

## Written Opinions, Guidelines and Interpretation Notes

The Chief Electoral Officer may issue guidelines and interpretation notes on the application of the *Election Act*, and *Election Expenses Act*, in accordance with sections 3(1)(f) and 3(1)(h) respectively, to official agents, auditors, political parties, candidates, potential candidates and any of the officers thereof. This guideline and interpretation note has been compiled through consultation with Elections Canada and inter-jurisdictional sharing of best practices on common themes among election legislation and current political fundraising issues.

Guideline and interpretation notes provide guidance and promote consistency in the interpretation and application of the Act. However, they are for information only and do not displace any provisions of the Act. Interpretation notes are subject to change with amendments to legislation. For any questions, please contact the Office of the Chief Electoral Officer.

### Interpretation Note: 2019-02

January 2019

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## *Fundraising*

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### Issue

With recent amendments to the *Election Expenses Act (EEA)*, there are some areas that have undergone significant change. Primarily, changes have focused on the eligibility of who is permitted to contribute to a registered political party and/or registered candidate as well as the definition of what is considered a contribution. The contribution definition in the *EEA* does not specify how to determine what portion of an amount given during a fundraising activity is a political contribution. In particular, it is not clear how to address situations in which contributors receive a benefit in exchange for making a contribution.

This Interpretation note seeks clarify these points and answers the questions who can contribute, how to avoid anonymous donations, who may participate in public fundraising events and, to the extent possible, harmonize Elections PEI's administration of contribution rules with that of the Canada Revenue Agency (CRA).

## Interpretation

Contributions to political entities are subject to the controls and reporting requirements in the EEA. When an amount is simply given to a political party or candidate with nothing received in return, the full amount is a contribution. The situation is more complicated when a benefit goes back to the contributor. In such cases, it is necessary to determine what portion of the money given is a contribution.

## Benefits provided to contributors

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### Applicable Framework

#### Income Tax Folio S7-F1-C1, Split-receipting and Deemed Fair Market Value

- Nominal Threshold for significant benefits received as gift for contribution (s 1.12, 1.13)
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- (1) When a political entity provides a benefit (t-shirt, coffee cup, etc.) to a contributor in exchange for a contribution, the fair market value of that benefit should be deducted from the amount given to determine the contribution amount. The fair market value of the benefit is generally the amount the political entity paid a commercial provider for the property or service (i.e. the retail price).
- (2) However, if the benefit is not significant, the entire amount given is a contribution. This is because a minimal benefit is presumably not central to the contribution, and therefore does not indicate an exchange. The benefit is considered significant only if its fair market value exceeds 10% of the amount given or \$75, whichever is less. Note that this *de minimis* threshold (below which the benefit is deemed insignificant) does not apply to cash or near-cash benefits, such as gift certificates; nor does it apply to the value of an activity that is central to a fundraising event, such as the meal provided at a ticketed fundraising dinner.<sup>1</sup>

### Examples

1. In exchange for making a \$20 contribution, contributors receive a t-shirt with the party logo. The cost of the t-shirt was \$10. In this case, since the value of the t-shirt exceeds 10% of the amount given, \$10 is deducted from the amount given and the contribution is \$10.
2. Contributors who make a \$100 contribution receive a keychain with the party logo. The cost of the keychain was \$5. In this case, since the value of the keychain does not exceed the lesser of 10% of the amount given and \$75, nothing is deducted from the amount given and the contribution is \$100.

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<sup>1</sup>The threshold of 10% of the amount given or \$75 is aligned with the *de minimis* threshold used by the CRA. Refer to [Income Tax Folio S7-F1-C1, Split-receipting and Deemed Fair Market Value](#), for more information on the CRA's administrative approach to determining the eligible amount and the amount of an advantage for both political and charitable contributions.

# Fundraising dinners (Ticketed fundraising events)

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## Applicable Framework

### Income Tax Folio S7-F1-C1, Split-receipting and Deemed Fair Market Value

- The value of a comparable meal provided by a comparable facility determines the value of the benefit received by the contributor. It is acceptable to take into account group or banquet rates. (s 1.15)
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When a fundraising event such as a dinner is held for the primary purpose of soliciting monetary contributions through ticket sales (including events with an entrance fee), the amount of a ticket purchaser's monetary contribution is the ticket price less the fair market value of the benefit that the bearer is entitled to receive. The *de minimis* threshold may apply to benefits that are not central to the event.

#### *Benefits*

In the case of a ticketed fundraising dinner, the benefit received by each ticket purchaser includes the following:

- if the event is held in a rented venue, the fair market value of the room rental and catering, pro-rated on the basis of the expected number of attendees
- if the event is held in a restaurant, the amount the restaurant would normally charge for the meal
- if the event is held in a private venue, the fair market value of the meal; no value is attributed to the use of an individual's private residence
- door prizes, pro-rated on the basis of the expected number of attendees (*de minimis* threshold may apply)
- complimentary items such as pens or keychains (*de minimis* threshold may apply)

In both cases, the fair market value of producing and distributing materials promoting the event, including ticket printing, is not included in the benefit received because attendees do not gain from such activities.

#### ***Calculation of the benefit's value***

The fair market value of the benefit is determined based on the expected, rather than the actual, number of attendees. For example, an individual will receive the same dinner in the same venue regardless of the actual number who attend. This fixed value is important in terms of contribution limits: it is necessary to determine the amount of the ticket purchaser's contribution in advance of the event so that individuals do not unknowingly exceed their limit.

Note that the expected number of attendees used in the calculation has to be reasonably supported by evidence (e.g. size of room rented, number of meals ordered).

## Example <sup>2</sup>

A registered political party holds a fundraising dinner for which 500 tickets are sold for \$250 each.

- A comparable meal could be purchased for \$100, excluding harmonized and any other sales taxes and gratuities.
- The total value of the door prizes is \$3,500. Based on 500 tickets sold, the value per ticket is \$7.
- Each attendee receives a logo pen and a key chain with a total retail value of \$10.

The door prizes, the key chain and the logo pen are complimentary benefits or items provided to all participants for attending the fundraising dinner.

The total value of the door prizes and complimentary items is \$17 per ticket sold, which is less than the lesser of 10% of \$250 (\$25) and \$75. This means that by applying the nominal threshold, the value of the door prizes and the complimentary items and are not subject to deduction from total contribution.

The eligible amount is determined as follows:

Ticket price	\$250
Less: meal	\$100
Less: complimentary items/door prizes	\$0
<b>Contribution</b>	<b>\$150</b>

## Non-ticketed events (ie pancake breakfasts, BBQ rally)

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Contributions may be solicited at events such as dinners or cocktail parties held without ticket sales or entrance fees. In these cases, attendees receive the benefit (e.g. food or drink) regardless of whether or not they make a contribution; no benefit is received in exchange for making a contribution. Therefore, the fair market value of any benefit received is not deducted from any amount given. The entire amount the individual gives is a contribution.

For fundraising events such as pancake breakfasts where the entry fee is minimal, these events may be treated as “non ticketed events”. Each individual who attends the event will receive the same benefit (ie food and drink) regardless of whether they make a contribution or not. Therefore the contribution is not required to be reduced by the benefit amount since you are not paying for a ticketed event whereby a benefit is expected. These events may have a “minimum suggested donation” of \$10, which would be the standard fee charged for entry, and the entire amount of the contribution is then recorded.

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<sup>2</sup> Example from CRA [Income Tax Folio S7-F1-C1, Split-receipting and Deemed Fair Market Value](#), section 1.15 Fundraising dinners.

# Sale of branded goods

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## Legal Framework

The relevant provisions of the EEA in this context are as follows:

- Calculation of contribution – Where property or services are provided at less than market value, the value of the contribution is the difference between the market value of the property or services when provided and the amount charged by the person providing the property or services (s 11.1(7))
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When branded goods such as pens, coffee cups or t-shirts are sold by a political party, any amount the purchaser pays in excess of the item's fair market value is a contribution. In this case, because the sale of the branded good is the fundraising activity, the *de minimis* threshold does not apply. The value of the item sold is always deducted from the amount paid to determine the contribution amount, regardless of the item's fair market value.

The same logic from section 11.1 (7) of the EEA is applied when considering the sale of goods and the donation of goods. While the definition speaks specifically to an in-kind donation of goods, the value of the contribution is the difference between what is paid and the fair market value.

## Benefits that are not commercially available

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In some cases, a political entity may provide a benefit to contributors for which there is no fair market value.

For example, a political entity may give contributors access to the party leader or a prominent candidate in exchange for making a contribution. Since the benefit is not commercially available, its fair market value cannot be determined. In a political context, such a payment is usually made to show partisan support and to buy influence or goodwill. This is exactly the type of transaction that the EEA seeks to regulate through the contribution rules.

As such, a non-repayable amount of money given for a benefit that is not available on a commercial basis falls squarely within the ordinary meaning of a monetary contribution.

**Note:** The CRA's approach differs. For tax purposes, if the fair market value of a benefit received in exchange for making a contribution cannot be reasonably ascertained, **no amount is eligible for a tax credit.** [\*Income Tax Folio S7-F1-C1, Split-receipting and Deemed Fair Market Value\*](#)

# Auctions

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## Legal Framework

The relevant provisions of the EEA in this context are as follows:

- Contributions may only be made by individuals who are ordinarily resident in Prince Edward Island (s. 11.(1))
  - “Ordinarily Resident” means an individual who, when away, intends to return to Prince Edward Island. (s. 11.1(1))
  - A contribution made to an association or organization of a political party is a contribution made to the political party. (s. 11.(5))
  - Contributions are subject to a \$3000 limit (s. 12.1(1))
  - Contribution made to a candidate is deemed a contribution made to the party. (s.12.1(2))
  - An individual may contribute the maximum to all political parties and any independent candidate (s. 12.1(4))
  - No one shall make an anonymous contribution (s.11 (3))
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Any goods or service donated to be auctioned is a contribution in-kind and is subject to the contribution limit of \$3000. The initial contribution value is equal to the fair market value of the goods or service when donated.

An individual who buys an item at an auction is making a monetary contribution equal to the amount bid less the fair market value of the property or service. In this case, because the sale of the auctioned item is the fundraising activity, the *de minimis* threshold does not apply. The value of the item sold is always deducted from the amount bid to determine the contribution amount, regardless of the auctioned item’s fair market value. However, if the auctioned property or service is not available on a commercial basis, the entire amount of the winning bid is a contribution.<sup>3</sup>

### Example:

Painting donated to the auction. Value of \$1500, in-kind contribution by individual providing item.

Winning bid was \$3000.

Bid of \$3000

- value of \$1500

Contribution of \$1500 from purchaser of painting.

As a result of the contribution limits, the final bid for an item must not exceed \$3000 above its fair market value.

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<sup>3</sup> Although the entire amount bid is a contribution under the EEA and subject to related controls, CRA guidelines indicate that if the value of an advantage provided to a contributor cannot be readily ascertained, no tax credit will be allowed.

# 50/50 raffle

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## Legal Framework

### Criminal Code of Canada

Terms and Conditions for the issuance of licenses for the conduct and management of lottery schemes – lottery schemes order

[https://www.princeedwardisland.ca/sites/default/files/publications/lottery\\_schemes\\_order.pdf](https://www.princeedwardisland.ca/sites/default/files/publications/lottery_schemes_order.pdf)

The relevant provisions of the order in this context are as follows:

- Application for license
  - Only groups of individuals may apply for a lottery licence. The lottery must be for the benefit of a group of individuals or the greater good of the community.
  - An individual is not permitted to receive a lottery licence to hold a raffle where proceeds directly benefit only themselves (ie, offsetting candidates own personal costs)
  - For more information on applying for a lottery licence and who may apply please contact **Consumer, Corporate and Financial Services Division 1-800-658-1799 or 902-368-4550**
- Fee to apply
  - When value of prize exceeds \$1000, the lesser of 2% of total value or prize, or \$2000
  - Flat fee of \$5 when prize value equals \$1000 or less (s 3.)

The relevant provisions of the *Lotteries Commission Act* in this context are as follows:

- No persons under the age of 19 shall be sold a lottery ticket (s. 17.)

The relevant provisions of the *EEA* in this context are as follows:

- No political party shall accept contributions ...unless the political party is a registered party (s 7.)
- Contributions can only be made by individuals who are ordinarily resident in the province (s.11(1))
- No one shall make anonymous contributions (s. 11(3))
- Where a contribution of more than \$25 is made, the official agent of the party or candidate shall issue a receipt ...(s 11.(2))

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All political parties must be registered with Elections PEI by filing an application for registration (for new parties only) prior to accepting any contributions or initiating any fundraising events.

50/50 raffle lottery tickets may only be sold to individuals who are ordinarily resident in PEI. To ensure compliance with the residency requirements, **name and address** must be captured for each individual purchasing a ticket(s). The total amount paid for the ticket(s) is the individual's contribution. This information must be kept by the political party for submission with annual contribution filings with Elections PEI.

If the total amount paid for the tickets exceeds \$25, a receipt must be issued in accordance with the *EEA*. The official agent, or a person authorized by the official agent to accept contributions must be present at all fundraising events in order to issue the income tax receipts as required under the *EEA*.

In addition to the residency requirements under the *Election Expenses Act*, purchasers must also comply with age requirements found in the *Lotteries Commission Act* for purchasers of 50/50 raffle tickets.

Example:

Tickets \$3/each or 5 for \$10

The contribution is the purchase of \$10. The name and address of the purchaser must be collected.

100 individuals purchased bundles of tickets at \$10 apiece. **Total contributions received was \$1000** regardless of the fact that the party only keeps \$500 after the draw.

#### **CRA rules on Income Tax Receipts <sup>4</sup>**

“It is the CRA’s view that participants in lotteries, while perhaps influenced in choosing which lottery they will participate in by the identity of the organizing charity, are primarily motivated by the chance to win the prizes that are offered. Therefore, while there may be an element of a gift in some cases, the amount of the advantage cannot be reasonably quantified. **Accordingly, no part of the cost of a lottery ticket is a gift which may be receipted for income tax purposes.**”

While the name and address of all ticket purchasers must be collected for filing with Elections PEI, under CRA rules, no part of the cost of the lottery ticket may be receipted for income tax purposes.

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<sup>4</sup> Although the draw ticket price is a contribution under the *EEA* and subject to related controls, CRA guidelines indicate that no part of the draw ticket price is a gift and, accordingly, no tax credit will be allowed. See section 1.19 [\*Income Tax Folio S7-F1-C1, Split-receipting and Deemed Fair Market Value\*](#),