Profits for Non-Profits

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The law on profit-making by non-profits remains unsettled in Canada. The Income Tax Act(Canada) allows for tax-exempt status for organizations that are not registered charities as long as they satisfy certain conditions. The conditions are, primarily, that the organization must not be a "charity" within the common law meaning of the word, that it must be organized and operated exclusively for any purpose except profit, and that none of its income can be payable or available for the benefit of its members. So, almost by definition a non-profit may not earn profits. But NPOs earn profits all the time, right? When is making a profit okay, and when will it cause the organization to lose its tax-exempt status?

Generally, the law in Canada has allowed NPOs to engage in profit-making activities and remain tax-exempt if there is a causal relationship between the profit-making activities and their non-profit purposes. So, for example, where an NPO earns passive investment income from its income-producing assets, that would not disqualify it from tax-exempt status unless the earning of the income was both an operating motivation and a focus of the NPO's activities. More recently, however, the Canada Revenue Agency has taken the view that because investing cash is an activity intended to earn a profit, doing so would be contrary to the Actand would cause the NPO to lose its tax-exempt status. The only exception would be where the cash and other income-generating assets are to be used within a reasonable time frame to meet the NPOs not-for-profit objectives.

So it now seems that the key to determining when it is okay for a non-profit to earn profits lies in the non-profit's intention when undertaking an activity. If the intention is to earn a profit, that may cause the NPO to lose its tax-exempt status. It is not completely clear, however, whether the Canada Revenue Agency will apply this test of "intention" on an activity-by-activity basis, or to the whole of an NPO's activities. Applying it on an activity-by-activity basis could have negative consequences for many activities undertaken by NPOs in Canada.

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