



Canada Revenue Agency Agence du revenu du Canada

REGISTERED MAIL

ASL Charity Foundation
333 Wilson Avenue, suite 200
Toronto ON M3H 1T2

BN: 868821216

Attention: Mr. Samuel Grosz

File #:3018023

August 23, 2010

**Subject: Revocation of Registration
ASL Charity Foundation**

Dear Sir:

The purpose of this letter is to inform you that a notice revoking the registration of ASL Charity Foundation (the Organization) was published in the *Canada Gazette* on August 21, 2010. Effective on that date, the Organization ceased to be a registered charity.

Consequences of Revocation:

- a). The Organization is no longer exempt from Part I Tax as a registered charity and is no longer permitted to issue official donation receipts. This means that gifts made to the Organization are no longer 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 *Income Tax 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 T-2046, *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. A copy of the Return is enclosed. The related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, is available on our website at www.cra-arc.gc.ca/E/pub/tq/rc4424.

Section 188(2) of the Act stipulates that a person (other than a qualified donee) who receives an amount from the Organization is jointly and severally liable with the Organization for the tax payable under section 188 of the Act by the Organization.

- c) The Organization no longer qualifies as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (ETA). As a result, the Organization may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

In accordance with *Income Tax Regulation 5800*, the Organization is required to retain its books and records, including duplicate official donation receipts, for a minimum of two years after the Organization's effective date of revocation.

Finally, we wish to advise that subsection 150(1) of the 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 of National Revenue (the Minister) in the prescribed form, containing prescribed information, for each taxation year. The *Return of Income* must be filed without notice or demand.

If you have any questions or require further information or clarification, please do not hesitate to contact the undersigned at the numbers indicated below.

Yours sincerely,



Danie Huppe-Cranford
Director
Compliance Division
Charities Directorate
Telephone: 613-957-8682
Toll free: 1-800-267-2384

Enclosures

- Copy of the Return (form T-2046)
- Canada Gazette publication

Cc: Bench & Donath Chartered Accountants
Attention: Mr. Donath
970 Lawrence Avenue West, Suite 209
Toronto ON M6A 3R6



Canada Revenue Agency Agence du revenu du Canada

MAY 05 2010

REGISTERED MAIL

ASL Charity Foundation
333 Wilson Avenue, suite 200
Toronto ON M3H 1T2

BN: 868821216RR0001

Attention: Mr. Samuel Grosz

File #: 3018023

**Subject: Notice of Intention to Revoke
ASL Charity Foundation**

Dear Mr. Grosz:

I am writing further to our letter dated March 27, 2009 (copy enclosed), in which you were invited to submit representations as to why the Minister of National Revenue (the Minister) should not revoke the registration of ASL Charity Foundation (the Organization) in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

We have now reviewed and considered your written responses dated May 19, 2009 and September 14, 2009. In your latter response, you had stated a written submission of "what has been done to date" would be faxed to our offices no later than September 25, 2009. We have not received the said update. A follow-up call on November 26, 2009 resulted in no response by the Organization. Notwithstanding your replies, our concerns with respect to the Organization's failure to devote all of its resources to its own charitable purposes, lack of direction and control over foreign activities, failure to maintain adequate records, issuance of donation receipts and unsubstantiated loans have not been alleviated. The basis for our concerns is explained below.

Charitable Objects & Activities, Direction & Control Over Foreign Activities and Maintenance of Books & Records

Our audit revealed that the Organization failed to maintain adequate books and records to substantiate that funds were distributed for charitable purposes. The Organization did not provide documentation to support that the applicants receiving funds were poor or needy and above-average scholars, as the Organization does not maintain a means test to determine the acceptance or rejection of applicants. The Organization also failed to demonstrate its direction and control over funds distributed in Israel. Rather, Mr. Grosz determines who will receive funding based on his own determination and is satisfied that funds are being used for charitable purposes. The Organization submits that "the directors of the charity have realized that more elaborate

and precise documentation is required" and that it has retained professional services to ensure the Organization will comply with its charitable objectives.

Aside from showing, through documented evidence and proper books and records, that it undertook charitable activities in furtherance of its charitable purposes, an organization must demonstrate that it operated in compliance with the Act at all times. This requires, among other things, for an organization to show that the activities it undertakes benefit only the proper objects of the charity considering the relief offered. While we appreciate the Organization's objective of minimizing its administering costs, the Organization has an obligation under the Act to maintain sufficient records to demonstrate that it undertook the charitable objects for which it was registered and to demonstrate that it exhibited direction and control over the activities performed by agents operating on the Organization's behalf. The Organization has not submitted any representations, nor has it provided any records, to demonstrate that the recipients of its funding were persons requiring charitable relief as recognized by the Courts or that it exhibited continuous direction and control over the funds distributed internationally. In your letter of May 19, 2009, you state that the "directors are attending in Israel to negotiate and attempt to formalize agency agreements with reference to the scholarship funds that are being disbursed in Israel." To date, no evidence of this agreement has been provided to the Canada Revenue Agency (CRA). The Organization also states in its May 19, 2009 correspondence that "[a]lthough the documentation made available may be lacking, documentation does exist and it is obvious that the charity is undertaking charitable activities although it may not be sufficiently documented." To date, the Organization has not presented any further documentation to demonstrate that its distribution of funds were for charitable purposes and not for acts of private benevolence.

It is our position that the Organization has not demonstrated that it has devoted its resources to charitable activities in furtherance of charitable purposes and as such, has contravened subsection 149.1(1) of the Act. It is also our position that the Organization has failed to maintain adequate books and records to support its charitable activities and therefore has contravened subsections 230(2) and (4) of the Act. Consequently, it is our position that ASL Charity Foundation's registration is revocable under paragraphs 168(1)(b) and (e) of the Act.

Other Issues:

Per our previous letter, we noted that the Organization's official donation receipts were not completed in compliance with Regulation 3501; that the Organization reported donations made to qualified donees, directly by a donor, as its own tax-receipted revenue and gifts to a qualified donee; and, that the Organization holds a loan with no indication of its purposes and with no terms of repayment. The Organization has not submitted any representations to these findings nor has it submitted any undertakings as to the corrections implemented by the Organization to resolve these issues of non-compliance.

In 2005, the Organization reported it received over \$1.2 million in gifts from a donor wherein the donor made gifts, via an agreement with the Organization's president and a corporation related to the president, directly to qualified donees on the Organization's behalf. With this amount, the Organization has over-stated its tax-receipted revenue and gifts to qualified donees, by 42% and 60% respectively. A registered charity cannot report income that it did not receive nor can it report gifts it did not make. The Organization also records a loan of \$404,342 as of June 30, 2007, owing to Mr. Grosz. Due to the Organization's insufficient records, we cannot ascertain the purpose of the loan – whether it is for use in paying operating costs, for investment purposes or for use in charitable activities.

Under paragraphs 168(1)(d) and (e) and 149.1(4)(b), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke a charity's registration if it issues a receipt otherwise than in accordance with the Act and its Regulations, fails to maintain adequate records and maintains a debt for purposes other than for operating expenses, investing or for charitable activities. It is our position that the Organization has issued receipts otherwise than in accordance with the Act and the Regulations, has failed to maintain adequate records and has incurred a debt for purposes otherwise than in accordance with the Act. For each reason identified above, there are grounds for revocation of ASL Charity Foundation's charitable status.

Conclusion:

The Canada Revenue Agency's (CRA) audit has revealed that ASL Charity Foundation (the Organization) has failed to operate for exclusively charitable purposes. The Organization has failed to demonstrate that recipients of funding were objects of poverty or recipients of scholarships; failed to demonstrate adequate direction and control over its foreign activities; failed to comply with the *Income Tax Act* (the Act) on the issuance of official donation receipts; and failed to maintain and/or provide adequate books and records. For all of these reasons, and for each of these reasons alone, it is the position of the CRA that the Organization's registration should be revoked.

Consequently, for each of the reasons mentioned in our letter dated March 27, 2009, I wish to advise you that, pursuant to the authority granted to the Minister in sections 168(1) and 149.1(4) of the Act, which has been delegated to me, 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 149.1(4)(d) 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
868821216RR0001	ASL Charity Foundation Toronto 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

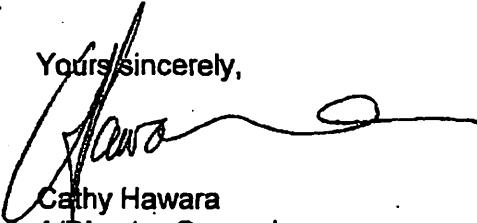
Consequences of Revocation

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 T-2046, *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. A copy of the relevant provisions of the Act concerning revocation of registration, the tax applicable to revoked charities, and appeals against revocation, can be found in Appendix "A", attached. Form T-2046, and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our website 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* (ETA). As a result, the Organization may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-800-959-8287.

Finally, I wish to advise that subsection 150(1) of the 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
A/Director General
Charities Directorate

Attachments:

- Canada Revenue Agency letter dated March 27, 2009
- Your letters dated May 19, 2009 and September 14, 2009; and
- Appendix "A", Relevant provisions of the Act

c.c.: Bench & Donath Chartered Accountants
Attention: Mr. Donath
970 Lawrence Avenue West, Suite 209
Toronto ON M6A 3B6



CANADA REVENUE AGENCY AGENCIE DU REVENU DU CANADA

REGISTERED MAIL

ASL Charity Foundation
333 Wilson Avenue, Suite 200
Toronto ON M3H 1T2

BN: 868821216RR0001
File #:3018023

Attention: Mr. Samuel Grosz

MAR 27 2009

Subject: Audit of ASL Charity Foundation

Dear Mr. Grosz:

This letter is further to the audit of the books and records of the ASL Charity Foundation (the Charity) conducted by the Canada Revenue Agency (the CRA). The audit related to the operations of the Charity for the period from July 1, 2005 to June 30, 2007.

At our meeting of December 31, 2008, you were advised that the CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* (the Act) and/or its *Regulations* in the following areas:

AREAS OF NON-COMPLIANCE:	
Issue	Reference
1. Charitable Activities & Objects	168(1)(b) 149.1(4)
2. Control of Activities Outside Canada and Gifts to Non-Qualified Donee	149.1(4)
3. Books and Records	230(2) 149.1(2)
4. Official Donation Receipts	Regulation 3501, 168(1)(d)
5. Charity Information Return	168(1)(c), 149.1(2)
6. Debts & Private Foundations	149.1(4)(d)

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 Charity with the opportunity make additional representations or present additional information. In order for a registered charity to retain its registration, legislative and common law compliance is mandatory, absent which the Minister of National Revenue (the Minister) may revoke the Charity's registration 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.

1. Charitable Activities

A registered Canadian charitable organization must devote all of its resources to its own charitable activities so as to further charitable purposes in a manner consistent with the Act. The term "charitable" is not defined in the Act. Therefore, it is necessary to refer to the principles of common law to determine whether a particular purpose or activity is charitable.

Charitable purposes have been categorized by the courts under the four following headings: the relief of poverty, the advancement of education, the advancement of religion and, other purposes beneficial to the community as a whole in a way which the law regards as charitable. This latter category merely identifies an additional group of specific purposes that have been held charitable at law rather than qualifying as charitable any and all purposes that provide a public benefit.

Aside from showing through documented evidence and proper books and records that it undertook charitable activities in furtherance of charitable purposes, an organization must demonstrate that it operated in compliance with the Act at all times. This requires, among other things, for an organization to show that the activities it undertakes benefit only proper objects of charity considering the relief offered. For instance, an organization relieving poverty must show that the beneficiaries of its programs in fact suffer from conditions associated with poverty.

The objects of the Charity, as outlined in their declaration of charitable trust, are:

- 1) To provide relief of poverty by assisting persons living below the minimum poverty levels based on the size of their families and their special needs if any;
- 2) To operate and maintain public food banks and public living quarters for poverty-stricken persons;
- 3) To establish, provide and operate non-profit residential accommodations and incidental facilities thereto for persons of low income, senior citizens and the disabled;
- 4) To provide and maintain a scholarship fund for needy and above-average scholars to enable them to continue their studies at a recognized educational institution; and
- 5) To transfer such income or capital as the directors determine to one or more qualified donees as that term is applicable under the Income Tax Act.

For the fiscal years under audit, we reviewed the major activities stated to be undertaken by the Charity to determine whether the activity was undertaken by the Charity itself and whether the resources devoted to this activity were considered devoted to charitable activities. We also reviewed those activities that are not stated in its constitution and for which no constitutional amendments have been provided yet undertaken by the Charity. The following summarizes our audit findings:

- 1) To provide relief of poverty by assisting persons living below the minimum poverty levels based on the size of their families and their special needs if any.

Mr. Grosz, the president of the Charity, reviews applications from rabbis recommending funds to various individuals, as well as applicants approaching him in person. Mr. Grosz decides who will receive funding based on his own determination. The requests relate mainly to the relief of poverty and in many cases for the purchase of the necessities of life. There were also requests relating to special needs, but without the supporting documentation it was not possible to ascertain the specific reason for the funding or whether they were in fact charitable under the principles of common law.

The Charity failed to provide its means test for determining the acceptance or rejection of applications, copies of documentation provided by the applicants, minutes of in-person meetings with applicants or evidence that references provided by the applicants had been verified. The Charity does not hold formal board meetings and does not prepare minutes of any meetings or conversations held. Mr. Grosz and his wife, acting as secretary, conduct the majority of the Charity's operations. In an effort to keep administrative costs down, Mr. Grosz relies on less paperwork, but maintains that he is confident of his decisions to provide funding.

It is the responsibility of the Charity to obtain and to maintain adequate documentary evidence to clearly demonstrate recipients of its financial aid program were in fact poor and that the applications received were evaluated against an established set of criteria. By failing to show that it applied selection criteria in such a manner that the beneficiaries of its funding were in fact proper objects of charitable relief, the Charity cannot show that it meets the requirement of paragraph 149.1(1)(a) of the Act.

Documentary evidence may consist of originals or copies of source documents such as salary confirmation letters, personal budgets, tax returns or bank statements. Other documentation should include minutes of Board of Directors meetings and other meetings held with applicants, rabbis and community leaders; written selection criteria; evaluations, and approval or rejection of applications along with appropriate evidence showing the source documents supplied by the individuals; reports; summaries of follow-up visits undertaken (by the Charity's volunteers or directors) to evaluate application of the funds; telephone conversation records, faxes and/or e-mails of discussions of and decisions taken; and other relevant evidential materials or documentation.

- 2) To operate and maintain public food banks and public living quarters for poverty stricken persons.

The audit did not reveal any evidence to indicate the organization operated or maintained a public food bank or public living quarters for poverty-stricken persons.

- 3) To establish, provide and operate non-profit residential accommodations and incidental facilities thereto for persons of low income, senior citizens and the disabled

Our audit has concluded that the Charity did not provide non-profit residential accommodations as described above. It was mentioned that non-interest bearing loans were provided for families to assist them with a down payment to purchase their own homes. We were unable to verify this claim as no applications or other supporting documentation was provided. As per above, the Charity maintains no formalized means test to establish whether an applicant is, in fact, a person of low income, a senior citizen or disabled and otherwise in need of assistance to purchase a home.

- 4) To provide and maintain a scholarship fund for needy and above-average scholars to enable them to continue their studies at a recognized educational institution.

The Charity's constitution states that "Preference will be given to students involved in research and post graduate work in a recognized educational institution. The criteria for the distribution of scholarship funds will be based on scholastic achievements of the students and also on their financial needs. The organization will scrutinize each applicant to see if they meet the organization's means test, and evaluate the applicant's grades in respect of their scholastic achievements. The selection process will then take place based on the final decision of the directors of the organization."

The 2006 and 2007 Registered Charity Information Returns indicate that "scholarships were provided to assist students in their studies", although no documentation was provided to verify the application for and the granting of scholarships. The Charity did not provide a means test used in the processing of the applications.

The Charity did not provide a scholarship fund as described in the activities. The Charity claimed to provide funding to scholars for Judaic studies and Talmudic research. The research is a form of articling leading to a position as a rabbi. No documentation was provided to substantiate the research activity conducted, how the researchers were chosen or if the research was being conducted at a recognized educational institution. The only documentation provided was applications for researchers in Canada and payment requisitions from Israel with names of the researchers and the hours of study.

Where a charity administers scholarships to students attending a foreign school or university, the following procedures are necessary to show that the charity maintained full direction and control over its resources:

- Scholarships should be awarded on the basis of pre-established selection criteria;
- There should be assurance that the student actually attended the school for which they received the scholarship by a statement of attendance provided by the school;
- A receipt should be provided by the student, for which the scholarship was intended, that they received the funds; and
- In order to support that scholarship funds were used for their intended purpose, the charity should retain source documents (receipts, vouchers, cancelled cheques)

It is the CRA's view that this type of reporting mechanism is necessary for the Charity to clearly demonstrate that it maintains an adequate level of control and accountability over the use of its funds. These reports would have to be kept with the Charity's other records and books or account at the address recorded with the CRA.

- 5) To transfer such income or capital as the directors determine to one or more qualified donees as the term is applicable under the *Income Tax Act*.

The Charity did transfer substantial amounts of funds to qualified donees.

There was a lack of documentation regarding the Charity's own charitable activities. We were not provided with any further supporting documentation aside from what has been mentioned above. As no applications or supporting documentation was maintained, and/or provided, for the years under audit, we are unable to verify whether funding was for relief of poverty, for any other valid charitable activity or for non-charitable purposes. In addition, there was no means test for determining whether to accept or reject an application. Discussions with Mr. Grosz and his accountant on September 4, 2008 indicated that there was a variety of reasons for providing funding, such as a loan provided to assist a family in purchasing a home or funds provided for the necessities of life. While Mr Grosz states he scrutinized every application and was satisfied that the funds were being issued for "charitable purposes" funds distributed without the necessary supporting documentation to prove that these funds were provided to needy individuals for the relief of poverty or for scholarships cannot be considered to be resources devoted to charitable programs. Our audit revealed the Charity does not maintain or request the documentation necessary to prove that the individuals are objects of charity, nor does the Charity have defined selection criteria to establish financial need of the applicants. Without supporting documentation to substantiate the individual's level of income or lack thereof and defined selection criteria, we cannot ascertain the individuals are poor or that funding was provided to provide relief from the effects of poverty. The Charity has an obligation under the Act of establishing that the individuals are in fact poor.

2. Activities Outside Canada and Gifts to Non-Qualified Donees

Our audit has raised serious concerns with respect to the Charity's foreign activities. According to our audit, the Charity has not demonstrated adequate direction and control over its foreign activities.

The Act permits a registered charity to carry out its charitable purposes both inside and outside Canada, in only two ways:

- It can make gifts to other organizations that are on the list of qualified donees set out in the Act. Qualified donees include Canadian registered charities, certain universities outside Canada, the United Nations and its agencies and a few foreign charities; or

- It can carry on its own activities. In contrast to the relatively passive transfer of money or other resources involved in making gifts to qualified donees, carrying on one's own activities implies that the Canadian charity is an active and controlling participant in a program or project that directly achieves a charitable purpose.

In order to give meaning and effect to the Act, a charity must continue to meet all of its obligations whether the activities are undertaken directly, through agency agreements or through any other arrangements. While we have never insisted on the absolute need for a written instrument, we recommend it as a means of meeting the requirements of the Act. Notwithstanding the manner by which a charity chooses to meet its obligations, it must provide documentation or other tangible evidence to substantiate that it met the requirements of the Act with respect to the direction and control of its resources.

Since the Act requires a charity to show that it effectively directs and actually controls its own activities, the agency agreement that a charity puts in place and the manner that the charity implements that agreement must allow the charity to discharge its statutory obligations.

From time to time the Charities Directorate has suggested certain guidelines for agency agreements in order to help charities understand all the requirements of the Act. For a number of years, we discussed these guidelines with individual charities on a case-by-case basis. As we identified a growing need in the charities sector for more information on this subject, guidelines have been made available to the public and the sector as a whole through our internet site.

By observing these guidelines and by keeping proper books and records, a charity should be able to discharge its evidentiary burden of establishing that its principal-agent relationship existed in fact, and that it maintained effective direction and actual control over its resources at all times. In the final analysis, the true test of whether a charity was responsible in a direct, effectual, and constant manner over its resources and activities is not shown by how well it has crafted an agreement but rather, how well it has implemented it through time. Therefore, it is incumbent upon the charity to show that it has properly implemented any agreement it claims is in place.

The existence of either a written or verbal agency agreement is only one example of evidence required to show that a sufficient principal-agent relationship truly exists. Through documented evidence, the Charity must demonstrate that actual events transpired which prove the continued existence of the principal-agent relationship. Thus, the Charity must provide the CRA with a means of examining the internal decision making mechanisms within the Charity's own structure through records, such as: minutes of board meetings; internal communications (i.e., memoranda); as well as, policies and procedures that show that the charity, by directing and controlling each of its activities, acted as the guiding-mind in the principal-agent relationship. In addition, the Charity must provide source documentation, reports, and the various other instruments it received from its agent showing that throughout the life of the principal-agent relationship, the agent reported back to the principal in such a manner as to make informed decisions about the

It is the CRA's view that this type of reporting mechanism is necessary for the Charity to clearly demonstrate that it maintains an adequate level of control and accountability over the use of its funds. These reports would have to be kept with the Charity's other records and books or account at the address recorded with the CRA.

For purposes of the Act, when a registered charity merely transfers its resources to another entity (assuming the entity is a non-qualified donee), but fails to maintain effective direction and actual control over those resources, the result is the same as a gift to a non-qualified donee. Allowing a non-qualified donee to take near total control of the resources of a registered charity nullifies the purpose and intent of the Act.

Our audit found that two different rabbis and [REDACTED] were in charge of research teams in Israel. The Charity contends that cheques made out to [REDACTED] were taken to Israel and while there, he was in charge of one of the research teams. The two rabbis in Israel received cheques and supervised their own research team. The funds were to be used to pay the scholars for the hours of research performed. The only supporting documentation provided was in the form of a cheque requisition provided by the rabbis. Each requisition listed the researcher's name and the payment for the hours spent on research.

The process, as described, raises several concerns. The main concern is the lack of documentation justifying the administration and operation of the research being conducted in Israel and its link to the registered objects of the Charity. The Charity indicated that each of the rabbis was in charge of the program, yet the audit revealed no agency agreement or supporting documentation to administer the program, control the funds or verify that the funds were being used for the stated purpose. Our concerns are further raised given that the cheques were written in the name of the rabbis and [REDACTED] as payees.

Our audit also found that some of the donations were distributed to rabbis in the United States for other than research. This was allegedly used for charitable purposes, but no documentation was provided to substantiate that the funds were used for charitable purposes.

3. 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

- 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."

A charity is not meeting its requirement to maintain adequate books and records if it fails to exercise due care with respect to ensuring the accuracy thereof.

In addition to substantiating all costs or expenses paid out of its funds, a charity's books and records should provide documentary evidence that monies it has transferred to any agency have been applied to the conduct of activities that are charitable under Canadian law and for which the charity itself is directly and legally responsible. The purpose of this requirement is to enable a charity to accurately provide CRA with the information required by the Act as well as to enable CRA to verify the accuracy of the reported information.

As per above, our audit revealed that the books and records kept by the Charity were inadequate for the purposes of the Act. What was lacking and is required is documentation to support each charitable expenditure, whether made for charitable activities abroad or in Canada. The overseas charitable program and expenditures had no agency agreements, contracts, statement of duties, student applications or any other supporting documentation to verify the nature of the expenditures. The only supporting documentation was the cancelled cheques.

The Charity had improperly recorded donation revenue and gifts to qualified donees during the 2005 fiscal year. The Charity had entered into an agreement whereby a corporation related to the president would donate funds directly to qualified donees on behalf of the Charity. These funds totalled \$1,276,036 and were recorded by the Charity as donation revenue and charitable expenditures to qualified donees. The expenditures were verified as made by the corporation to the qualified donees. Operating in this fashion permits, and creates the opportunity, for the corporation making the gift to a qualified donee to claim the gifts on their corporate income tax return filed and claim the corresponding tax credits. To be properly accounted for, the funds must have been donated to the Charity and then gifted to the qualified donees by the Charity.

4. Official Donation Receipts

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*.

Our review of the official donation receipts provided revealed that the Charity was not entirely in compliance with Income Tax Regulation 3501 as follows:

- The registration number assigned by the Minister to the Charity was recorded incorrectly on all official donation receipts as BN 86892 1216RR0001. The correct BN is 86882 1216RR0001 (Reg. 3501(b)).
- The Charity's name appears as ASL Charity Fund. It is officially registered as ASL Charity Foundation (Reg. 3501(a)).
- The following receipt numbers were not issued: 200513 and 200713. The Charity claimed it was bad luck, yet receipt #200613 was issued (Reg. 3501(c)).
- Receipt #200602 did not have an address (Reg. 3501(g)).

5. Registered Charity Information Return (Form T3010A)

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

It is the responsibility of a charity to ensure that the information provided in its Return, schedules and statements, is factual and complete in every respect. A charity 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 Charity improperly completed the T3010A for the fiscal periods ending 2006-06-30 and 2007-06-30 in that many items reported were incorrectly identified or omitted. Specifically:

- Section C Question C2 listed the programs carried on during the fiscal period as "Provide relief of poverty by assisting the poor and provide a scholarship fund for the needy and above average scholars." As per above, the Charity maintained no supporting documentation to substantiate the nature of any of the programs conducted by the Charity.
- Question C4's response indicates "No" to operating any of the programs directly or indirectly outside Canada. The Charity distributed funding to the United States and Israel. This was confirmed by the Charity and by the cancelled cheques that showed the various locations in which they were cashed. The Charity also funded research work in Israel.
- Question C6's response was "No" to the Charity issuing scholarships, bursaries, awards, prizes or honoraria during the fiscal period; however, the Charity made payments to students for the Talmudic research conducted in Canada and Israel. The researchers were paid and T4As were issued to the researchers in Canada.
- Line 4500 for the 2005 fiscal period reported tax-receipted gifts of \$3,015,675. Of this amount \$1,975,025 were not received by the Charity.

directly to qualified donees on the Charity's behalf by Line 5050 includes the amount of \$1,276,036 in the total gifts to qualified donees of \$2,159,773. The bank records of [REDACTED] verified that the payments were made under the agreement signed between the two parties, but the amount of \$1,276,036 cannot be considered as being a donation and expended by the Charity to qualified donees even though there was an agreement signed.

- Section F1 does not indicate a dollar amount for program expenditures outside Canada.

6. Debts & Private Foundations

Our audit revealed that the Charity had received loans from Mr. Grosz's family accounts totalling \$404,342 as at June 30, 2007. These loans had accrued since 2005 and do not have any terms of repayment.

We also wish to advise that paragraph 149.1(4)(d) of the Act provides for revocation of a private foundation where it has incurred debts other than for current operating expenses, in connection with the purchase and sale of investment or in the course of administering charitable activities. Due to the Charity's lack of adequate records, we are unable to ascertain the purpose of the loans. As a start, the loans should have repayment terms to protect the Charity and be designated for current operating expenses if this is the purpose of the loan. The loans should not be intended as long term revolving loans with no charitable purpose.

The Charity'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 Charity 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 Charity, 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; or

APPENDIX "A"

Section 149.1: [Charities]

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; or
- (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.

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;
- (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 (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;
- (c) since June 1, 1950, acquired control of any corporation; or
- (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 the registered charity has made a gift to another registered charity and it can reasonably be considered that one of the main purposes of making the gift was to unduly delay the expenditure of amounts on charitable activities;
- (b) of the other charity referred to in paragraph (a), if it can reasonably be considered that, by accepting the gift, it acted in concert with the registered charity to which paragraph (a) applies; and
- (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.

Section 168: Notice of intention to revoke registration

168(1) Where a registered charity or a registered Canadian amateur athletic association

- (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 as such,
- (c) fails to file an information return as and when required under this Act or a regulation,
- (d) issues a receipt for a gift or donation 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 or donation the granting of which was expressly or impliedly conditional on the association making a gift or donation to another person, club, society or association, the Minister may, by registered mail, give notice to the registered charity or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.

168(2) Revocation of Registration

Where the Minister gives notice under subsection (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 that is or was registered as a registered charity or is an applicant for registration as a registered charity that objects to a notice under subsection (1) or any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) 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.

Section 172: Appeal from refusal to register, revocation of registration, etc.

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

Where the Minister

- (a) refuses to register an applicant for registration as a Canadian amateur athletic association,
- (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,
- (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) refuses to issue a certificate of exemption under subsection 212(14),
- (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, or
- (g) refuses to accept for registration for the purposes of this Act any retirement income fund, the applicant or the organization, foundation, association or registered charity, as the case may be, in a case described in paragraph (a) or (a.1), the applicant in a case described in paragraph (b), (d), (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), or the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), may appeal from the Minister's decision, or from

Section 180: Appeals to 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) the mailing of notice to a registered Canadian amateur athletic association under subsection 168(1),
- (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), or
- (c) the time the decision of the Minister to refuse the application for acceptance of the amendment to the 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
- (d) 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

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) applies.

188(4) Idem

Where 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 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”

“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”

“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.

Section 189**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 mailed 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 registered charity in respect of the charity'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 charity after the day on which the Minister first assessed that liability and before the particular time 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 total of

- (a) the consideration given by the 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, 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.

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- the Minister giving notice of its intention to revoke the registration of the Charity 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 the undersigned at the numbers indicated below.

Yours sincerely,

