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REGISTERED MAIL

JAN 13 2015

African Computer And Technology Literacy
Awareness Program (ACTLAP) Inc.
2288-100 City Centre Drive
Mississauga ON L5B 3C8

BN: 87087 4013RR0001

Attention: Mr. Bevis Paul Igbinoba

File #: 3024701

**Subject: Notice of Intention to Revoke
African Computer And Technology Literacy Awareness
Program (ACTLAP) Inc.**

Dear Mr. Igbinoba:

I am writing further to our letters dated June 25, 2014 and November 7, 2014 (copies enclosed), in which you were invited to submit representations as to why the registration of African Computer And Technology Literacy Awareness Program (ACTLAP) Inc. (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act*.

As of this date, we still have not received any response to our letters. Therefore, our position, as expressed in our letters of June 25, 2014 and November 7, 2014, is that the Organization's registration should be revoked, as explained below.

Conclusion

The audit by the Canada Revenue Agency (CRA) has revealed that the Organization operated primarily for the non-charitable purpose of furthering a tax shelter donation arrangement, the MissionLife Financial Inc. Canadian Relief Program. The Organization agreed to accept alleged gifts of property from participants and to act as a receipting agent for this donation arrangement. For the period March 1, 2008 to February 28, 2010, the Organization improperly issued receipts totalling over \$8.6 million for purported donations of cash and pharmaceuticals, which were not legitimate gifts. Of the \$254,273 in cash contributions it received, the Organization paid nearly \$218,127 to the promoters of the tax shelter and to the Organization's directors or related parties. Of the \$8.4 million worth of tax receipts issued for the gifts of pharmaceuticals, the CRA determined that the Organization significantly over-reported the value of the alleged property, resulting in grossly inflated tax receipts to participants. Further, the Organization failed to demonstrate that it had actually received the tax-receipted pharmaceuticals or that it had carried out any charitable activities using these pharmaceuticals.

Canada

The audit has shown that the Organization has failed to comply with several requirements set out in the *Income Tax Act*. In particular, the Organization issued donation receipts for transactions that do not qualify as gifts, issued receipts otherwise than in accordance with the Act and its Regulations, did not devote all its resources to charitable activities, failed to maintain proper books and records and failed to file an accurate *Registered Charity Information Return*. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements necessary for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letters dated June 25, 2014 and November 7, 2014, I wish to advise you that, pursuant to subsection 168(1), I propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d), and 168(1)(e) of the Income Tax Act, that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.

Business number	Name
870874013RR0001	African Computer And Technology Literacy Awareness Program (ACTLAP) Inc. Mississauga ON

Should you wish to object to this notice of intention to revoke the Organization's registration in accordance with subsection 168(4) of the Act, a written notice of objection, which includes the reasons for objection and all relevant facts, must be filed within **90 days** from the day this letter was mailed. The notice of objection should be sent to:

Tax and Charities Appeals Directorate
Appeals Branch
Canada Revenue Agency
250 Albert Street
Ottawa ON K1A 0L5

Notwithstanding the filing of an objection, a copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of 30 days from the date this letter was mailed. The Organization's registration will be revoked on the date of publication.

A copy of the relevant provisions of the Act concerning revocation of registration, including appeals from a notice of intent to revoke registration can be found in Appendix "A", attached.

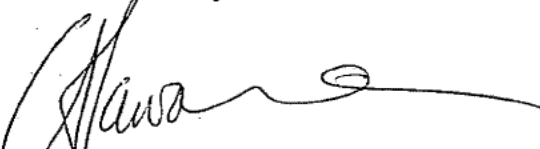
Consequences of revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and will no longer be permitted to issue official donation receipts. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed Form T2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix "A". Form T2046 and the related Guide RC4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our Web site at www.cra-arc.gc.ca/charities;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act*. As a result, the Organization may be subject to obligations and entitlements under the *Excise Tax Act* that apply to organizations other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

Finally, I wish to advise that subsection 150(1) of the *Income Tax Act* requires that every corporation (other than a corporation that was a registered charity throughout the year) file a return of income with the Minister in the prescribed form, containing prescribed information, for each taxation year. The return of income must be filed without notice or demand.

Yours sincerely,



Cathy Hawara
Director General
Charities Directorate

Attachments:

- CRA letters dated June 25, 2014 and November 7, 2014
- Appendix "A", Relevant provisions of the Act

c.c.: Bevis Paul Igbinoba



*Place de Ville, Tower A
320 Queen Street, 13th Floor
Ottawa ON K1A 0L5*



REGISTERED MAIL

African Computer And Technology Literacy
Awareness Program (ACTLAP) Inc.
2288-100 City Centre Drive
Mississauga, ON L5B 3C8

Attention: Mr. Bevis Paul Igbinoba

BN: 870874013RR0001

File #: 3024701

November 7, 2014

**Subject: Audit of African Computer And Technology Literacy
Awareness Program (ACTLAP) Inc.**

Dear Mr Igbinoba:

This letter is further to our phone conversation, dated October 29, 2014 regarding the audit of the books and records of African Computer And Technology Literacy Awareness Program (ACTLAP) Inc. (the Organization) conducted by the Canada Revenue Agency (the CRA). The audit related to the operations of the Organization for the period from March 1, 2008 to February 28, 2010.

During our conversation, you were advised that we had sent registered letters to the Organization and her trustees during the months of June and July 2014. Each letter was returned to CRA marked "Unclaimed". Also, we were unable to reach you by phone during that period.

This letter represents our fourth attempt to describe the areas of non-compliance identified by the CRA during the course of the audit to the Organization.

The CRA has identified specific issues of non-compliance with the provisions of the *Income Tax Act* and/or its *Regulations* in the following areas:

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Failure to Devote Resources to Charitable Activities	149.1(1), 168(1)(b)
2.	Failure to Accept Valid Gifts in Accordance with the Act	118.1, 168(1)(b)
3.	Failure to Issue Receipts in Accordance with the Act	149.1(2), 168(1)(d)

Canada



4.	Failure to Maintain or Provide Adequate Books and Records	149.1(2), 168(1)(e), 230(2)
5.	Failure to File an Accurate T3010 Return	149.1(2), 168(1)(c)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Organization with the opportunity to make additional representations or present additional information.

Registered charities must comply with the law, failing which the Organization's registered status may be revoked in the manner described in section 168 of the Act.

The balance of this letter describes the identified areas of non-compliance in further detail.

Identified Areas of Non-Compliance:

1. Failure to Devote Resources to Charitable Activities

The Organization is registered as a charitable organization. In order to satisfy the definition of a "charitable organization" pursuant to subsection 149.1(1) of the Act, "charitable organization" means an organization... "all the resources of which are devoted to charitable activities".

To qualify for registration as a charity under the Act, an organization must be established for charitable purposes that oblige it to devote all its resources to its own charitable activities. This is a two-part test. First, the purposes it pursues must be wholly charitable and second, the activities that a charity undertakes on a day-to-day basis must support its charitable purposes in a manner consistent with charitable law. Charitable purposes are not defined in the Act and it is therefore necessary to refer, in this respect, to the principles of the common law governing charity. An organization that has one or more non-charitable purposes or devotes resources to activities undertaken in support of non-charitable purposes cannot be registered as a charity.

Once registered, a charity must only pursue activities in furtherance of the specific charitable purposes as approved by CRA. The implicit understanding is that the charity will not undertake any activity beyond those described in the application for charitable registration. This is necessary to ensure that the charity will operate within the limitations imposed by the Act.

a) Tax Shelter Involvement

It is our view, based on our review, that the Organization does not operate for wholly charitable purposes and the activities it undertakes on a day-to-day basis do not support its charitable purposes in a manner consistent with charitable law. In fact, the evidence on the file, as outlined below, demonstrates a preponderance of effort and



resources devoted to non-charitable activities. The Organization has devoted a substantial portion of its efforts and resources to participating in a registered tax shelter donation arrangement with a small portion of its net fundraising profits devoted to the charitable sector.

The Organization was registered effective August 27, 2005 under the legal name African Computer And Technology Literacy Awareness Program (ACTLAP) Inc. to conduct the following activities:

To establish Training Centres to address the problem of Computer and Technology illiteracy by offering courses, seminars, conferences and meetings and by providing students with technological equipments necessary for their studies.

The Organization amended their objects on January 9, 2009, to replace them with:

To establish Training Centres to address the problems of Poverty, Health, Computer and Technology illiteracy by offering courses, seminars, conferences, meetings and by providing students and participants with academic, Health, Computer and Technological products, materials and equipments as necessary.

The revenue of the Organization (approx. \$40,000/year) was principally based on gifts in kind from computers equipment during the fiscal years 2006 to 2009. In 2009 (FYE 2010, February 28), it began participating in the Mission Life Financial Inc. Canadian Relief Program (MissionLife; the Program), a gifting arrangement tax shelter. The registered tax shelter gifting program is a continuation of another donation program called the Relief Lending Group Donation Program. The Program is a leveraged donation arrangement in which participants purportedly donated pharmaceuticals to the Organization for which favourable financing was provided by MissionLife. MissionLife was also the promoter of the Program. As a result of its participation, the Organization receipted over \$8.4 million for the fiscal year end 2010.

Based on the MissionLife promotional material, the donation program purportedly operates as follows:

- The participant borrows a Credit Certificate from MissionLife having a face value equal to the purchase price of the pharmaceuticals in exchange for an eight year promissory note;
- The participant is required to pay MissionLife interest for the first four years in advance. The interest rate on the promissory note varies depending on the month of participation;
- The participant uses the Credit Certificate to purchase the treatment units (TU), for \$120/TU from Logipharma Distributing Inc. (Logipharma), the participating vendor, therefore the pharmaceuticals are purchased 100% on credit;



- The participant never takes physical possession of the Credit Certificate. MissionLife delivered the Credit Certificate to Logipharm on the participant's behalf.
- The pharmaceutical was described as a treatment unit. One TU consisted of: Seven (7) doses of the Aid Cocktail, 3-in-1 ARV (Lamivudine 150mg/dose, Zidovudine 300mg/dose, Nevirapine 200mg/dose), one (1) dosage of Ciprofloxacin (250mg/dose), and seven (7) doses of Fluconazole (150mg/dose).
- The participant pledges to "gift" the treatment units to the Organization;
- As a condition of participating in the program, the participant must make a cash donation to the Organization equal to 3% of the value of the treatment units pledged;
- The participant receives two charitable donation receipts from the Organization: one for the cash value of the treatment units and a second for the 3% cash donation stated above;
- The cash receipt indicates an advantage received by the participant equal to 80% of the cash donation.

The participant's actual involvement in the above transactions is limited to completing and signing the required documents and issuing the cheques mentioned above. All of the transactions were conducted by MissionLife and Logipharm on behalf of the participant pursuant to limited power of attorney granted to them.

The cost to a participant to take part in the MissionLife program varies from month to month throughout the year based on interest rates in effect at the time of participation. As an example, a participant wishing to participate in July 2009 would purchase 84 treatment units valued at \$10,080 from Logipharm and uses the Credit Certificate, issued by MissionLife in exchange for an eight year promissory note bearing interest at 4.46%, to pay for the units. The participant pays 3% of the value of the treatment units or \$302 to the Organization as a condition of participating in the program and contributes \$1,800 in prepaid interest for 4 years to MissionLife for a total cash outlay of \$2,102. The participant pledges to "gift" all the treatment units to the Organization and is issued two charitable donations receipts one for \$10,080 gift in-kind and one for \$302 cash gift. The cash gift receipt indicates the participant's eligible amount of gift for tax purposes is \$60. The participant is left with an eight year loan payable in cash or by returning the Credit Certificate to MissionLife (treatment units).

It is our opinion, viewed as a whole, the primary purpose of this arrangement is to allow participants participating in this arrangement to profit from making a "donation" through the claiming of a donation credit. Based on the above, participants are actually out of pocket no more than 21% of the total receipted value. The participant's eligible amount of gift according to the receipts is \$10,140. Using the Ontario tax credit rate of 46.41%, the participant's tax credit is \$4,707 and net return on cash outlay is \$2,102 or 124%. The return on cash for residents of other provinces varies based on the tax credit rates applicable to each province. Based on the promotional material, the cash return



can be increased in increments with the same cash on cash return to have virtually 100% of a participant's income taxes refunded.

The Organization began participating in this program in 2009 by accepting participant "gifts" equivalent to 3% of the purported value of the treatment units pledged. Of this 3% "gift" received, the Organization paid MissionLife Marketing Inc. (MMI) an average of 77% in fundraising fees. We found that the Organization was provided with lists of tax shelter participants and a cheque equivalent to the participants combined 3% cash contributions as well invoices from the tax shelter equivalent to 77% of the cash contributions. Our audit has revealed, of the balance the Organization was able to retain for its own charitable programs, it distributed over 22% of its net fundraising proceeds in 2010 to the directors of the Organization and/or related parties. Although the Organization did not provide agreements between itself and MissionLife or its directors, our audit revealed the Organization consistently pays the amounts due upon receipt of the 3% "gifts" received from participating donors.

In 2009 the Organization began receipting for the participants' "gifts" of treatment units. The Organization receipted over \$8.4 million for treatment units in that year. The Organization also received cash "gifts" from the participants in the tax shelter. Of the \$254,273 received as cash "gifts", the Organization reports spending \$204,778 in fundraising fees to MMI and \$13,349 in management and administration fees to companies held by the Organization's directors and/or related parties for services. The Organization's records indicate that outside the tax shelter, it spent \$7,145 on its own charitable purposes. However, the audit revealed of that amount, an important part was not related to charitable purposes, but to personal expenses.

In conclusion, during the two years under audit, the Organization spent approximately \$24,799 on charitable activities compared to over \$288,019 on fundraising and administrative payments. Also, per the Organization's representations, they closed their office by January 2010 and did not conduct charitable activities since this event. Since the office is closed, no training activities have taken place and all the computers/equipment (approx. 100 units) are in storage at the director's personal residence. With no place (facility) for training and computers piling up in storage, it is evident that no activities are taken place other than the Organization's involvement in the tax shelter program in 2009.

b) Failure to Devote all of its Resources to its own Charitable Activities

As stated above, in order for an organization to be recognized as a charity, it must be constituted and operated exclusively for charitable purposes, and it must devote all of its resources to charitable activities carried on by the organization itself.

Focusing on "devotion of resources", a registered charity may only use its resources (funds, personnel and/or property) in two ways, both inside and outside Canada – for charitable activities undertaken by the charity itself, under its continued



supervision, direction and control; and for gifting to "qualified donees" as defined in the Act.

CRA acknowledges that it is not always practical for a registered charity to become directly involved in charitable activities because of limited financial resources, the size of the project or because the charity lacks the necessary expertise to operate effectively in a particular area of interest. Accordingly, CRA will consider that a registered charity is involved in its own charitable activities if the charity demonstrates that it maintains the same degree of control and responsibility over the use of its resources by another entity as it would if its activities were conducted by the charity itself.

Where a registered charity chooses to operate through an appointed agent or representative (intermediary), it must be able to substantiate, generally through documentary evidence, that it has arranged for the conduct of certain specific activities on its behalf, and has not simply made a transfer of resources to a non-qualified donee. A charitable organization is not at liberty to transfer funds or resources to other individuals or entities unless the recipient is an employee of the charity, an agent of the charity under contract, or a qualified donee. To this end, the charity must be able to demonstrate to the CRA's satisfaction that it maintains control over, and is fully accountable for, the use of resources provided to the intermediary, at all times.

The existence of an arrangement that demonstrates sufficient and continuing direction and control over, and full accountability for, all resources and related activities, is critical. The arrangement must establish that the activities in question are, in fact, those of the Organization.

For the period under audit, the Organization has purportedly distributed treatment units to Nigeria as a result of its participation in and promotion of the MissionLife Financial Inc. registered tax shelter. As per the Organization's representations, the pharmaceuticals were distributed to communities in Nigeria. No agents or volunteers were engaged and a list of health centres was provided. The Organization states it has transferred 489,867 treatment units in Nigeria. The audit revealed there were no agency agreements between the Organization and health centres in respect of these transfers.

The Organization has failed to demonstrate to the CRA's satisfaction that it maintained control over, and was fully accountable for, the use of resources purportedly provided to the health centres. Therefore, it is CRA's position that the Organization has relinquished control and gifted the treatment units to non-qualified donees. It is further our position the Organization has failed to satisfy subsection 149.1(6) of the Act with regard to devoting resources to its own charitable activities.

According to its representations, the Organization became aware of the above organizations through Beta Management, the company that provides logistics for the MissionLife tax shelter program. The Organization did not present evidence that it conducted due diligence with regard to the organizations or their expertise and ability to



deliver the services required. As part of the tax shelter program, Beta Management located the recipients, made recommendations, drafted the agency agreements and delivered the pharmaceuticals. It is the position of the CRA that the Organization was simply working as a conduit for the tax shelter program as the Organization has not demonstrated its actions in selecting the intermediaries as qualified agents capable of receiving and distributing the pharmaceuticals or in confirming that the treatment units were in fact used for charitable purposes. Rather, it is our opinion that the Organization chose to abide by the pre-determined transactions established by the tax shelter in order to participate in this arrangement and did not seek to inquire or operate outside of its agreement with the parties involved.

We find the Organization's participation in this tax shelter arrangement to be problematic, as, in our view, the Organization appears to be facilitating an arrangement designed to avoid the application of the provisions of the *Income Tax Act* and may be designed to create improper tax results. In our view, the Organization is operating primarily for the purpose of promoting a tax shelter program as the Organization has not shown or otherwise indicated it is conducting any other charitable activities. The Organization is an integral part of the arrangement being paid to circulate funds, as directed, in an artificial manner in an attempt to facilitate and lend legitimacy to the overall arrangement.

Given the manner in which the Organization allegedly structured and conducted its activities to accommodate the tax shelter, and the proportional levels of involvement in the arrangement, it is our view that a collateral purpose, if not primary purpose of the organization is, in fact, to support and promote a tax shelter arrangement. In this regard, it appears that the Organization enthusiastically lent its physical, financial and human resources (not to mention tax receipting privileges and registered charity status) to support the tax shelter arrangement, with little regard for the mandate and best interests of the Organization itself. Operating for the purpose of promoting tax shelters is not a charitable purpose at law. It is our view, therefore, that by pursuing this non-charitable purpose, the Organization has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) of the Act as a charitable organization "all the resources of which are devoted to charitable activities".

It is further our view that by failing to demonstrate the Organization's on-going direction and control of its distribution of treatment units and permitting other organizations to use the Organization's registered status to flow donations through it, the Organization has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) of the Act as a charitable organization "...all the resources of which are devoted to charitable activities". For this reason, it appears to us that there may be grounds for revocation of the charitable status of the Organization.



2. Failure to Accept Valid Gifts in Accordance with the Act

It is our position that the cash donations received by the Organization from participants in the registered tax shelter gifting arrangement are not valid gifts under section 118.1 of the Act. We offer the following explanations to support our position.

The term "gift" is not defined in the Act, so the general principles of law govern the meaning of a "gift" from the case *The Queen v. Friedberg* as:

[...] gift is a voluntary transfer of property owned by a donor to a donee, in return for which no benefit or consideration flows to the donor.

a) **No Animus Donandi -**

An additional essential element of a gift is *animus donandi* - that the donor must be motivated by an intention to give. As stated in *Grant McPherson v. HMQ (2007 DTC 326)*:

"[20] There is an element of impoverishment which must be present for a transaction to be characterized as a gift. Whether this is expressed as an *animus donandi*, a charitable intent or an absence of consideration the core element remains the same."

Justice J. Bowie further clarifies in 2004 UDTc 148, *Dwight Webb (Appellant) v. Her Majesty the Queen (Respondent)*:

"These cases make it clear that in order for an amount to be a gift to charity, the amount must be paid without benefit or consideration flowing back to the donor, either directly or indirectly, or anticipation of that. The intent of the donor must, in other words, be entirely donative." [Emphasis added]

One other element of the definition of a gift includes *animus donandi* or a donative intent. As stated in the cases quoted above, there must be an element of impoverishment and the donor must be willing to grow poorer.

In this case there was no element of impoverishment as the participants did not grow any poorer from making the alleged donations to the Organization. The participants were rather enriched from being able to claim tax credits from inflated donation receipts.

Tax minimization was a major selling feature of the Program. The Program was advertised to offer innovative financing that would enable the participants to maximize the amount of their donation and make a profitable gift.



The financing arrangement that was offered by the Program in which the participants agreed to enter provided the participants with the option to effectively pay a "nil" amount for their purchase of the TUs through its terms of repayment.

We recognize that the charitable tax credits available with respect to donations are not usually an advantage or benefit that would affect whether a gift is made. However, it is our position that mass-marketed donation arrangements promising participants that they will be able to claim tax credits for charitable donations far in excess of the expenditures actually made (i.e. the actual cash outlay and subsequent reduction in the donor's net worth), lack the requisite *animus donandi* for the transactions to be considered gifts. It is further our position, that the series of events allegedly entered into by the participants, were done in a manner to create the illusion that no benefit or advantage was received by the participant. The participants lacked donative intent when participating in the Program. The participants' sole intention was to achieve tax savings without fully understanding how the Program worked. The participants received a donation receipt from the Organization, a charity they knew nothing about.

In support of this position, we note the promotional materials primarily focus on the participant's substantial "cash on cash return" as a result of participation. Minimal investment is required of the participant in order to acquire treatment units from the authorized vendor, Logipharm and the participant is lead to believe the loan held with MissionLife will be repaid without further cash outlay. The participants rely upon MissionLife and Logipharm to acquire the treatment units and transfer title of the treatment units to the Organization without using or seeing the property. The participants' involvement is limited to completing and signing the documents and issuing the required cheques described above. All of the transactions were conducted on behalf of the participants by MissionLife and Logipharm pursuant to limited power of attorney granted to each. Minimal information is provided to the prospective participants as to how the medicine units will benefit the Organization, what the Organization will do with the treatment units or the activities of the Organization aside from its participation in the tax shelter arrangement. Transactions are pre-arranged and handled entirely by promoters or other pre-arranged third parties. A participant in the arrangement is merely expected to put forward a minimal investment to receive generous tax receipts in return.

As such, it is our position that there is no intention to make a "gift" within the meaning assigned at 118.1 of the Act. Participants in this donation arrangement are primarily motivated by the artificial manipulation of the tax incentives available rather than a desire to enrich the participating charity. In our view, these transactions, given the combination of the tax credits and other benefits received, lack the requisite *animus donandi* to be considered gifts.

b) Transfers not gifts – Benefit Received

Additionally, we are of the opinion that the transactions themselves lack the necessary elements to be considered gifts at law. The participants receive some form of advantage or benefit that is linked to their participation in the tax shelter program. It is



clear, based upon our audit and the promotional materials of MissionLife that there was a clear expectation of financial return with respect to the donation made to the Organization. Participants are able to acquire treatment units on 100% credit and have the option to repay their promissory note in cash or by delivering a credit certificate to MissionLife via acquiring identical pharmaceutical. The pharmaceuticals may be acquired on the international market, at amounts significantly less than the alleged fair market value of the original pharmaceuticals bought on credit. The fact that the promissory note was payable by credit certificate through the purchase of identical pharmaceutical at a significantly lower price represents a material and significant benefit to the participant. It is our view that the tax shelter promoters knew that the pharmaceuticals could be purchased from a manufacturer for a unit price much lower than the \$120/unit value used by the Organization when the pharmaceuticals were donated it.

The fact that a benefit was received as a result of the financing arrangements with the tax shelter and not directly from the Organization does not render the transfer a valid gift since the financing was not provided separately from the donation and the two are intricately linked. It is our opinion that since the financing forms an integral part of the donation any benefit that flows to the participant through the series of predetermined transactions would invalidate the gift. In *Marechaux v. The Queen* 2010 FCA 287, Evans, J.A. stated:

"We are not persuaded that the Judge got the law wrong. Counsel cited no authority for the proposition that only a benefit provided to an alleged donor by the donee can prevent a payment to a charity from being a gift for the purpose of section 118.1. Nor do we see any principled reason in the present context for disregarding a benefit simply because it was provided by a third party, particularly where, as the Judge found in this case, the "donation" was conditional on the provision of the benefit." [Emphasis added]

In our view, it is clear that the pharmaceuticals transferred to the Organization were not gifts in the sense understood at law and that the Organization was not entitled to issue official donation receipts for their overstated value. In our findings, the Organization issued official donation receipts exceeding \$8.4 million for transactions that did not qualify as gifts and for amounts clearly in excess of the pharmaceuticals' factual fair market value. It is clear from our audit and the promotional materials of the tax shelter that the Organization knew, or ought to have known that there was discrepancy in value of the pharmaceuticals donated to it. The Organization knew, or ought to have known, that it was not entitled to issue donation receipt for these transactions.

c) Eligible amount of gift or monetary contribution

Even without reference to the common law definition of a gift, it is clear that section 248(32) of the Act applies to these transactions as well. In our view, the



financing of the MissionLife loan, results in an advantage received in consideration¹ for the gift made to the Organization or is otherwise related to this gift². As per above, the financing arrangement enabled the participant to finance 100% of the purchase price of the treatment units. The terms of the promissory note provide the option to repay the promissory note by delivering a Credit Certificate to MissionLife, which the participant could obtain from Logipharm by delivering to the latter identical pharmaceuticals. As a result, a participant who exercises this option would not be required to make any additional cash outlay to acquire the identical pharmaceuticals. Therefore, a participant's cash outlay in respect of the cost of the pharmaceutical is zero since the treatment units were purchased on 100% credit and the terms of repayment of the financing arrangement are such that participants would not be required to incur any future cash outlay to settle their obligation. The Organization was therefore required by the Act to reduce the value reflected on the receipts issued by the value of the advantage.

The Organization obtained an opinion from [REDACTED] (the Valuator) on whether the participants would receive an advantage under the proposed subsections 248(31) and 248(32) of the Act. The Valuator provided the opinion that a cash gift of 3% of the pledged pharmaceuticals made to the Organization as a precondition to participate in the program would give rise to a small advantage to the donor. Based on this opinion, the Organization issued donation receipts for 20% of the cash gifts. The remaining 80% of the cash gift was reported as an advantage on the cash donation receipts.

It is our opinion that the advantage reported on the receipt is grossly understated given that the participants' cash outlay to acquire the treatment units was zero and that they were not required under the financing arrangement to incur any additional cash outlays from their own resources to settle their debt obligation as stated above.

Paragraph 248(35)(a) deems the fair market value of property acquired by a taxpayer under a gifting arrangement that is a tax shelter as defined by subsection 237.1(1) to be the lesser of the fair market value (FMV) otherwise determined or the cost of the property. It is our opinion that the acquisition cost of TUs varying from \$1.50 to \$2.88 per treatment unit from Medreich and Hetero is the most representative FMV of the TUs used in the Program as this is the last known arm's length transaction before the date of donation. As such, the FMV of the treatment units is deemed, by virtue of proposed subsection 248(35), to be no more than zero. Consequently the amount that the Organization was required under the *Income Tax Act* to record on its official donation receipts as the deemed FMV of the gift is significantly lower than what was actually recorded by the Organization.

Additionally, it appears that the Organization participated in an arrangement designed to avoid the application of subsection 248(35). We would note that subsection 248(38) states that where it can be reasonably concluded that the particular gift relates

¹ See sub-paragraph 248(32)(a)(i)

² See sub-paragraph 248(32)(a)(iii)



to a transaction or series of transactions one of the purposes of which is to avoid the application of subsection 248(35), the eligible amount of the property so gifted is nil. As such, it is our view that even if the property received by the Organization is a "gift", which, as described above, given the motivation of the donors, is unlikely, the property so received by the Organization was not eligible for tax receipts reflecting a value greater than zero.

d) Fair Market Value

"Fair market value" is not defined by the Act; however, a standard definition generally accepted is, the highest price, expressed in dollars, obtainable in an open and unrestricted market between informed, prudent parties dealing at arm's length and under no compulsion to buy or sell³.

According to Rothstein, J.A. in *AG (Canada) v Tolley et al* 2005 FCA 386, in applying the Henderson definition of FMV, the first step is to accurately identify the asset whose FMV is to be ascertained. Rothstein, J.A. discusses the relevance of donating a group of items versus an individual item and states that because the items were acquired and donated in groups, the relevant asset was the group of items and not individual items. This would apply to the present case.

In applying that step to the facts of this case, we have to first determine if the accurate asset is one TU or the bulk TUs. All the participants were required to purchase and donate the TUs in bulk ranging from 76 to 663 TUs for one donation unit, depending on the month of purchase. Furthermore, the bulk TUs supplied to the participants was acquired in bulk in a series of purchase and supply transactions between several entities. At each level, the TUs were acquired in bulk based on the pledges made by the participants. As a result, the relevant asset is the "bulk TUs" and not one TU.

According to Rothstein, J.A., once the asset has been identified, and then the market in which that asset is normally sold in the ordinary course of business is determined. As indicated above, the bulk TUs supplied to the participants was acquired in bulk in a series of interconnected purchase and supply transactions based on pledges made by the participants for donation to the Organization. Since each supplier at each level in the chain acquired the TUs in bulk solely for use in the Program, the Program created its own market, i.e., the market in bulk transactions. Therefore the relevant market is the bulk market created by the Program.

The decision in *Frank Klotz v. The Queen*, 2005 DTC 5279 (FCA), a leading case in determining the appropriate market, supports our position that the donation program created its own market. The Federal Court of Appeal in that case upheld that the:

³ *Henderson Estate & Bank of New York v M.N.R.* 73 D.T.C. 5471 et 5476.



...magnitude of the mass market art donation program created its own market and that the relevant market was not, as the taxpayer alleged, retail art galleries where pieces of art are sold individually.

Taking into account the relevant asset and market, the decisions of the courts in some of the leading cases regarding the determination of the FMV of property purchased and donated through a mass marketed donation program have been to assign the price paid by the taxpayers to purchase the donated assets as the best evidence to determine the FMV of the gift.⁴

However, in this case, the price of \$120 per TU paid by the participants to Logipharm is not representative of the FMV because:

- (a) The participants' effective purchase price of the TUs is "nil" as a result of the terms of repayment of the promissory note.
- (b) The purchase price of \$120 per TU is an inflated price derived from a series of predetermined and interconnected transactions between non-arm's length parties.

Also, the FMV recorded on the official donation receipts is based upon the Canadian retail market and based upon the individual pills included in one TU. The valuation method used by the appraiser commissioned by the Organization claimed that the Ontario Drug Benefit Plan Formulary (ODBF) was an appropriate standard for establishing the price of the medicine units. The ODBF generally establishes prices for individual pills bought by individual Ontario consumers for individual consumption. We are of the opinion the retail market is not the relevant market as the medicine units are manufactured, sold and distributed outside of Canada, acquired in bulk and were never intended to be used for personal consumption in Canada. Based on the ODBF prices the valuator concluded that the fair market value of one TU was \$120.

Notwithstanding our position that the transactions entered into by the participants under the Program does not qualify as gifts at law, and therefore not valid charitable gifts under section 118.1 of the Act, and the financing arrangement was a sham, it is our position that the fair market value of the pharmaceuticals was overstated.

e) Effective purchase price of the TUs is "nil"

The stated purchase price of \$120 per TU that the participants purportedly paid to Logipharm is not a reflection of the FMV of the TUs because the effective purchase price is "nil" as a result of the financing arrangement.

⁴ See the decisions of some of the leading cases regarding determination of fair market value of goods purchased via a donation program in *Frank Klotz v. The Queen*, 2005 DTC 5279 (FCA); *Frank Klotz v. The Queen* 2004 DTC 2236; and *AG (Canada) v Tolley et al* 2005 FCA 386.



The financing arrangement, in which the participants agreed to enter, enabled them to finance 100% of the purchase price of the TUs. The terms of the promissory note provided the participants with the option to repay the promissory note by delivering a Credit Certificate to MissionLife which they could obtain from Logipharma by delivering to Logipharma identical pharmaceuticals. In addition, it was promoted to the participants that the identical pharmaceuticals would be acquired from a portion of the participants' four year prepaid interest by the agents of the Program for significantly lower prices. As a result, if the participants chose to exercise this option, they would not be required to make any additional cash outlay from their own resources, i.e., they would be required to make a "nil" outlay to acquire the identical pharmaceuticals. The Program as marketed, anticipated that the participants would exercise the option of settling the promissory note with identical pharmaceuticals, as any prudent and informed person would do so.

It is our position that the correct price paid by the participants for the donated TUs should not exceed the amount of the cash outlay the participants actually incurred or were required to incur from their own personal resources. Since the participants purchased the TUs on 100% credit and the terms of repayment of the financing arrangement are such that the participants would not be required to incur any additional cash outlay from their own resources to settle the obligation, it is our position that the price the participants paid to acquire the TUs is "nil".

f) Due Diligence

We note with concern, with respect to this particular issue, that it appears that the Organization's directors have demonstrated a lack of due diligence with respect to receipting practices. In fact, and as above, we are of the opinion that the duty of the directors to operate in the best interests of the Organization has been sidetracked by its collusion with the tax shelter arrangement.

As above, we note a failure by the Organization to demonstrate its due diligence in verifying the authenticity of the tax shelter. By failing to do so the Organization has allowed official donations receipts to be prepared for transactions that are not valid gifts which have resulted in the Organization issuing receipts for property it did not receive and has operated as a conduit for the tax shelter program.

Under paragraph 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its *Regulations*. It is our position that the Organization has issued receipts otherwise than in accordance with the Act and the *Regulations*. For each reason identified above, it appears to us that there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.



3. Failure to Issue Receipts in Accordance with the Act

The law provides various requirements with respect to the issuing of official donation receipts by registered charities. These requirements are contained in *Regulations* 3500 and 3501 of the Act and are described in some detail in Interpretation Bulletin IT-110R3 *Gifts and Official Donation Receipts*.

The audit revealed that the donation receipts issued by the Organization do not comply with the requirements of *Regulation* 3501 of the Act and IT-110R3 as follows:

- Receipts issued to acknowledge goods received as a result of the Organization's participation in the tax shelter were not valid gifts under section 118.1 of the Act. Under the *Income Tax Act*, a registered charity can issue official donation receipts for income tax purposes for donations that legally qualify as gifts. Our findings are explained above.
- Receipts issued to acknowledge goods received as a result of the Organization's participation in the registered tax shelter were not independently appraised by the Organization. The Organization used the valuation report commissioned by the tax shelter promoter as support for the values recorded on the official donation receipts issued. The Organization did not seek to obtain an independent valuation report. As above, we are of the view that the amounts recorded on the tax receipts are not reflective of the factual fair market value of the property donated.
- Receipts issued to acknowledge gifts in kind (computers equipment) were not appraised. The Organization consulted www.██████████.com to determine their value.
- Receipts issued to acknowledge cash gifts and gifts in kind outside of its tax shelter participation are missing the name of Canada Revenue Agency and a statement that it is an official receipt for income tax purposes.

Additionally, the amendments to the Act, which were introduced as part of Bill C-33, also apply to official donation receipts. As a result of the amendments, a registered charity that issues an official donation receipt that includes incorrect information is liable pursuant to subsection 188.1(7) of the Act to a penalty equal to 5% of the eligible amount stated on the receipt. This penalty increases to 10% for a repeat infraction within 5 years.

Pursuant to Subsection 188.1(9) of the Act, a registered charity that issues an official donation receipt that includes false information is liable to a penalty equal to 125% of the eligible amount stated on the receipt, where the total does not exceed \$25,000. Where the total exceeds \$25,000, the charity is liable to a penalty equal to 125% and the suspension of tax-receipting privileges as per paragraph 188.2(1)(c). We



do not believe that either of these sanctions are an appropriate alternative, given the serious nature of the matter of non-compliance.

Under paragraph 168(1)(d) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its Regulations. It is our position the Organization issued receipts for transactions that do not qualify as gifts at law. For this reason alone, there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

4. Failure to Maintain or Provide Adequate Books and Records

Subsection 230(2) of the Act requires that every registered charity shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing:

- Information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under the Act;
- A duplicate of each receipt containing prescribed information for a donation received by it; and
- Other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under the Act.

In addition, subsection 230(4) also states "every person required by this section to keep books of account shall retain:

- a) The records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such period as is prescribed; and
- b) All other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the date of the last taxation year to which the records and books relate".

Our audit revealed the books and records kept by the Organization were inadequate for the purposes of the Act. In the course of the audit, the following deficiencies were noted concerning the Organization's records:

- The Organization did not keep/provide minutes of meetings relative to important board decisions. In particular, discussions related to the involvement of the Organization in the MissionLife Financial Inc. tax shelter, their comprehension of this program and the distribution of the pharmaceuticals.
- The Organization did not keep/provide documentation to substantiate the basis for the promotion and administration fees paid to MissionLife Marketing Inc. The



Organization did not provide any agreements between itself and the registered tax shelter to substantiate these fees. We find this behavior inconsistent with normal business practice.

- The Organization did not keep/provide proper books and records, specifically, no general ledger, no trial balance, no disbursement/receipt journal. Also, some banking records were not kept or provided.
- As per above, the pharmaceuticals were allegedly distributed to communities in Nigeria yet no agents or volunteers were engaged; a list of health centres was provided. The audit revealed there were no agency agreements between the Organization and health centres in respect of these transfers nor could the Organization provide any further details on how the health centres were selected or effective safe transportation and delivery of the treatment units.
- The Organization did not provide the documentation related to their liabilities.

Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it fails to comply with or contravenes section 230 of the Act dealing with books and records. It is our position the Organization has failed to comply with and has contravened section 230 of the Act. For this reason alone there may be grounds to revoke the registered status of the Organization.

5. Failure to File an Accurate Registered Charity Information Return

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file a T3010 with the applicable schedules.

It is the responsibility of the Organization to ensure that the information that is provided in its Return, schedules and statements, is factual and complete in every respect. An Organization is not meeting its requirement to file an Information Return if it fails to exercise due care with respect to ensuring the accuracy thereof.

The Organization improperly completed the T3010 for the fiscal period ending February 28, 2010 in that items reported were omitted or inaccurate. Specifically:

- The Organization incorrectly reported \$257,773 as the eligible amount of all gifts for which they issued tax receipts at line 4500. This amount represents the 3% cash gift received from the tax shelter participants as a precondition to participate in the program plus cash gifts received from other donors. The Organization did not deduct from this amount the \$203,418 considered to be an advantage received by the participants in the tax shelter program; this amount should have been reported on line 4530 of the T3010.



- Additionally, the Organization did not report the \$8,483,033 issued for the gifts in kind received. The total of the line 4500 should have been \$8,544,888.
- The Organization incorrectly reported on Schedule 5 on the T3010, the total amount of tax receipts for the gifts in kind (\$8,503,132). The total should have been \$8,483,033.
- The Organization failed to complete section C4 of the T3010 regarding activities and projects carried on outside Canada. If the Organization had actually distributed the pharmaceuticals outside Canada as it claims, as per its participation in the tax shelter program, it should have completed this section of the T3010.
- The Organization did not complete the Schedule 2 of T3010 that it transferred \$8,475,760 of pharmaceuticals to health centres in Nigeria.
- The total expenditures reported at the line 4950 of the T3010 did not contain the promotion and marketing fees paid by the Organization for its participation in the tax shelter program.
- The Organization failed to complete lines 5000 to 5100 on the T3010 regarding the breakdown of the expenditures.

The Organization improperly completed the T3010 for the fiscal period ending February 28, 2009 in that items reported were omitted or inaccurate. Specifically:

- The Organization incorrectly reported the amount on the line 5000 and 5010 on the T3010 regarding the breakdown of the expenditures.

Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it fails to file a charity information return as when required under the Act. It is our position the Organization has failed to comply with the Act by failing to file an accurate T3010. For this reason, there may be grounds to revoke the registered status of the Organization.

The Organization's Options:

a) No Response

You may choose not to respond. In that case, the Director General of the Charities Directorate may give notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

b) Response

Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter. After considering the representations submitted by the Organization, the Director General of the Charities



Directorate will decide on the appropriate course of action, which may include:

- no compliance action necessary;
- the issuance of an educational letter;
- resolving these issues through the implementation of a Compliance Agreement;
- the application of penalties and/or suspensions provided for in sections 188.1 and/or 188.2 of the Act; or
- giving notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.


If you appoint a third party to represent you in this matter, please send us a written authorization naming the individual and explicitly authorizing that individual to discuss your file with us.

If you have any questions or require further information or clarification, please do not hesitate to contact me at the numbers indicated below. My manager, Holly Brant, may also be reached at 613-946-2400.

Yours sincerely,



Charities Directorate
305, René-Lévesque W
Montreal QC H2Z 1A6

Telephone: 
Facsimile: 514-283-8208

CC:
Bevis Paul Igbinoba



Section 149.1 Qualified Donees

149.1(2) Revocation of registration of charitable organization

The Minister may, in the manner described in section 168, revoke the registration of a charitable organization for any reason described in subsection 168(1) or where the organization

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the organization's disbursement quota for that year; or
- (c) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift.

149.1(3) Revocation of registration of public foundation

The Minister may, in the manner described in section 168, revoke the registration of a public foundation for any reason described in subsection 168(1) or where the foundation

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (b.1) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) since June 1, 1950, acquired control of any corporation;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or
- (e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the Minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection 149.1(4), to revoke its registration as a private foundation.

149.1(4) Revocation of registration of private foundation

The Minister may, in the manner described in section 168, revoke the registration of a private foundation for any reason described in subsection 168(1) or where the foundation

(a) carries on any business;

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

(b.1) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift;

(c) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;

(d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

149.1(4.1) Revocation of registration of registered charity

The Minister may, in the manner described in section 168, revoke the registration

(a) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;

(b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;

(c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;

(d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length; and

(e) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever.

Section 168:

Revocation of Registration of Certain Organizations and Associations

168(1) Notice of intention to revoke registration

The Minister may, by registered mail, give notice to a person described in any of paragraphs (a) to (c) of the definition "qualified donee" in subsection 149.1(1) that the Minister proposes to revoke its registration if the person

- (a) applies to the Minister in writing for revocation of its registration;
- (b) ceases to comply with the requirements of this Act for its registration;
- (c) in the case of a registered charity or registered Canadian amateur athletic association, fails to file an information return as and when required under this Act or a regulation;
- (d) issues a receipt for a gift otherwise than in accordance with this Act and the regulations or that contains false information;
- (e) fails to comply with or contravenes any of sections 230 to 231.5; or
- (f) in the case of a registered Canadian amateur athletic association, accepts a gift the granting of which was expressly or implicitly conditional on the association making a gift to another person, club, society or association.

168(2) Revocation of Registration

Where the Minister gives notice under subsection 168(1) to a registered charity or to a registered Canadian amateur athletic association,

- (a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the Canada Gazette, and
- (b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the Canada Gazette,

and on that publication of a copy of the notice, the registration of the charity or association is revoked.

168(4) Objection to proposal or designation

A person may, on or before the day that is 90 days after the day on which the notice was mailed, serve on the Minister a written notice of objection in the manner authorized by the Minister, setting out the reasons for the objection and all the relevant facts, and the provisions of subsections 165(1), (1.1) and (3) to (7) and sections 166, 166.1 and 166.2 apply, with any modifications that the circumstances require, as if the notice were a notice of assessment made under section 152, if

(a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);

(b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or

(c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

172(3) Appeal from refusal to register, revocation of registration, etc.

Where the Minister

(a) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.2) and (22) and 168(1) by the Minister, to a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for registration as a registered Canadian amateur athletic association, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

(a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,

(a.2) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.3), (22) and 168(1) by the Minister, to a person that is a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1) that is or was registered by the Minister as a qualified donee or is an applicant for such registration, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

(b) refuses to accept for registration for the purposes of this Act any retirement savings plan,

(c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,

(d) [Repealed, 2011, c. 24, s. 54]

(e) refuses to accept for registration for the purposes of this Act an education savings plan,

(e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,

(f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,

(f.1) refuses to accept an amendment to a registered pension plan,

(g) refuses to accept for registration for the purposes of this Act any retirement income fund,

(h) refuses to accept for registration for the purposes of this Act any pooled pension plan or gives notice under subsection 147.5(24) to the administrator of a pooled registered pension plan that the Minister proposes to revoke its registration, or

(i) refuses to accept an amendment to a pooled registered pension plan,

the person described in paragraph (a), (a.1) or (a.2), the applicant in a case described in paragraph (b), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan; in a case described in paragraph (c), the promoter in a case described in paragraph (e.1), the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), or the administrator of the plan in a case described in paragraph (h) or (i), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

180(1) Appeals to Federal Court of Appeal

An appeal to the Federal Court of Appeal pursuant to subsection 172(3) may be instituted by filing a notice of appeal in the Court within 30 days from

(a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),

(b) [Repealed, 2011, c. 24, s. 55]

(c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),

(c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1),

(c.2) the mailing of notice to the administrator of the pooled registered pension plan under subsection 147.5(24), or

(d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan or pooled registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

as the case may be, or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiration of those 30 days, fix or allow.

Section 188: Revocation tax

188(1) Deemed year-end on notice of revocation

If on a particular day the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) or it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available,

(a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;

(b) a new taxation year of the charity is deemed to begin immediately after that day; and

(c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

188(1.1) Revocation tax

A charity referred to in subsection (1) is liable to a tax, for its taxation year that is deemed to have ended, equal to the amount determined by the formula

$$A - B$$

where

A

is the total of all amounts, each of which is

(a) the fair market value of a property of the charity at the end of that taxation year,

(b) the amount of an appropriation (within the meaning assigned by subsection (2)) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or

(c) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

B

is the total of all amounts (other than the amount of an expenditure in respect of which a deduction has been made in computing income for the winding-up period under paragraph (c) of the description of A), each of which is

- (a) a debt of the charity that is outstanding at the end of that taxation year,
- (b) an expenditure made by the charity during the winding-up period on charitable activities carried on by it, or
- (c) an amount in respect of a property transferred by the charity during the winding-up period and not later than the latter of one year from the end of the taxation year and the day, if any, referred to in paragraph (1.2)(c), to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

188(1.2) Winding-up period

In this Part, the winding-up period of a charity is the period that begins immediately after the day on which the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) (or, if earlier, immediately after the day on which it is determined, under subsection 7(1) of the *Charities Registration (Security Information) Act*, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available), and that ends on the day that is the latest of

- (a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,
- (b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and
- (c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

188(1.3) Eligible donee

In this Part, an eligible donee in respect of a particular charity is a registered charity

- (a) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;
- (b) that is not the subject of a suspension under subsection 188.2(1);
- (c) that has no unpaid liabilities under this Act or under the *Excise Tax Act*;

- (d) that has filed all information returns required by subsection 149.1(14); and
- (e) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable.

188(2) Shared liability — revocation tax

A person who, after the time that is 120 days before the end of the taxation year of a charity that is deemed by subsection (1) to have ended, receives property from the charity, is jointly and severally, or solidarily, liable with the charity for the tax payable under subsection (1.1) by the charity for that taxation year for an amount not exceeding the total of all appropriations, each of which is the amount by which the fair market value of such a property at the time it was so received by the person exceeds the consideration given by the person in respect of the property.

188(2.1) Non-application of revocation tax

Subsections (1) and (1.1) do not apply to a charity in respect of a notice of intention to revoke given under any of subsections 149.1(2) to (4.1) and 168(1) if the Minister abandons the intention and so notifies the charity or if

(a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and

(b) the charity has, before the time that the Minister has so registered the charity,

(i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the Excise Tax Act in respect of taxes, penalties and interest, and

(ii) filed all information returns required by or under this Act to be filed on or before that time.

188(3) Transfer of property tax

Where, as a result of a transaction or series of transactions, property owned by a registered charity that is a charitable foundation and having a net value greater than 50% of the net asset amount of the charitable foundation immediately before the transaction or series of transactions, as the case may be, is transferred before the end of a taxation year, directly or indirectly, to one or more charitable organizations and it may reasonably be considered that the main purpose of the transfer is to effect a reduction in the disbursement quota of the foundation, the foundation shall pay a tax under this Part for the year equal to the amount by which 25% of the net value of that property determined as of the day of its transfer exceeds the total of all amounts each of which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.

188(3.1) Non-application of subsection (3)

Subsection (3) does not apply to a transfer that is a gift to which subsection 188.1(11) or (12) applies

188(4) Transfer of property tax

If property has been transferred to a charitable organization in circumstances described in subsection (3) and it may reasonably be considered that the organization acted in concert with a charitable foundation for the purpose of reducing the disbursement quota of the foundation, the organization is jointly and severally, or solidarily, liable with the foundation for the tax imposed on the foundation by that subsection in an amount not exceeding the net value of the property.

188(5) Definitions

In this section,

“net asset amount”

« *montant de l'actif net* »

“net asset amount” of a charitable foundation at any time means the amount determined by the formula

$$A - B$$

where

A

is the fair market value at that time of all the property owned by the foundation at that time, and

B

is the total of all amounts each of which is the amount of a debt owing by or any other obligation of the foundation at that time;

“net value”

« *valeur nette* »

“net value” of property owned by a charitable foundation, as of the day of its transfer, means the amount determined by the formula

$$A - B$$

where

A

is the fair market value of the property on that day, and

B

is the amount of any consideration given to the foundation for the transfer.

189(6) Taxpayer to file return and pay tax

Every taxpayer who is liable to pay tax under this Part (except a charity that is liable to pay tax under section 188(1)) for a taxation year shall, on or before the day on or before which the taxpayer is, or would be if tax were payable by the taxpayer under Part I for the year, required to file a return of income or an information return under Part I for the year,

(a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

189(6.1) Revoked charity to file returns

Every taxpayer who is liable to pay tax under subsection 188(1.1) for a taxation year shall, on or before the day that is one year from the end of the taxation year, and without notice or demand,

(a) file with the Minister

(i) a return for the taxation year, in prescribed form and containing prescribed information, and

(ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and

(b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

189 (6.2) Reduction of revocation tax liability

If the Minister has, during the one-year period beginning immediately after the end of a taxation year of a person, assessed the person in respect of the person's liability for tax under subsection 188(1.1) for that taxation year, has not after that period reassessed the tax liability of the person, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of

(a) the amount, if any, by which

(i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was sent and ends at the end of the one-year period

exceeds

(ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and

(b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

189(6.3) Reduction of liability for penalties

If the Minister has assessed a particular person in respect of the particular person's liability for penalties under section 188.1 for a taxation year, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of all amounts, each of which is an amount, in respect of a property transferred by the particular person after the day on which the Minister first assessed that liability and before the particular time to another person that was at the time of the transfer an eligible donee in respect of the particular person, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the total of

(a) the consideration given by the other person for the transfer, and

(b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

189 (7) Minister may assess

Without limiting the authority of the Minister to revoke the registration of a registered charity or registered Canadian amateur athletic association, the Minister may also at any time assess a taxpayer in respect of any amount that a taxpayer is liable to pay under this Part.



CANADA REVENUE
AGENCY

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DU CANADA

REGISTERED MAIL

African Computer And Technology Literacy
Awareness Program (ACTLAP) Inc.
2288-100 City Centre Drive
Mississauga, ON L5B 3C8

BN: 870874013RR0001

Attention: Mr. Bevis Paul Igbinoba

File #: 3024701

June 25, 2014

**Subject: Audit of African Computer And Technology Literacy
Awareness Program (ACTLAP) Inc.**

Dear Mr Igbinoba:

This letter is further to the audit of the books and records of African Computer And Technology Literacy Awareness Program (ACTLAP) Inc. (the Organization) conducted by the Canada Revenue Agency (the CRA). The audit related to the operations of the Organization for the period from March 1, 2008 to February 28, 2010.

The CRA has identified specific issues of non-compliance with the provisions of the *Income Tax Act* and/or its *Regulations* in the following areas:

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Failure to Devote Resources to Charitable Activities	149.1(1), 168(1)(b)
2.	Failure to Accept Valid Gifts in Accordance with the Act	118.1, 168(1)(b)
3.	Failure to Issue Receipts in Accordance with the Act	149.1(2), 168(1)(d)
4.	Failure to Maintain or Provide Adequate Books and Records	149.1(2), 168(1)(e), 230(2)
5.	Failure to File an Accurate T3010 Return	149.1(2), 168(1)(c)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Organization with the opportunity to make additional representations or present additional information.

Registered charities must comply with the law, failing which the Organization's registered status may be revoked in the manner described in section 168 of the Act.

The balance of this letter describes the identified areas of non-compliance in further detail.

Identified Areas of Non-Compliance:

1. Failure to Devote Resources to Charitable Activities

The Organization is registered as a charitable organization. In order to satisfy the definition of a "charitable organization" pursuant to subsection 149.1(1) of the Act, "charitable organization" means an organization... "all the resources of which are devoted to charitable activities".

To qualify for registration as a charity under the Act, an organization must be established for charitable purposes that oblige it to devote all its resources to its own charitable activities. This is a two-part test. First, the purposes it pursues must be wholly charitable and second, the activities that a charity undertakes on a day-to-day basis must support its charitable purposes in a manner consistent with charitable law. Charitable purposes are not defined in the Act and it is therefore necessary to refer, in this respect, to the principles of the common law governing charity. An organization that has one or more non-charitable purposes or devotes resources to activities undertaken in support of non-charitable purposes cannot be registered as a charity.

Once registered, a charity must only pursue activities in furtherance of the specific charitable purposes as approved by CRA. The implicit understanding is that the charity will not undertake any activity beyond those described in the application for charitable registration. This is necessary to ensure that the charity will operate within the limitations imposed by the Act.

a) Tax Shelter Involvement

It is our view, based on our review, that the Organization does not operate for wholly charitable purposes and the activities it undertakes on a day-to-day basis do not support its charitable purposes in a manner consistent with charitable law. In fact, the evidence on the file, as outlined below, demonstrates a preponderance of effort and resources devoted to non-charitable activities. The Organization has devoted a substantial portion of its efforts and resources to participating in a registered tax shelter donation arrangement with a small portion of its net fundraising profits devoted to the charitable sector.

The Organization was registered effective August 27, 2005 under the legal name African Computer And Technology Literacy Awareness Program (ACTLAP) Inc. to conduct the following activities:

To establish Training Centres to address the problem of Computer and Technology illiteracy by offering courses, seminars, conferences and meetings and by providing students with technological equipments necessary for their studies.

The Organization amended their objects on January 9, 2009, to replace them with:

To establish Training Centres to address the problems of Poverty, Health, Computer and Technology illiteracy by offering courses, seminars, conferences, meetings and by providing students and participants with academic, Health, Computer and Technological products, materials and equipments as necessary.

The revenue of the Organization (approx. \$40,000/year) was principally based on gifts in kind from computers equipment during the fiscal years 2006 to 2009. In 2009 (FYE 2010, February 28), it began participating in the Mission Life Financial Inc. Canadian Relief Program (MissionLife; the Program), a gifting arrangement tax shelter. The registered tax shelter gifting program is a continuation of another donation program called the Relief Lending Group Donation Program. The Program is a leveraged donation arrangement in which participants purportedly donated pharmaceuticals to the Organization for which favourable financing was provided by MissionLife. MissionLife was also the promoter of the Program. As a result of its participation, the Organization receipted over \$8.4 million for the fiscal year end 2010.

Based on the MissionLife promotional material, the donation program purportedly operates as follows:

- The participant borrows a Credit Certificate from MissionLife having a face value equal to the purchase price of the pharmaceuticals in exchange for an eight year promissory note;
- The participant is required to pay MissionLife interest for the first four years in advance. The interest rate on the promissory note varies depending on the month of participation;
- The participant uses the Credit Certificate to purchase the treatment units (TU), for \$120/TU from Logipharm Distributing Inc. (Logipharm), the participating vendor, therefore the pharmaceuticals are purchased 100% on credit;
- The participant never takes physical possession of the Credit Certificate. MissionLife delivered the Credit Certificate to Logipharm on the participant's behalf.
- The pharmaceutical was described as a treatment unit. One TU consisted of: Seven (7) doses of the Aid Cocktail, 3-in-1 ARV (Lamivudine 150mg/dose, Zidovudine 300mg/dose, Nevirapine 200mg/dose), one (1) dosage of Ciprofloxacin (250mg/dose), and seven (7) doses of Fluconazole (150mg/dose).
- The participant pledges to "gift" the treatment units to the Organization;

- As a condition of participating in the program, the participant must make a cash donation to the Organization equal to 3% of the value of the treatment units pledged;
- The participant receives two charitable donation receipts from the Organization: one for the cash value of the treatment units and a second for the 3% cash donation stated above;
- The cash receipt indicates an advantage received by the participant equal to 80% of the cash donation.

The participant's actual involvement in the above transactions is limited to completing and signing the required documents and issuing the cheques mentioned above. All of the transactions were conducted by MissionLife and Logipharm on behalf of the participant pursuant to limited power of attorney granted to them.

The cost to a participant to take part in the MissionLife program varies from month to month throughout the year based on interest rates in effect at the time of participation. As an example, a participant wishing to participate in July 2009 would purchase 84 treatment units valued at \$10,080 from Logipharm and uses the Credit Certificate, issued by MissionLife in exchange for an eight year promissory note bearing interest at 4.46%, to pay for the units. The participant pays 3% of the value of the treatment units or \$302 to the Organization as a condition of participating in the program and contributes \$1,800 in prepaid interest for 4 years to MissionLife for a total cash outlay of \$2,102. The participant pledges to "gift" all the treatment units to the Organization and is issued two charitable donations receipts one for \$10,080 gift in-kind and one for \$302 cash gift. The cash gift receipt indicates the participant's eligible amount of gift for tax purposes is \$60. The participant is left with an eight year loan payable in cash or by returning the Credit Certificate to MissionLife (treatment units).

It is our opinion, viewed as a whole, the primary purpose of this arrangement is to allow participants participating in this arrangement to profit from making a "donation" through the claiming of a donation credit. Based on the above, participants are actually out of pocket no more than 21% of the total receipted value. The participant's eligible amount of gift according to the receipts is \$10,140. Using the Ontario tax credit rate of 46.41%, the participant's tax credit is \$4,707 and net return on cash outlay is \$2,102 or 124%. The return on cash for residents of other provinces varies based on the tax credit rates applicable to each province. Based on the promotional material, the cash return can be increased in increments with the same cash on cash return to have virtually 100% of a participant's income taxes refunded.

The Organization began participating in this program in 2009 by accepting participant "gifts" equivalent to 3% of the purported value of the treatment units pledged. Of this 3% "gift" received, the Organization paid MissionLife Marketing Inc. (MMI) an average of 77% in fundraising fees. We found that the Organization was provided with lists of tax shelter participants and a cheque equivalent to the participants combined 3% cash contributions as well invoices from the tax shelter equivalent to 77% of the cash contributions. Our audit has revealed, of the balance the Organization was able to retain

for its own charitable programs, it distributed over 22% of its net fundraising proceeds in 2010 to the directors of the Organization and/or related parties. Although the Organization did not provide agreements between itself and MissionLife or its directors, our audit revealed the Organization consistently pays the amounts due upon receipt of the 3% "gifts" received from participating donors.

In 2009 the Organization began receipting for the participants' "gifts" of treatment units. The Organization receipted over \$8.4 million for treatment units in that year. The Organization also received cash "gifts" from the participants in the tax shelter. Of the \$254,273 received as cash "gifts", the Organization reports spending \$204,778 in fundraising fees to MMI and \$13,349 in management and administration fees to companies held by the Organization's directors and/or related parties for services. The Organization's records indicate that outside the tax shelter, it spent \$7,145 on its own charitable purposes. However, the audit revealed of that amount, an important part was not related to charitable purposes, but to personal expenses.

In conclusion, during the two years under audit, the Organization spent approximately \$24,799 on charitable activities compared to over \$288,019 on fundraising and administrative payments. Also, per the Organization's representations, they closed their office by January 2010 and did not conduct charitable activities since this event. Since the office is closed, no training activities have taken place and all the computers/equipment (approx. 100 units) are in storage at the director's personal residence. With no place (facility) for training and computers piling up in storage, it is evident that no activities are taken place other than the Organization's involvement in the tax shelter program in 2009.

b) Failure to Devote all of its Resources to its own Charitable Activities

As stated above, in order for an organization to be recognized as a charity, it must be constituted and operated exclusively for charitable purposes, and it must devote all of its resources to charitable activities carried on by the organization itself.

Focusing on "devotion of resources", a registered charity may only use its resources (funds, personnel and/or property) in two ways, both inside and outside Canada – for charitable activities undertaken by the charity itself, under its continued supervision, direction and control; and for gifting to "qualified donees" as defined in the Act.

CRA acknowledges that it is not always practical for a registered charity to become directly involved in charitable activities because of limited financial resources, the size of the project or because the charity lacks the necessary expertise to operate effectively in a particular area of interest. Accordingly, CRA will consider that a registered charity is involved in its own charitable activities if the charity demonstrates that it maintains the same degree of control and responsibility over the use of its resources by another entity as it would if its activities were conducted by the charity itself.

Where a registered charity chooses to operate through an appointed agent or representative (intermediary), it must be able to substantiate, generally through documentary evidence, that it has arranged for the conduct of certain specific activities on its behalf, and has not simply made a transfer of resources to a non-qualified donee. A charitable organization is not at liberty to transfer funds or resources to other individuals or entities unless the recipient is an employee of the charity, an agent of the charity under contract, or a qualified donee. To this end, the charity must be able to demonstrate to the CRA's satisfaction that it maintains control over, and is fully accountable for, the use of resources provided to the intermediary, at all times.

The existence of an arrangement that demonstrates sufficient and continuing direction and control over, and full accountability for, all resources and related activities, is critical. The arrangement must establish that the activities in question are, in fact, those of the Organization.

For the period under audit, the Organization has purportedly distributed treatment units to Nigeria as a result of its participation in and promotion of the MissionLife Financial Inc. registered tax shelter. As per the Organization's representations, the pharmaceuticals were distributed to communities in Nigeria. No agents or volunteers were engaged and a list of health centres was provided. The Organization states it has transferred 489,867 treatment units in Nigeria. The audit revealed there were no agency agreements between the Organization and health centres in respect of these transfers.

The Organization has failed to demonstrate to the CRA's satisfaction that it maintained control over, and was fully accountable for, the use of resources purportedly provided to the health centres. Therefore, it is CRA's position that the Organization has relinquished control and gifted the treatment units to non-qualified donees. It is further our position the Organization has failed to satisfy subsection 149.1(6) of the Act with regard to devoting resources to its own charitable activities.

According to its representations, the Organization became aware of the above organizations through Beta Management, the company that provides logistics for the MissionLife tax shelter program. The Organization did not present evidence that it conducted due diligence with regard to the organizations or their expertise and ability to deliver the services required. As part of the tax shelter program, Beta Management located the recipients, made recommendations, drafted the agency agreements and delivered the pharmaceuticals. It is the position of the CRA that the Organization was simply working as a conduit for the tax shelter program as the Organization has not demonstrated its actions in selecting the intermediaries as qualified agents capable of receiving and distributing the pharmaceuticals or in confirming that the treatment units were in fact used for charitable purposes. Rather, it is our opinion that the Organization chose to abide by the pre-determined transactions established by the tax shelter in order to participate in this arrangement and did not seek to inquire or operate outside of its agreement with the parties involved.

We find the Organization's participation in this tax shelter arrangement to be problematic, as, in our view, the Organization appears to be facilitating an arrangement designed to avoid the application of the provisions of the *Income Tax Act* and may be designed to create improper tax results. In our view, the Organization is operating primarily for the purpose of promoting a tax shelter program as the Organization has not shown or otherwise indicated it is conducting any other charitable activities. The Organization is an integral part of the arrangement being paid to circulate funds, as directed, in an artificial manner in an attempt to facilitate and lend legitimacy to the overall arrangement.

Given the manner in which the Organization allegedly structured and conducted its activities to accommodate the tax shelter, and the proportional levels of involvement in the arrangement, it is our view that a collateral purpose, if not primary purpose of the organization is, in fact, to support and promote a tax shelter arrangement. In this regard, it appears that the Organization enthusiastically lent its physical, financial and human resources (not to mention tax receipting privileges and registered charity status) to support the tax shelter arrangement, with little regard for the mandate and best interests of the Organization itself. Operating for the purpose of promoting tax shelters is not a charitable purpose at law. It is our view, therefore, that by pursuing this non-charitable purpose, the Organization has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) of the Act as a charitable organization "all the resources of which are devoted to charitable activities".

It is further our view that by failing to demonstrate the Organization's on-going direction and control of its distribution of treatment units and permitting other organizations to use the Organization's registered status to flow donations through it, the Organization has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) of the Act as a charitable organization "...all the resources of which are devoted to charitable activities". For this reason, it appears to us that there may be grounds for revocation of the charitable status of the Organization.

2. Failure to Accept Valid Gifts in Accordance with the Act

It is our position that the cash donations received by the Organization from participants in the registered tax shelter gifting arrangement are not valid gifts under section 118.1 of the Act. We offer the following explanations to support our position.

The term "gift" is not defined in the Act, so the general principles of law govern the meaning of a "gift" from the case *The Queen v. Friedberg* as:

[...] gift is a voluntary transfer of property owned by a donor to a donee, in return for which no benefit or consideration flows to the donor.

a) **No *Animus Donandi* -**

An additional essential element of a gift is *animus donandi* - that the donor must be motivated by an intention to give. As stated in *Grant McPherson v. HMQ (2007 DTC 326)*:

"[20] There is an element of impoverishment which must be present for a transaction to be characterized as a gift. Whether this is expressed as an *animus donandi*, a charitable intent or an absence of consideration the core element remains the same."

Justice J. Bowie further clarifies in 2004 UDTc 148, *Dwight Webb (Appellant) v. Her Majesty the Queen (Respondent)*:

"These cases make it clear that in order for an amount to be a gift to charity, the amount must be paid without benefit or consideration flowing back to the donor, either directly or indirectly, or anticipation of that. The intent of the donor must, in other words, be entirely donative." [Emphasis added]

One other element of the definition of a gift includes *animus donandi* or a donative intent. As stated in the cases quoted above, there must be an element of impoverishment and the donor must be willing to grow poorer.

In this case there was no element of impoverishment as the participants did not grow any poorer from making the alleged donations to the Organization. The participants were rather enriched from being able to claim tax credits from inflated donation receipts.

Tax minimization was a major selling feature of the Program. The Program was advertised to offer innovative financing that would enable the participants to maximize the amount of their donation and make a profitable gift.

The financing arrangement that was offered by the Program in which the participants agreed to enter provided the participants with the option to effectively pay a "nil" amount for their purchase of the TUs through its terms of repayment.

We recognize that the charitable tax credits available with respect to donations are not usually an advantage or benefit that would affect whether a gift is made. However, it is our position that mass-marketed donation arrangements promising participants that they will be able to claim tax credits for charitable donations far in excess of the expenditures actually made (i.e. the actual cash outlay and subsequent reduction in the donor's net worth), lack the requisite *animus donandi* for the transactions to be considered gifts. It is further our position, that the series of events allegedly entered into by the participants, were done in a manner to create the illusion that no benefit or advantage was received by the participant. The participants lacked

donative intent when participating in the Program. The participants' sole intention was to achieve tax savings without fully understanding how the Program worked. The participants received a donation receipt from the Organization, a charity they knew nothing about.

In support of this position, we note the promotional materials primarily focus on the participant's substantial "cash on cash return" as a result of participation. Minimal investment is required of the participant in order to acquire treatment units from the authorized vendor, Logipharm and the participant is lead to believe the loan held with MissionLife will be repaid without further cash outlay. The participants rely upon MissionLife and Logipharm to acquire the treatment units and transfer title of the treatment units to the Organization without using or seeing the property. The participants' involvement is limited to completing and signing the documents and issuing the required cheques described above. All of the transactions were conducted on behalf of the participants by MissionLife and Logipharm pursuant to limited power of attorney granted to each. Minimal information is provided to the prospective participants as to how the medicine units will benefit the Organization, what the Organization will do with the treatment units or the activities of the Organization aside from its participation in the tax shelter arrangement. Transactions are pre-arranged and handled entirely by promoters or other pre-arranged third parties. A participant in the arrangement is merely expected to put forward a minimal investment to receive generous tax receipts in return.

As such, it is our position that there is no intention to make a "gift" within the meaning assigned at 118.1 of the Act. Participants in this donation arrangement are primarily motivated by the artificial manipulation of the tax incentives available rather than a desire to enrich the participating charity. In our view, these transactions, given the combination of the tax credits and other benefits received, lack the requisite *animus donandi* to be considered gifts.

b) Transfers not gifts – Benefit Received

Additionally, we are of the opinion that the transactions themselves lack the necessary elements to be considered gifts at law. The participants receive some form of advantage or benefit that is linked to their participation in the tax shelter program. It is clear, based upon our audit and the promotional materials of MissionLife that there was a clear expectation of financial return with respect to the donation made to the Organization. Participants are able to acquire treatment units on 100% credit and have the option to repay their promissory note in cash or by delivering a credit certificate to MissionLife via acquiring identical pharmaceutical. The pharmaceuticals may be acquired on the international market, at amounts significantly less than the alleged fair market value of the original pharmaceuticals bought on credit. The fact that the promissory note was payable by credit certificate through the purchase of identical pharmaceutical at a significantly lower price represents a material and significant benefit to the participant. It is our view that the tax shelter promoters knew that the pharmaceuticals could be purchased from a manufacturer for a unit price much lower than the \$120/unit value used by the Organization when the pharmaceuticals were donated it.

The fact that a benefit was received as a result of the financing arrangements with the tax shelter and not directly from the Organization does not render the transfer a valid gift since the financing was not provided separately from the donation and the two are intricately linked. It is our opinion that since the financing forms an integral part of the donation any benefit that flows to the participant through the series of predetermined transactions would invalidate the gift. In *Marechaux v. The Queen* 2010 FCA 287, Evans, J.A. stated:

"We are not persuaded that the Judge got the law wrong. Counsel cited no authority for the proposition that only a benefit provided to an alleged donor by the donee can prevent a payment to a charity from being a gift for the purpose of section 118.1. Nor do we see any principled reason in the present context for disregarding a benefit simply because it was provided by a third party, particularly where, as the Judge found in this case, the "donation" was conditional on the provision of the benefit." [Emphasis added]

In our view, it is clear that the pharmaceuticals transferred to the Organization were not gifts in the sense understood at law and that the Organization was not entitled to issue official donation receipts for their overstated value. In our findings, the Organization issued official donation receipts exceeding \$8.4 million for transactions that did not qualify as gifts and for amounts clearly in excess of the pharmaceuticals' factual fair market value. It is clear from our audit and the promotional materials of the tax shelter that the Organization knew, or ought to have known that there was discrepancy in value of the pharmaceuticals donated to it. The Organization knew, or ought to have known, that it was not entitled to issue donation receipt for these transactions.

c) Eligible amount of gift or monetary contribution

Even without reference to the common law definition of a gift, it is clear that section 248(32) of the Act applies to these transactions as well. In our view, the financing of the MissionLife loan, results in an advantage received in consideration¹ for the gift made to the Organization or is otherwise related to this gift². As per above, the financing arrangement enabled the participant to finance 100% of the purchase price of the treatment units. The terms of the promissory note provide the option to repay the promissory note by delivering a Credit Certificate to MissionLife, which the participant could obtain from Logipharm by delivering to the latter identical pharmaceuticals. As a result, a participant who exercises this option would not be required to make any additional cash outlay to acquire the identical pharmaceuticals. Therefore, a participant's cash outlay in respect of the cost of the pharmaceutical is zero since the treatment units were purchased on 100% credit and the terms of repayment of the financing arrangement are such that participants would not be required to incur any future cash outlay to settle their obligation. The Organization was therefore required by

¹ See sub-paragraph 248(32)(a)(i)

² See sub-paragraph 248(32)(a)(iii)

the Act to reduce the value reflected on the receipts issued by the value of the advantage.

The Organization obtained an opinion from [REDACTED] (the Valuator) on whether the participants would receive an advantage under the proposed subsections 248(31) and 248(32) of the Act. The Valuator provided the opinion that a cash gift of 3% of the pledged pharmaceuticals made to the Organization as a precondition to participate in the program would give rise to a small advantage to the donor. Based on this opinion, the Organization issued donation receipts for 20% of the cash gifts. The remaining 80% of the cash gift was reported as an advantage on the cash donation receipts.

It is our opinion that the advantage reported on the receipt is grossly understated given that the participants' cash outlay to acquire the treatment units was zero and that they were not required under the financing arrangement to incur any additional cash outlays from their own resources to settle their debt obligation as stated above.

Paragraph 248(35)(a) deems the fair market value of property acquired by a taxpayer under a gifting arrangement that is a tax shelter as defined by subsection 237.1(1) to be the lesser of the fair market value (FMV) otherwise determined or the cost of the property. It is our opinion that the acquisition cost of TUs varying from \$1.50 to \$2.88 per treatment unit from Medreich and Hetero is the most representative FMV of the TUs used in the Program as this is the last known arm's length transaction before the date of donation. As such, the FMV of the treatment units is deemed, by virtue of proposed subsection 248(35), to be no more than zero. Consequently the amount that the Organization was required under the *Income Tax Act* to record on its official donation receipts as the deemed FMV of the gift is significantly lower than what was actually recorded by the Organization.

Additionally, it appears that the Organization participated in an arrangement designed to avoid the application of subsection 248(35). We would note that subsection 248(38) states that where it can be reasonably concluded that the particular gift relates to a transaction or series of transactions one of the purposes of which is to avoid the application of subsection 248(35), the eligible amount of the property so gifted is nil. As such, it is our view that even if the property received by the Organization is a "gift", which, as described above, given the motivation of the donors, is unlikely, the property so received by the Organization was not eligible for tax receipts reflecting a value greater than zero.

d) Fair Market Value

"Fair market value" is not defined by the Act; however, a standard definition generally accepted is, the highest price, expressed in dollars, obtainable in an open and unrestricted market between informed, prudent parties dealing at arm's length and under no compulsion to buy or sell³.

³ *Henderson Estate & Bank of New York v M.N.R.* 73 D.T.C. 5471 et 5476.

According to Rothstein, J.A. in *AG (Canada) v Tolley et al* 2005 FCA 386, in applying the Henderson definition of FMV, the first step is to accurately identify the asset whose FMV is to be ascertained. Rothstein, J.A. discusses the relevance of donating a group of items versus an individual item and states that because the items were acquired and donated in groups, the relevant asset was the group of items and not individual items. This would apply to the present case.

In applying that step to the facts of this case, we have to first determine if the accurate asset is one TU or the bulk TUs. All the participants were required to purchase and donate the TUs in bulk ranging from 76 to 663 TUs for one donation unit, depending on the month of purchase. Furthermore, the bulk TUs supplied to the participants was acquired in bulk in a series of purchase and supply transactions between several entities. At each level, the TUs were acquired in bulk based on the pledges made by the participants. As a result, the relevant asset is the "bulk TUs" and not one TU.

According to Rothstein, J.A., once the asset has been identified, and then the market in which that asset is normally sold in the ordinary course of business is determined. As indicated above, the bulk TUs supplied to the participants was acquired in bulk in a series of interconnected purchase and supply transactions based on pledges made by the participants for donation to the Organization. Since each supplier at each level in the chain acquired the TUs in bulk solely for use in the Program, the Program created its own market, i.e., the market in bulk transactions. Therefore the relevant market is the bulk market created by the Program.

The decision in *Frank Klotz v. The Queen*, 2005 DTC 5279 (FCA), a leading case in determining the appropriate market, supports our position that the donation program created its own market. The Federal Court of Appeal in that case upheld that the:

...magnitude of the mass market art donation program created its own market and that the relevant market was not, as the taxpayer alleged, retail art galleries where pieces of art are sold individually.

Taking into account the relevant asset and market, the decisions of the courts in some of the leading cases regarding the determination of the FMV of property purchased and donated through a mass marketed donation program have been to assign the price paid by the taxpayers to purchase the donated assets as the best evidence to determine the FMV of the gift.⁴

However, in this case, the price of \$120 per TU paid by the participants to Logipharm is not representative of the FMV because:

⁴ See the decisions of some of the leading cases regarding determination of fair market value of goods purchased via a donation program in *Frank Klotz v. The Queen*, 2005 DTC 5279 (FCA); *Frank Klotz v. The Queen* 2004 DTC 2236; and *AG (Canada) v Tolley et al* 2005 FCA 386.

- (a) The participants' effective purchase price of the TUs is "nil" as a result of the terms of repayment of the promissory note.
- (b) The purchase price of \$120 per TU is an inflated price derived from a series of predetermined and interconnected transactions between non-arm's length parties.

Also, the FMV recorded on the official donation receipts is based upon the Canadian retail market and based upon the individual pills included in one TU. The valuation method used by the appraiser commissioned by the Organization claimed that the Ontario Drug Benefit Plan Formulary (ODBF) was an appropriate standard for establishing the price of the medicine units. The ODBF generally establishes prices for individual pills bought by individual Ontario consumers for individual consumption. We are of the opinion the retail market is not the relevant market as the medicine units are manufactured, sold and distributed outside of Canada, acquired in bulk and were never intended to be used for personal consumption in Canada. Based on the ODBF prices the valuator concluded that the fair market value of one TU was \$120.

Notwithstanding our position that the transactions entered into by the participants under the Program does not qualify as gifts at-law, and therefore not valid charitable gifts under section 118.1 of the Act, and the financing arrangement was a sham, it is our position that the fair market value of the pharmaceuticals was overstated.

e) Effective purchase price of the TUs is "nil"

The stated purchase price of \$120 per TU that the participants purportedly paid to Logipharm is not a reflection of the FMV of the TUs because the effective purchase price is "nil" as a result of the financing arrangement.

The financing arrangement, in which the participants agreed to enter, enabled them to finance 100% of the purchase price of the TUs. The terms of the promissory note provided the participants with the option to repay the promissory note by delivering a Credit Certificate to MissionLife which they could obtain from Logipharm by delivering to Logipharm identical pharmaceuticals. In addition, it was promoted to the participants that the identical pharmaceuticals would be acquired from a portion of the participants' four year prepaid interest by the agents of the Program for significantly lower prices. As a result, if the participants chose to exercise this option, they would not be required to make any additional cash outlay from their own resources, i.e., they would be required to make a "nil" outlay to acquire the identical pharmaceuticals. The Program as marketed, anticipated that the participants would exercise the option of settling the promissory note with identical pharmaceuticals, as any prudent and informed person would do so.

It is our position that the correct price paid by the participants for the donated TUs should not exceed the amount of the cash outlay the participants actually incurred or were required to incur from their own personal resources. Since the participants

purchased the TUs on 100% credit and the terms of repayment of the financing arrangement are such that the participants would not be required to incur any additional cash outlay from their own resources to settle the obligation, it is our position that the price the participants paid to acquire the TUs is "nil".

f) Due Diligence

We note with concern, with respect to this particular issue, that it appears that the Organization's directors have demonstrated a lack of due diligence with respect to receipting practices. In fact, and as above, we are of the opinion that the duty of the directors to operate in the best interests of the Organization has been sidetracked by its collusion with the tax shelter arrangement.

As above, we note a failure by the Organization to demonstrate its due diligence in verifying the authenticity of the tax shelter. By failing to do so the Organization has allowed official donations receipts to be prepared for transactions that are not valid gifts which have resulted in the Organization issuing receipts for property it did not receive and has operated as a conduit for the tax shelter program.

Under paragraph 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its *Regulations*. It is our position that the Organization has issued receipts otherwise than in accordance with the Act and the *Regulations*. For each reason identified above, it appears to us that there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

3. Failure to Issue Receipts in Accordance with the Act

The law provides various requirements with respect to the issuing of official donation receipts by registered charities. These requirements are contained in *Regulations* 3500 and 3501 of the Act and are described in some detail in Interpretation Bulletin IT-110R3 *Gifts and Official Donation Receipts*.

The audit revealed that the donation receipts issued by the Organization do not comply with the requirements of *Regulation* 3501 of the Act and IT-110R3 as follows:

- Receipts issued to acknowledge goods received as a result of the Organization's participation in the tax shelter were not valid gifts under section 118.1 of the Act. Under the *Income Tax Act*, a registered charity can issue official donation receipts for income tax purposes for donations that legally qualify as gifts. Our findings are explained above.
- Receipts issued to acknowledge goods received as a result of the Organization's participation in the registered tax shelter were not independently appraised by the Organization. The Organization used the valuation report commissioned by the

tax shelter promoter as support for the values recorded on the official donation receipts issued. The Organization did not seek to obtain an independent valuation report. As above, we are of the view that the amounts recorded on the tax receipts are not reflective of the factual fair market value of the property donated.

- Receipts issued to acknowledge gifts in kind (computers equipment) were not appraised. The Organization consulted www.██████████.com to determine their value.
- Receipts issued to acknowledge cash gifts and gifts in kind outside of its tax shelter participation are missing the name of Canada Revenue Agency and a statement that it is an official receipt for income tax purposes.

Additionally, the amendments to the Act, which were introduced as part of Bill C-33, also apply to official donation receipts. As a result of the amendments, a registered charity that issues an official donation receipt that includes incorrect information is liable pursuant to subsection 188.1(7) of the Act to a penalty equal to 5% of the eligible amount stated on the receipt. This penalty increases to 10% for a repeat infraction within 5 years.

Pursuant to Subsection 188.1(9) of the Act, a registered charity that issues an official donation receipt that includes false information is liable to a penalty equal to 125% of the eligible amount stated on the receipt, where the total does not exceed \$25,000. Where the total exceeds \$25,000, the charity is liable to a penalty equal to 125% and the suspension of tax-receipting privileges as per paragraph 188.2(1)(c). We do not believe that either of these sanctions are an appropriate alternative, given the serious nature of the matter of non-compliance.

Under paragraph 168(1)(d) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its Regulations. It is our position the Organization issued receipts for transactions that do not qualify as gifts at law. For this reason alone, there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

4. Failure to Maintain or Provide Adequate Books and Records

Subsection 230(2) of the Act requires that every registered charity shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing:

- Information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under the Act;
- A duplicate of each receipt containing prescribed information for a donation received by it; and

- Other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under the Act.

In addition, subsection 230(4) also states "every person required by this section to keep books of account shall retain:

- a) The records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such period as is prescribed; and
- b) All other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the date of the last taxation year to which the records and books relate".

Our audit revealed the books and records kept by the Organization were inadequate for the purposes of the Act. In the course of the audit, the following deficiencies were noted concerning the Organization's records:

- The Organization did not keep/provide minutes of meetings relative to important board decisions. In particular, discussions related to the involvement of the Organization in the MissionLife Financial Inc. tax shelter, their comprehension of this program and the distribution of the pharmaceuticals.
- The Organization did not keep/provide documentation to substantiate the basis for the promotion and administration fees paid to MissionLife Marketing Inc. The Organization did not provide any agreements between itself and the registered tax shelter to substantiate these fees. We find this behavior inconsistent with normal business practice.
- The Organization did not keep/provide proper books and records, specifically, no general ledger, no trial balance, no disbursement/receipt journal. Also, some banking records were not kept or provided.
- As per above, the pharmaceuticals were allegedly distributed to communities in Nigeria yet no agents or volunteers were engaged; a list of health centres was provided. The audit revealed there were no agency agreements between the Organization and health centres in respect of these transfers nor could the Organization provide any further details on how the health centres were selected or effective safe transportation and delivery of the treatment units.
- The Organization did not provide the documentation related to their liabilities.

Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it fails to comply with or contravenes section 230 of the Act dealing with books and records. It is our position the Organization has failed to comply with and has contravened section

230 of the Act. For this reason alone there may be grounds to revoke the registered status of the Organization.

5. Failure to File an Accurate Registered Charity Information Return

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file a T3010 with the applicable schedules.

It is the responsibility of the Organization to ensure that the information that is provided in its Return, schedules and statements, is factual and complete in every respect. An Organization is not meeting its requirement to file an Information Return if it fails to exercise due care with respect to ensuring the accuracy thereof.

The Organization improperly completed the T3010 for the fiscal period ending February 28, 2010 in that items reported were omitted or inaccurate. Specifically:

- The Organization incorrectly reported \$257,773 as the eligible amount of all gifts for which they issued tax receipts at line 4500. This amount represents the 3% cash gift received from the tax shelter participants as a precondition to participate in the program plus cash gifts received from other donors. The Organization did not deduct from this amount the \$203,418 considered to be an advantage received by the participants in the tax shelter program; this amount should have been reported on line 4530 of the T3010.
- Additionally, the Organization did not report the \$8,483,033 issued for the gifts in kind received. The total of the line 4500 should have been \$8,544,888.
- The Organization incorrectly reported on Schedule 5 on the T3010, the total amount of tax receipts for the gifts in kind (\$8,503,132). The total should have been \$8,483,033.
- The Organization failed to complete section C4 of the T3010 regarding activities and projects carried on outside Canada. If the Organization had actually distributed the pharmaceuticals outside Canada as it claims, as per its participation in the tax shelter program, it should have completed this section of the T3010.
- The Organization did not complete the Schedule 2 of T3010 that it transferred \$8,475,760 of pharmaceuticals to health centres in Nigeria.
- The total expenditures reported at the line 4950 of the T3010 did not contain the promotion and marketing fees paid by the Organization for its participation in the tax shelter program.
- The Organization failed to complete lines 5000 to 5100 on the T3010 regarding the breakdown of the expenditures.

The Organization improperly completed the T3010 for the fiscal period ending February 28, 2009 in that items reported were omitted or inaccurate. Specifically:

- The Organization incorrectly reported the amount on the line 5000 and 5010 on the T3010 regarding the breakdown of the expenditures.

Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it fails to file a charity information return as when required under the Act. It is our position the Organization has failed to comply with the Act by failing to file an accurate T3010. For this reason, there may be grounds to revoke the registered status of the Organization.

The Organization's Options:

a) No Response

You may choose not to respond. In that case, the Director General of the Charities Directorate may give notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

b) Response

Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter. After considering the representations submitted by the Organization, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include:

- no compliance action necessary;
- the issuance of an educational letter;
- resolving these issues through the implementation of a Compliance Agreement;
- the application of penalties and/or suspensions provided for in sections 188.1 and/or 188.2 of the Act; or
- giving notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

If you appoint a third party to represent you in this matter, please send us a written authorization naming the individual and explicitly authorizing that individual to discuss your file with us.

If you have any questions or require further information or clarification, please do not hesitate to contact me at the numbers indicated below. My team leader, Holly Brant, may also be reached at 613-946-2400.

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Yours sincerely,

[REDACTED]
Charities Directorate
305, René-Lévesque W
Montreal QC H2Z 1A6

Telephone: [REDACTED]
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cc: Kaleb Imoisilo
[REDACTED]