



REGISTERED MAIL

Mr. David Nigel Kilbey
Secretary and Treasurer
Advance Academic College
317, rue Marquette - 214
Sherbrooke QC J1H 1M2

0739631

October 17, 1997

Dear Sir:

Subject: CHARITY TAX AUDIT

In the Spring of 1997, a representative authorised by the Department audited the books and activities of Advance Academic College (the "AAC") for its fiscal period ending March 31, 1996. The Auditor, Mr. Laurent Lapointe, discussed with you during the debriefing meeting certain non-compliance issues at the end of his field audit. This letter addresses issues identified during the audit and review of the AAC's file.

Our audit findings and our review suggest serious contraventions of the *Canadian Income Tax Act* (the "Act"), and we are therefore considering whether we should revoke the registration of the AAC. Our concerns relate to the AAC's activities, its compliance with the *Act's* disbursement quota requirements, its receipting practices, its failure to properly complete prescribed information returns and its failure to maintain adequate books and records.

1- The AAC's Objects and Activities

In order to continue to qualify for charitable registration, under subsection 149.1(1) of the *Act*, an organisation must devote all its resources to charitable activities carried on by itself. Further, the courts have established that, for a purpose to be charitable, it must also be of a public character. A purpose is of a public character if it is for the benefit of the public at large and not for a particular person or group of persons.

According to its Certificate of Incorporation of October 2, 1985, the purposes of the AAC are:

Canada

To operate a non-profit educational institute to help students graduate from high school by means of flexible educational scheduling.

The audit findings indicate that AAC disbursed all its funds to pay for your personal expenses like rent, telephone, heating, school fees, supplies, gifts of flowers to other directors and theatre tickets. Furthermore, the audit revealed that you were the only student helped by AAC.

We conclude that AAC's activities are not in compliance with its purposes and are not of a charitable nature. Furthermore, they lack the element of public character.

Paragraph 168(1)(b) of the *Act* provides that for a registered charity to be entitled to retain its registered status, it is required to comply with the requirements of the *Act* relating to its registration as such. Since the AAC failed to comply with these requirements, the Minister may give notice to the AAC that he proposes to revoke its registration.

2- Disbursement Quota

A registered charity must spend a minimum amount of money each year on charitable activities. This minimum amount, or disbursement quota, varies according to a charity's designation. In the case of a charitable organisation like AAC, the *Act* stipulates that this minimum annual disbursement quota is equal to eighty percent of the prior year's officially receipted donations. This test provides some assurance to donors that charities will use a significant portion of their donations for charitable purposes and activities, with a minimum expenditure on administrative and other non-charitable expenses. Those that are directly attributable to the accomplishment of charitable activities are considered charitable expenditures. It does not include amounts paid for purely administrative expenses such as accounting fees or house maintenance.

Further to the above findings under item number one, the AAC did not meet its disbursement quota for its fiscal year 1996, because there were no charitable expenditures and only administrative or personal ones.

Under paragraph 149(2)(b) of the *Act*, the Minister may give notice to the AAC that he proposes to revoke its registration because it failed to expend in any taxation year its disbursement quota.

3- Official Donation Receipts

The *Act* provides a tax credit or deduction for gifts made to registered charities. A "gift", at law, is a voluntary transfer of property, usually cash, made out of detached and disinterested generosity, without consideration or expectation of benefit in return. Where, for example, the donor is receiving in exchange for his donation a benefit that he would otherwise have to pay for, or makes a contribution voluntarily but on the understanding or with the expectation that a family member will benefit as a result, the donation does not meet the tests the Courts have set in interpreting what constitutes a charitable gift.

Interpretation Bulletin IT-110R3 *Gifts and Official Donation Receipts* attached sets out Departmental policy in this regard. The issue of gifts of services is expressly addressed in paragraph 16(d). The issue of directed gifts is expressly addressed in paragraph 16(f).

The auditor found that AAC issued official donation receipts totalling \$ 19,600 for gifts of services. Out of this amount, AAC issued for \$ 18,000 of official donation receipts to four AAC's executives, including yourself, for gift of their services in administering the AAC. Furthermore, AAC failed to provide documentation to support these gifts or any return of the payment as a gift.

The auditor also found that AAC issued a receipt serial number 44115 for \$ 2,000 to [REDACTED] for dental work that she paid on your behalf.

The *Act* provides various requirements in respect of official donation receipts issued by registered charities. These requirements include:

- Under Regulation 3501(1), that every official donation receipt must contain a statement that it is an official receipt for income tax purposes;
- Under Regulation 3501(1)(a), that every official donation receipt must show clearly the address in Canada of the organisation.

We discovered during the audit that AAC contravened these two requirements on all its receipts.

Under paragraph 168(1)(d) of the *Act*, the Minister may, by registered mail, give notice to the AAC that he proposes to revoke its registration because it issued receipts otherwise than in accordance with the *Act* and the Regulations.

4- Information Return (T3010)

Subsection 149.1(14) of the *Act* requires every registered charity to file a *Registered Charity Information Return*, form T3010, each in prescribed form and containing prescribed information for each taxation year of the charity.

Audit evidence indicates that the AAC estimated the majority of the amounts reported on its T3010 return for the fiscal years 1995 and 1996. AAC also omitted to file the financial statements

Under paragraph 168(1)(c) of the *Act*, the Minister may, by registered mail, give notice to the AAC that he proposes to revoke its registration because it failed to file a complete information return as required under the *Act* or its regulation.

5- Books and Records

Registered charities are obliged, under subsection 230(2) of the *Act*, to maintain adequate books and records of account at a single address in Canada that is registered with the Department. This provision is intended to enable a charity to accurately provide Revenue Canada with the information required by the *Act*. As well it permits Revenue Canada to verify the accuracy of reported information through an audit and to determine whether there are any grounds for the revocation of the charity's registration.

The audit reveals that AAC failed to maintain a register detailing its disbursements and its receipts. For each disbursement or receipt you must record the date, cheque number, name of beneficiary or recipient and an explanation. AAC also failed to keep invoices.

Under paragraph 168(1)(e) of the *Act*, the Minister may, by registered mail, give notice to AAC that he proposes to revoke its registration if it failed to comply with or contravened section 230 of the *Act* dealing with books and records.

Conclusion

For all of the reasons indicated above, it appears to us that there are grounds for revocation of the AAC's status as a registered charity.

The consequences to a registered charity of losing its registration include:

1. the loss of its tax exempt status as a registered charity which means that the AAC would become a taxable entity under Part I of the *Act* unless, in the opinion of the Director of the applicable Tax Services

office, it qualifies as a non-profit organisation as described in paragraph 149(1)(l) of the *Act*;

2. loss of the right to issue official donation receipts for income tax purposes which means that gifts made to the AAC would not be allowable as a tax credit to individual donors as provided at subsection 118.1(3) of the *Act* or as a deduction allowable to corporate donors under paragraph 110.1(1)(a) of the *Act*; and
3. the possibility of a tax payable under Part V, subsection 188(1) of the *Act*.

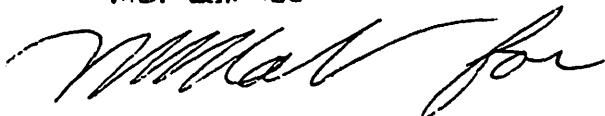
We have attached a copy of the relevant provisions of the *Act* concerning revocation of registration and the tax applicable to revoked charities as well as appeals against revocation.

If you do not agree with the facts outlined above, or if you wish to present any reasons why the Minister of National Revenue should not revoke the registration of the AAC in accordance with subsection 168(2) of the *Act*, I invite you to submit your representations **within 30 days from the date of this letter**. If you wish to obtain an extension, please contact the undersigned. Subsequent to this date, the Director of the Charities Division will decide whether or not to proceed with the issuance of a notice of intention to revoke the registration of the AAC 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 authorisation naming that individual. Should you have any questions on these matters, please telephone Marie-France Jetté at [REDACTED] or myself at [REDACTED], or write to 400 Cumberland Street, Room 5004B, Ottawa, Ontario, K1A 0L5. Our fax number is [REDACTED].

Yours sincerely,

M.B. Lalonde



Rhéal Dorval, C.G.A.
Assistant Director - Audit
Charities Division

Attachments



REGISTERED MAIL

Mr. David Nigel Kilbey
Secretary and Treasurer
Advance Academic College
317, rue Marquette - 214
Sherbrooke QC J1H 1M2

Your file *Votre référence*

Our file *Notre référence*

0739631

February 20, 1998

Dear Sir:

Subject: CHARITY TAX AUDIT

Thank you for your letters of October 28, 1997 and December 17, 1997, responding to the Department's letter of October 17, 1997, in which we informed you that we felt that the Advance Academic College ("AAC") does not meet the requirements of the *Canadian Income Tax Act* (the "Act") to maintain its charitable status, and therefore that we consider revoking its registration.

Please let me assure you that we are not judging the worth of AAC's activities or goals, or of the motives of the individuals involved. All the law permits the Department to do is simply to ensure that the benefits provided for registered charities under the *Act* are made available to organizations which operate within the legal boundaries of charity. This legal meaning does not necessarily correspond to the popular understanding of the term "charitable." Indeed, under the somewhat restrictive legal criteria we are obligated to work with, many worthwhile endeavours must nonetheless be denied charitable status.

We carefully reviewed the additional information you provided, and must advise that the points raised in your response and the additional information does not alter our previous determination. We would, however, like to provide you with a more detailed explanation of our decision.

Our letter of October 17, 1997 (copy enclosed) explained that in order to continue to qualify for charitable registration, an organization must devote all its resources to its own charitable activities. The organization's objects in its incorporation documents must allow these activities. In other words, a charity is bound by its incorporation documents and must use its resource for activities related to its purposes.

Canada

In your letter of October 28, 1997, you indicate that AAC had modified its purposes in order to receive substantial donations in Sherbrooke. You also state that AAC "works with schizophrenics, alcoholics, toxicomaniacs, adolescents" in order to help their reintegration into the public education and that it provides a process to combat racism and elitism. While these activities could qualify as charitable, AAC is not presently constituted to pursue such activities. Accordingly, if AAC decides to extend its purposes it must first advise the Department and obtain its approval.

Because you did not give us such notice, we must inform you that we based our analysis on AAC's object found in its Certificate of Incorporation of October 2, 1985. AAC was constituted and registered as a charity in order to "operate a non-profit educational institute to help students graduate from high school by means of flexible educational scheduling." We understand that AAC's beneficiaries are referred to as "Students Directors." You indicate that AAC has several students involved in its activities, including yourself. We determined that most of AAC's students are also member of the board of directors. We also determined that most of AAC's expenses are personal expenses of Mr. David Kilbey.

We understand that the AAC's had limited resources, however, under the *Act*, a charity must devote all its resources to charitable activities. Moreover, the definition of a "charitable organization" in subsection 149.1(1) of the *Act* stipulates that no part of the income shall be payable to, or otherwise available for the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof. The Department considers the meaning of the term "trustees" to include persons having the general control and management of the administration of a charity, including directors of corporations established for charitable purposes. The prohibition against making a charity's income available to those having control over its affairs reflects the general rule of equity that a trustee must not make a profit out of his position of trust, nor must he place himself in a position where his duties as a trustee conflict with his own interests. It is our position that you made AAC's resources available for the benefit of Mr. David Kilbey.

Regarding the receiving practices of AAC, we determined that you signed receipts for services and for amounts that are not gifts, i.e., dental work paid by [REDACTED]

[REDACTED] You claim that the recipients did not use these receipts. A charity can issue tax donation receipts for donation it receives. This privilege was designed to encourage funding of charitable activities. The misuse of this privilege can sincerely affect the charitable sector. The *Act* provides that the charitable status of a registered charity may be revoked if it issued receipts otherwise than in accordance with the *Act*'s requirements.

Consequently, for the preceding reasons and as explained in our letter of October 17, 1997, it is our view that AAC does not meet the requirements of the *Act* to maintain its charitable status. Therefore we consider revoking its registration. If you wish to present any more reasons why the Minister of National Revenue should not revoke the

registration of AAC in accordance with subsection 168(2) of the *Act*, I invite you to submit your representations within 30 days from the date of this letter. Subsequent to this date, the Director of the Charities Division will decide whether or not to proceed with the issuance of a notice of intention to revoke the registration of AAC in the manner described in subsection 168(1) of the *Act*.

If you choose to respond, your submission should include a detailed description of all current and future activities of AAC. It should also provide us with a copy of the new governing documents of AAC if applicable.

If you appoint a third party to represent you in this matter, please send us a written authorisation naming that individual. Should you have any questions on these matters, please telephone Marie-France Jetté at [REDACTED] or myself at [REDACTED], or write to our new address at Place de Ville, 320 Queen Street, 18th Floor, Tower A, Ottawa, Ontario, K1A 0L5. Our new fax number is [REDACTED].

Yours sincerely,



Rhéal Dorval, C.G.A.
Assistant Director - Audit
Charities Division

Attachments



Your file Votre référence

REGISTERED MAIL

Our file Notre référence

Mr. David Nigel Kilbey
Secretary and Treasurer
Advance Academic College
317, rue Marquette -- 214
Sherbrooke QC
J1H 1M2

0739631
118777754RR0001

February 16, 1999

Dear Sir:

Subject: Notice of intent to revoke Advanced Academic College

We invited you in our letter of February 20, 1998 (copy enclosed) to submit representations as to why the Minister of National Revenue should not revoke the registration of Advance Academic College ("AAC"). This is in response to your letter of March 1, 1998.

We reviewed carefully your reply. First, let us assure you that no one in the Charities Division or Revenue Canada slandered you nor intimidated AAC's ex-directors. Secondly, confidentiality provisions of the *Income Tax Act* (the "Act") preclude us from revealing to you information about your mother's personal Tax Return.

We reached the final decision that your representations to our letters of October 17, 1997 and February 20, 1998 did not provide sufficient evidence to support the continued registration of AAC. Accordingly, we concluded that all the contentions for revocation of these two letters remain unchanged. We offer the following explanations to help you understand our decision:

1- The AAC's Objects and Activities

You confirmed that AAC modified its name, objects, activities and constitution on November 2, 1997. Your omission to request our approval is also grounds for revocation. Even if AAC retained its original objects and activities during the period audited, the audit revealed that the objects and activities pursued were not charitable. You may find our explanations in our letters of October 17, 1997 and February 20, 1998 (copy attached).

2- Disbursement quota

In reply to your argument about the timing of the disbursements and donations, the *Act* provides at subsection 149.1(20) the ability to carry a "disbursement excess" (defined in subsection 149.1(21) of the *Act*) to the prior year and up to five subsequent taxation years. We contend that the expenditures were not charitable, consequently not eligible toward the satisfaction of the disbursement quota. You failed to demonstrate how the expenditures AAC presented were charitable expenditures.

3- Official donation receipts

You alleged that the receipts issued by AAC were not official donation receipts for tax purposes and were not claimed by the donors. Unfortunately, your allegation contradicts your presentation of the same receipts as official receipts for income tax purposes in AAC's T3010 returns for the fiscal years ended March 31, 1996, March 31, 1997 and December 31, 1997.

4- Information Return (T3010)

So far, we have not received amended returns for the fiscal years ended March 31, 1996, and March 31, 1997 that you believe to have corrected.

Conclusion

We are returning your school bag containing your binder and your original of the letter of March 16, 1998 from the Minister of Fisheries and Oceans. These documents offered no new evidence relative to the issues at hand.

As a result of our intention to revoke the registered status of AAC, the following issues are now irrelevant:

1. The filing of amended returns for the year 1997;
2. The filing of a request to change the year end;
3. Your proposed receipt issuance practices.

Therefore, pursuant to the authority granted to the Minister in subsection 168(1) of the *Act* and delegated to me in subsection 900(8) of the Regulations to the *Act*, I reach the final decision to propose the revocation of the registration of Advance Academic College. By virtue of subsection 168(2) of the *Act*, the revocation will be effective on the date of publication in the Canada Gazette of the following notice:

Notice is hereby given, pursuant to subparagraph 149.1(2)(b), 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.

Registration number Business number Name

0739631 11877754RR0001 Advance Academic College
Sherbrooke, Quebec

Should you wish to appeal this notice of intention to revoke the charity registration in accordance with subsections 172(3) and 180(1) of the Act, you are advised to file a Notice of Appeal with the Federal Court of Appeal within 30 days from the mailing of this letter. The address of the Federal Court of Appeal is:

Supreme Court Building
Wellington Street
Ottawa, Ontario
K1A 0H9

Please note that Federal Court Rules amended April 25, 1998, impose particular obligations upon an appellant to be met within restricted time frames. In particular, the appellant is now responsible for filing the documents that will form the case material for the Court's review. You can obtain information about these Rules from the Court.

Consequences of a revocation

As of the date of revocation of the registration of the organization, which is the date upon which the above-noted notice is published in the Canada Gazette, 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.

Additionally, the conclusion of our letter of October 17, 1997 informed you of other consequences and relevant provisions of the *Act* relative to the revocation.

I advise you that pursuant to subsection 150(1) of the Act a return of income for each taxation year in the case of a corporation (other than a corporation that was a registered charity throughout the year) shall without notice or demand therefor, be filed with the Minister in prescribed form containing prescribed information.

Also we draw your attention to paragraph 149(1)(l) of the Act which states the definition of a non-profit organization and subsection 149(12) which states the filing requirements of a non-profit organization.

AAC might be eligible for non-profit organization status under paragraph 149(1)(l) of the *Act*. Determination of such status is the responsibility of the Department's Tax Services offices. If you need further clarification in this respect you may contact the Sherbrooke Tax Services office, located at 50 Place de la Cité, Sherbrooke, QC, J1H 5L8, telephone number: (819) 564-5888. I would stress, however, that such recognition does not convey authority to issue official donation receipts for income tax purposes.

Yours truly,



Neil Barclay
Director
Charities Division

Attachments