 1964. In addition, AFP instituted a credentialing process in 1981 – the Certified Fund Raising Executive designation. This certification program is designed to identify, for the giving public, those fundraisers who possess the demonstrated knowledge and skills necessary to perform their duties in an effective, conscientious, ethical and professional manner. AFP also has a strong ethics enforcement policy that can lead to the revocation of credentials and expulsion of members who engage in unethical behavior.

Related Business and the Changing Charitable Sector in Canada

The charitable sector in Canada is being transformed dramatically by long-term societal changes. Government funding, which used to be the lifeblood of the charitable sector (and to some extent, still is) is being scaled back. Private giving from individuals, corporations and foundations is slowly rebounding from decreases in the mid-1990s, but is nowhere near enough to make up the deficit. The need for charitable services is only increasing every year, and the long-term outlook for increased government funding is not promising. Nonprofits are feeling pinched to not only maintain, but expand, their programs and are looking for additional sources of revenue to do so.

To its credit, the federal government is beginning to understand the dilemma many organizations face. The Voluntary Sector Initiative is looking at ways for the government and the charitable sector to work together, but from AFP's perspective, the critical aspect of that project is to increase the sector's capacity and self-sustainability. All the agreements and accord won't mean anything if the sector does not have the capacity and funding to perform its services and meet the needs of Canada's citizens. While the VSI is starting to grapple with these issues, however, long-term solutions are many years away.

In this environment, operating a business moves from becoming an option, to an imperative. The increased number of related businesses make it clear: revenues from related businesses are critical to ensuring the continued operations of Canada's charitable organizations, and will become more so in the near future.

The list of examples is tremendous: hospitals managing parking lots and gift shops; ballet companies selling shoes and other supplies; schools sponsoring teams and activities. The increasing number of related businesses is not a bad thing – far from it. Without this revenue, many charitable programs would undoubtedly suffer. But, it is an indication of the growing importance that charities place on these arrangements.

The federal government clearly believes that the charitable sector is an important part of society and plays an important role in meeting the needs of Canada's citizens and communities. It has expressed its commitment to the sector through the Voluntary Sector Initiative. Therefore, as it decreases direct funding for the sector through government grants and programs, it should be looking for ways to help the sector increase its own capacity and sustainability.

One such opportunity is in the area of related businesses. The government should be encouraging related businesses by charities, and AFP appreciates the CCRA reviewing its guidelines on related business. However, given the current environment, the current guidelines are outdated and need to be amended. In the following section, AFP proposes changes to the guidelines that would make the CCRA policy more consistent and encourage the creation of related business by charities.

Related Business – Linkage

Under the proposed guidelines, a business must be both linked to a charity's purpose and subordinate to that purpose in order to qualify as a related business. While AFP agrees with the idea that a business should be subordinate to a charity's purpose, we find the concept of linkage unfair and outdated.

Linkage is unfair because certain charities have missions, operations and programs that lend themselves more to the creation of related businesses than other charities. Certain organizations might have gift shops, food outlets and cafeterias, and parking lots that they can build which are linked, under the guidelines, to their purpose. For example, universities have bookstores, student residences and dining halls that they can lease out which qualify as related businesses because of linkage.

What about a charity that operates homeless shelters or runs literacy programs? What are their related businesses that might bring in additional income? These are just two examples of a myriad of charities whose mission and operations don't readily link to any sort of related business. The

concept of linkage creates an uneven playing field for the charitable sector, a situation that the government should not be encouraging.

Linkage is also a problem because it creates a distinction without a difference. Does a hospital need a gift shop in order to pursue its mission? A university can rent out its facilities to conferences or visitors as a related business, but what if the conference is completely unrelated to the purpose of the university? What if the conference was antithetical to the mission of the university?

The guidelines further blur the difference between what is and isn't a related business. As examples in the guidelines point out, charities cannot run certain types of businesses but can legally invest in those same businesses. What purpose does this distinction serve, especially if funds from either an investment or through management of a business serve the same organization and its charitable purpose?

In addition, any sort of business is considered related as long as it is "substantially" run by volunteers. While AFP understands this provision was explicitly included in the Income Tax Act, it is outdated policy that makes little sense in today's environment. Most charities can barely find enough qualified employees for paid staff positions, much less get enough volunteers to run a business.

Finally, the guidelines allow charities to engage in certain business transactions, so long as they are not operated regularly or continuously. These various exemptions and exceptions lead AFP to one conclusion: linkage is a mirage. There are charitable operations and there are business operations, and in the case of these guidelines, trying to link the two is unfair, unworkable and ultimately not helpful to the charitable sector.

Subordination

AFP believes the CCRA should eliminate the policy of linkage and focus on subordination. To qualify its business as related, a charity should only have to prove that its business activities are subordinate to its charitable work and purpose. AFP finds the questions and procedures laid out in the guidelines about subordination to be workable, effective and appropriate in determining if a business is indeed subordinate. To the requirements already listed, AFP would add that any and all profits from the business must be used to further the charitable purposes of the organization. This change would incorporate the "destination of funds" test in the existing guidelines.

This change does not necessarily allow charities to run any type of business that it wants. Question II under the Subordination guidelines, "Is the business integrated into the charity's operations, rather than acting as a self-contained unit," will tend to prevent certain types of businesses from being run by charities. Other questions and standards will act as a check on the types of businesses charities can run and manage.

The focus on subordination also creates greater consistency within the guidelines and the legislative language contained in the Income Tax Act. The provision that a business run by volunteers is automatically considered related makes greater sense in the context of subordination. If a business is automatically considered related because it's run by volunteers (whether or not it's linked or subordinate to the charity's purpose), then it only makes sense that a business that is subordinate to the charity's purpose ought to be considered related as well.

Conclusion

AFP commends CCRA for its leadership and understanding of the charitable sector as demonstrated by the Agency's recognition of the importance to the sector of "business" income that supplements other charitable revenue streams. AFP encourages the Agency to take the next

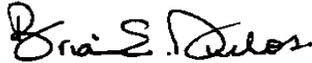
step and acknowledge that the concept of “related” business is an unnecessary restriction on charitable activity.

As it relates to the CCRA’s current related business guidelines, the concept of linkage is unfair and unworkable. However, the idea of related business is critical to the charitable sector and should be encouraged by the government to help the charitable sector increase its capacity and become more self-sustaining.

To increase capacity and level the playing field, the CCRA should eliminate its guidelines on linkage and focus on subordination. Any business which is subordinate to the mission of a charity, and from which all profits go to further the charity’ mission, should be considered a related business.

AFP appreciates this opportunity to comment on the CCRA’s guidelines and looks forward to working with the CCRA to craft appropriate guidelines that will allow the sector to increase its capacity to provide critically needed services to the people and communities of Canada.

Sincerely,

A handwritten signature in black ink that reads "Brian S. Duclos". The signature is written in a cursive style with a large initial 'B'.

Brian Duclos
Chair, AFP Canadian Government Relations Committee