

Township of Brock Corporate Policy



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Approval By: Senior Management Team
Point of Contact: Director of Finance/Treasurer

POLICY STATEMENT:

This policy applies to donations made to the Township of Brock ("Township") and sets out the eligibility for the issuance of income tax receipts.

PURPOSE:

The purpose of the Donation Policy is to set out guiding principles for the donation eligibility, the eligibility for donation receipts (for income tax purposes), and the amount to be recognized.

SCOPE:

This Policy applies to all departments, boards and agencies falling within the financial reporting requirements of the Township, with the exclusion of the Brock Township Public Library, who has their own policy. This policy also supports the Township's commitment to meet the requirements for issuing donation receipts according to the Canada Revenue Agency ("CRA").

BACKGROUND

The Township is considered to be a "qualified donee" under the Income Tax Act of Canada ("ITA"). The requirements to be considered a qualified donee are as follows:

- Municipalities are required to be registered with CRA and included on a publicly available list maintained by CRA;
- Municipalities are required to abide by the rules of the ITA in relation to the issuance of official donation receipts;

- Municipalities are required to issue receipts that contain the same information as registered charities, the details of which will be outlined further in this document; and
- Municipalities are required to maintain proper books and records supporting official donation receipts issued and provide access to those books and records to CRA upon request.

If the requirements above are not adhered to, CRA can revoke the status of the Township as a qualified donee and suspend receipting privileges.

GENERAL RULES:

- No individual(s) or organizations shall solicit funds in the name of or on behalf of the Township without approval of the CAO or Council unless they are doing so in relation to an event organized and managed by the Township of Brock.
- A donation is “a voluntary transfer of property owned by a donor to a donee, in return for which no benefit accrues to the donor”.
- To have a valid donation/gift, there must be an intention to give, a delivery and an acceptance. Because there must be an acceptance by the donee, a donation is not completed until it is accepted.
- The donation/transfer is made without the expectation of a return. If a donor receives an advantage as part of their donation, all or part of the donation may no longer qualify as a gift.
- The donor cannot direct the gift to a specific person, family or other non-qualified donee. Donors can direct their gift to a specific program operated by the Township, however, cannot choose specific beneficiaries of their donation.

The Township reserves the right to reject any gift or donation in whole or in part.

QUALIFYING DONATIONS:

Donations that qualify for an official tax receipt generally include:

1. Cash
2. Capital, real or depreciable property;
3. Personal use property, works of art, jewellery, rare books, stamps or coins;
4. A leasehold interest or a residual interest in real property;
5. Donations of life insurance properties; and
6. Donations made under a will.

Only the eligible amount of a donation may be recorded on a donation receipt. If the donor receives any property, services or other advantage in consideration of their donation, the Fair Market Value ("FMV") of the advantage is deducted from the FMV of the gift to determine the Eligible Amount for the purposes of the donation receipt.

NON-QUALIFYING DONATIONS:

1. Donations that are given to the Township intended as a flow through to a specified receipts who does not have charitable organization status;
2. A court ordered transfer of property to the Township, or requirement of the Township's approval process, such as a site plan or subdivision agreement;
3. The payment of a basic fee for admission to an event, program or membership does not qualify as a donation that is eligible for the issuance of a tax receipt. An exception to this rule is for the purchase of a ticket to a fund-raising dinner (gala, concert, golf tournament or like event). In this instance, the donation is valued as the difference between the FMV of the food, entertainment, prizes and the purchase price of the ticket. As per CRA guidelines, the Township will not issue a tax receipt if the total value of the food, entertainment and prizes exceed 80% of the purchase price of the ticket.
4. When a donor requests that the donee pay for a portion of the donation no tax receipt will be issued;
5. Gifts of service (for example, donated time, labour, knowledge);
6. Donations of business marketing products such as supplies and merchandise;
7. A payment for a lottery ticket or other chance to win a prize;
8. The purchase of goods or services from a charity;

9. A donation for which the fair market value of the advantage or consideration provided to the donor exceeds 80% of the value of the donation;
10. Donations provided in exchange for advertising/sponsorship;
11. Gift certificates donated by the issuer of the certificate are not considered property, **however**, a gift certificate that is **purchased and then donated** does constitute property, and may be receipted;
12. Pledges;
13. Loans of property;
14. Lease of premises;
15. Donations that have a direct benefit to the donor or any relative of the donor will not receive a tax receipt; and
16. Gifts-in-kind for which the FMV cannot be determined.

ASSOCIATED COSTS:

At the Township's discretion and determination, the donor is responsible for related costs for all donations, as applicable, and for which costs are not eligible for a donation receipt, including:

1. Transportation of the donated item, including transfer costs;
2. Cost for an appraisal/valuation of gifts-in-kind by an independent, qualified appraiser for donations valued above \$1000. Donations of personal property, public art and real property expected to be valued at \$1,000 or less may be appraised by knowledgeable staff, in conjunction with the use of resources suitable to establish a FMV (i.e. online sales data).
3. Document for insurance purposes.
4. Conservation treatment, if applicable (i.e. restoration of artwork, cleaning, repairs, etc.).

VALUING THE DONATION:

All donations receipted will exclude HST.

If an official donation receipt is being issued, it must reflect FMV of the gift received. The onus is on the Township to determine that the FMV reflected on the donation receipt is accurate. In cases where the FMV of the gift cannot be determined at the time the gift is received, a donation receipt cannot be issued.

FMV is the highest price, expressed in dollars that the property would bring in an open and unrestricted market, between a willing buyer and a willing seller who are both knowledgeable, informed and prudent and who are acting independently of each other.

GENERAL CONSIDERATIONS FOR GIFTS-IN-KIND:

Gifts-in-kind is a type of charitable giving in which contributions take the form of tangible goods rather than money.

All gifts-in-kind will be subject to a formal offer and review process which considers factors such as:

- Consistency with the Township's priorities, mandates, strategies and business plans, vision and/or beneficial to the Community of the Township;
- Compliance with by-laws and policies;
- Conflict of interest or potential for an appearance of a conflict of interest;
- Reputational risk associated with accepting a donation from a particular donor;
- Political sensitivity;
- Usefulness of the donation;
- Condition and value of the donation;
- Future costs/benefit/risk evaluation in relation to available financial resources required for installation, storage, maintenance and other relevant costs, such as insurance;
- Availability for full and unencumbered transfer of ownership/title, and donor release to allow for such a transfer of title.

Once a gift-in-kind is accepted by the Township, ownership of the asset transfers to the Township. At that point in time, the Township will accept responsibility for the care and maintenance of the gift and will be responsible for making any and all decisions related to the gift. This may include such things as the length of time an item will be maintained by the Township, where a gift will be placed and how it is used, how an item will be cared for and when or if an item will be disposed of or replaced.

For specific gifts like public art, signs and benches, the Township may require that a staff committee be established to consider these donations and whether the Township is prepared and able to accept these donations. The staff committee will review the donation proposal to ensure that the Township is willing and able to take on responsibility for the assets in question and will need to determine if the assets are in keeping with the Township's asset management plan, maintenance plans and in consideration the Township's climate change mandate.

There may be instances where these gifts-in-kind are outside the expertise of the Township to care for, do not align with the Township's strategic mandate or policies, are in poor condition or may require significant financial consideration to restore or maintain the gift in good condition. In instances such as these, the Township may be unable to accept the donation.

If the Township is able to accept the gift-in-kind, an agreement is to be signed between the donor and the Township, which acknowledges the rights and responsibilities of both parties.

In order to ensure independence and avoid any real or perceived conflicts of interest, the Township will not accept donations from persons (corporations) who:

- Have a concurrent application of a permit or licence from the Township or an application for planning approval from the Township;
- Are bidding on an open and active contract with the Township through a competitive procurement process;
- Are currently in litigation against the Township;
- Are not in good financial standing with the Township (i.e. who may be in tax arrears)

Donations of real estate will require consultation with the Township's legal representative.

GIFT-IN-KIND DONATIONS AT FMV:

The Township will only issue official tax receipts for Gift-in-kind donations where the donation provides a clear benefit to the Township. The valuation of any donation is governed by the following:

1. The value placed on the gift-in-kind will be determined by the items FMV.
2. Valuation of FMV is based on an arm's length sale and purchase of similar property at or near the same date.

3. If the item is valued at \$1,000 or less, a Township employee qualified to make the appraisal for such items may complete an appraisal of the item.
4. If the item is valued at greater than \$1,000, outside appraisals are required unless there is a ready and verifiable market for the item from which the FMV can be ascertained. Art appraisers are to be members of the Art Dealers Association of Canada (“ADAC”). In addition, the dealer, appraiser or other knowledgeable individual must be independent of the donor. At the discretion of the Treasurer, a second appraiser may be required (at the donor’s expense). The average of these appraisals shall be used to determine the FMV of the item.
5. The receipt shall be in the amount of the appraised value. The receipt shall also indicate a description of the object and the name and address of the appraiser and the appraiser’s certification number, if applicable. The receipt will be dated on the day which the Township received the donation. If two appraisals are used and they significantly differ in appraised values, a third appraisal may be requested to clarify the true value.

Donations of land as an ecological gift is administered by Environment Canada through the Ecological Gifts Program. To qualify for income tax benefits associated with ecological gifts, the gift must satisfy specific criteria for an ecological gift. The donor shall be responsible for investigating the donation requirements with the Minister of the Environment and the receiving department will request and review these requirements to ensure the donation is appropriate. In addition, lands being donated to the Township will require an ESA Phase 1 assessment be completed, at the donors expense, to ensure that the lands are not contaminated (and/or whether further investigation is required).

Donations of cultural property are items that are deemed by the Canadian Cultural Property Export Review Board to have “outstanding significance and national importance” to Canada. The donation of cultural property must be certified as such by the Canadian Cultural Property Export Review Board. The receiving department shall be responsible for making the application to the Canadian Cultural Property Export Review Board.

DONATIONS TO SUPPORT ORGANIZATIONS INDEPENDENT OF THE TOWNSHIP:

Organizations that offer programs of genuine benefit to the community often request that the Township receive donations on their behalf for the purpose of issuing tax receipts.

Under the ITA, the Township cannot issue income tax receipts for funds that it will not itself be responsible for spending. Such organizations should receive their donations directly and register as a Charity with CRA if they wish to provide income tax receipts.

TOWNSHIP CONTROLLED CHARITABLE ACTIVITY AND COMMUNITY EVENTS:

The Township may issue charitable receipts for events held by Township-owned or Township-controlled organizations, if those organizations meet the criteria in accordance with CRA's expanded definition of "municipality".

- a) In order to be considered an organization that is owned by the Township, the following must apply:
 - The Township must own 90% or more of the shares or capital of the organization; or
 - The Township holds title to the assets of the organization or controls their disposition.
- b) In order to be considered an organization that is controlled by a municipality, the following must apply:
 - The Township appoints more than 50% of the members of the governing body of the organization; and
 - The organization must submit its annual operating budget and, if applicable, capital budget to the Township for review and approval.

USE OF TOWNSHIP CHARITABLE NUMBER BY ORGANIZATIONS INDEPENDENT OF THE TOWNSHIP:

The Township often receives requests from community organizations to use the Township's business/charitable number to establish charitable status when applying for grant funding. Many grant programs require applicants to have a charitable status as one of the qualification criteria. This section addresses the ITA implications to the Township:

1. The Township, as a qualified donee, is prohibited under the ITA from permitting third parties to use its business number/charitable number to establish qualified donee status when applying for grant funding.
2. The Township can grant use of their charitable number ONLY when the Township is working through an intermediary to apply for grant funding related to a project for which the Township directs and controls both the activities being conducted on the Township's behalf and the use of the grant funds received. In order to use this exception, there must be a formal agreement in place between the Township and the intermediary organization that specifies the details of the project, the nature of the shared objectives and that the project is an activity eligible to receive charitably donated funds pursuant to the ITA.

ACCOUNTING FOR DONATIONS OF MONEY:

All cheque donations must clear the Township's financial institution prior to the issuance of a tax receipt. The receipt will be made out to the same name and address appearing on the cheque or form of payment and dated for the date received. Donations made by cheque must be made payable to the "Township of Brock" and no third-party cheques will be accepted.

DONOR INFORMATION/RECEIPT REQUIREMENTS:

The following information must be collected by the Township and reported on the donation receipt:

Required Information	Cash Gift	Non-Cash Gift
Receipt must state "Official Receipt for Income Tax Purpose"	X	X
Serial Number of Receipt	X	X
Name of Township	X	X
Address of Township	X	X
Name of Donor	X	X
Address of Donor	X	X
Date on which the Gift was Received	X	X
Amount of Cash Received	X	
FMV of Donated Property on Date of Gift		X
Description of Property Received		X
Name of Property Appraiser		X
Address of Property Appraiser		X
Appraisers Certification Number (if applicable)		X
Description of Advantage Given to Donor (if applicable)		X
Amount of Advantage Given to Donor	X	X
Eligible Gift Amount	X	X
Place Where Receipt was Issued	X	X
Date of Issuance of Receipt	X	X
Signature of Authorized Person	X	X

If a donation is made by a cheque in one or more person's names, an official donation receipt can be made to one of the names.

Receipts given in connection with corporate donations will be given in the name of the corporation and will not be given to individual shareholders of the corporation.

ISSUANCE OF RECEIPTS:

Upon confirmation that the donation is in compliance with this policy, the Treasurer shall issue an "Official Tax Receipt for Income Tax Purposes" and will include all the information outlined above in the Donor Information section of this policy.

Income tax receipts shall be issued for donations of \$25 or more, unless specifically requested by the Donor and approved the Treasurer.

The date of the donation is the date the donation is received or the title to the asset is transferred. Donations received after December 31st may not be included in the prior's years donation unless the donation was post marked in the previous year.

CRA ultimately determines the value of the donation which is permitted for tax deduction and if this is different from the value assigned by the Township, the final determination will reside with CRA.

REPLACING ISSUED OFFICIAL DONATION RECEIPTS:

If a receipt has been issued, but was subsequently lost or contained incorrect information, the issuer is permitted to issue a replacement receipt to the donor.

The replacement receipt must include:

- All the same information required that was captured to issue the initial receipt (see section on Donor Information/Receipt Requirements);
- The serial number of the original receipt; and
- A statement that it replaces the original receipt.

The Township must retain its original copy of the receipt that required a re-issue and clearly mark it as "cancelled".

CORRECTING UNISSUED OFFICIAL DONATION RECEIPTS;

If the Township has prepared a donation receipt containing incorrect information but has not yet issued it to the donor, a new receipt can be prepared. However, both copies of the original receipt must be retained (i.e. the donor copy and the Township copy) and clearly marked as "cancelled".

CRA/TOWNSHIP RETENTION REQUIREMENTS:

In order to maintain their qualified donee status, municipalities must keep adequate books and records containing:

- Information to allow the CRA to verify revenues for which donors can claim income tax credits or deductions;
- Information to allow the CRA to confirm that they meet the requirements for qualified donee status under the ITA; and
- A duplicate of each receipt containing prescribed information for each donation received.

If a municipality fails to maintain adequate books and records, or fails to provide them to CRA upon request, it may have its qualified donee status suspended or revoked entirely.

All used and unused receipts will be securely stored by the Township until needed. All used receipts will be retained per the Township's retention by-law, which is in line with section 5800 of the Income Tax Regulations.

CONSEQUENCES OF IMPROPER RECEIPTING:

CRA has outlined the following specific scenarios and penalties for improper receipting:

- If the Township issues an official donation receipt that includes incorrect or incomplete information, it is liable to a penalty equal to 5% of the eligible amount stated on the receipt. This penalty increases to 10% for a repeat offence within five (5) years.
- If the Township issued an official donation receipt that included *deliberately false* information, it is liable to a penalty equal to 125% of the eligible amount stated on the receipt.
- If the Township is liable for penalties in excess of \$25,000 for issuing false receipts, the Township is also liable to one year's suspension of its qualified donee status.
- If the Township contravenes or continues to contravene the receipt requirements under the ITA, it could also have its registration revoked.

CONFIDENTIALTY OF INFORMATION:

Subject to any legislative disclosure requirements, such as in the *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990*, all information pertaining to donors and donations received by the Municipality are considered confidential. A donor may request that their gift and/or all information pertaining to that gift remain anonymous.

RESPONSIBILITIES OF EMPLOYEES:

Employees of the Township will assess potential donations for eligibility and evaluate their benefit to the Township, considering any potential future cost implications arising from the donation.

The Finance department will issue tax receipts for qualified donations and maintain books and records according to the requirements of the ITA and CRA.

FINANCIAL IMPLICATIONS:

Financial implications of accepting a donation should be a consideration in the assessment of the donation acceptance. Some of the financial costs to consider are:

1. Cost of project implementation
2. Installation of the work
3. Insurance of the property
4. Restoration
5. Ongoing maintenance

POLICY REVIEW:

This policy shall be reviewed when there is a significant change in the Canadian Income Tax Act or regulations to that Act.