PROFITABLE GIVING CANADA

A Not for Profit Organization

PGC ALERT: A13-015
November 21, 2013
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SUBJECT: Beware of the Tax Advice from the Fast Track Group

This ALERT pertains to advice regarding the following Registered Profitable Gifting Arrangements (RPGA):

Canadian Organization for International Philanthropy (COIP)
Mission Life Financial (MLF)
PharmaGifts International (PGI)

The ALERT

This ALERT is being issued to inform members and donors of recent publications from Fast Track Group (Fast), headquartered in St Albert, Alberta. The advice they are offering, in the view of PGC, is incorrect, improper, and potentially very detrimental to their client base.

1. Fast has issued letters and emails to their clients suggesting they follow their lead and object to the collection efforts of Integrated Receivables Management Inc (IRMI). IRMI is attempting debt collection efforts on behalf of the RPGAs listed above. The Fast messages can be seen here and a template letter looks like this.

2. The reason given for objecting to the collections is that the program was marketed to clients that no money would ever have to be paid again to settle the debt. Therefore, the donors should object to the collections because they were "guaranteed" that no more money would have to be paid and now the opposite is happening.

3. Fast clients were also advised to contact the provincial regulators and complain that IRMI is not licensed to collect the debts, as they have been attempting.

4. Fast clients are also advised to perform "Due Diligence" on Profitable Giving Canada, and Justice Trading Ltd.

PGC Analysis and Recommendation

PGC understands that many donors were originally told by their agents, which included Fast agents, that their loans were "guaranteed" to be paid off by the RPGA Promoter, and that no further money would be required. This, however, is in conflict with the legal documents that the donors actually signed. It is important to note that Fast and many other agents, may have made these statements and representations to their clients, but the statements may not have been authorized by the actual RPGA Promoter. In fact, with the creation of the programs, it could never have been guaranteed that the loan be "paid off" by the original Promoter, since the program would therefore not comply with current tax law. The loan would be classed as a partial recourse loan and the tax credits achieved would not be valid. So why would the original RPGA program make representations that invalidate their own program?

Independent agents for the RPGA, such as Fast and others, might have made these false statements in order to increase sales participation and their commission revenue. And now that these statements are not coming true, somebody must be blamed.

The RPGA program original documents provide for a debt settlement process that included a partial refund of the original interest paid. After three years, the refund was to be redirected to an independent phamaceutical vendor, who would assist donors with the purchase of pharmaceuticals used to settle the debt according to its terms and conditions. The RPGA programs all failed to do this, and the reasons for this are currently under investigation by PGC. **The failure of the RPGAs to refund interest before it was all used up, however, is independent from and irrelavent to the advice being given by Fast.**

The prime mission of PGC is to assit donors who participated in valid RPGA programs maintain a valid claim to their tax credit. With this in mind, the Fast advice to ignore or object to the debt as not valid, will confirm the CRA argument that the contract was a sham contract, the loan was a partial recourse loan, and the tax credits are therefore not valid.

Many of you will have received the long CRA proposal letters that explain the reasons why they are going to reassess every donors donation to zero. One of their strongest arguments is that the loan is a sham contract. It is important to note that the word sham is different from scam. The CRA has never claimed any of these RPGAs are scams. Sham has specific meaning in law. A sham contract is one where the original parties to the agreement never intended to execute the terms and conditions of the contract, but just used it under false pretences for other purposes. In our view, (in spite of other problematic actions under investigation) the RPGAs in question have the right to collect on these debts and are not demonstrating they were sham contracts. The contracts themsleves are clear. Donors signed them in many areas, provided witnesses to their signatures, and the contract should be binding, but only under the terms listed. If donors now say they never intended to honour these contracts, or didn't understand their terms, they are now admitting the contracts were sham contracts and the loans partial recourse debt. To do so, would surely strengthen the CRA argument and donors will most likely be required to repay 100% of their tax credits, probably with interest. This is why PGC is issuing this ALERT, our mission is to protect donors tax credits. The Supreme Court of Canada as ruled that when it comes to tax law, "form matters". If you wish to read more , please look at PGC Technical Bulletin 13-12

With all of this in mind, PGC is making the following recommendations to all its members and subscribers.

1. Do not send any money to any of the programs under investigation if you wish to maintain your current tax credit postion. They are not capable of properly settling your debt. They have demonstrated improper behaviour in their collection activities.

2. **Do treat your debts with any of these programs as real,** however, find another totally independent way to settle them. PGC has endorsed the Justice Pharma program as the only known program presently available to do so compliantly with tax law.

3. If you feel you are are being harassed by IRMI, register a complaint to your provincial Ministry of Consumer Services. IRMI is not licensed to call or write to you! We agree with Fast on this issue.

4. Please do your due diligence on PGC. We welcome your questions and analysis of our actions. Justice Trading Ltd is a private company, independent of PGC. We believe, however, that they too would welcome the same due diligence questions.

Thank you for reading this ALERT. The prime concern of Profitable Giving Canada is to provide accurate information to its members who participte in compliant Profitable Giving.

We are working hard to give you the best chance possible to maintain a valid claim to your tax credits.