



**REGISTERED MAIL**

Alberta Distribution Relief Agency Aid Society International  
224-200 Bethel Drive  
Sherwood Park AB T8H 2C4

BN: 891177578RR0001

Attention: Mr. Lovyl Marian

File #:0987065

September 14, 2009

**Subject: Revocation of Registration**  
**Alberta Distribution Relief Agency Aid Society International**

Dear Mr. Marian:

The purpose of this letter is to inform you that a notice revoking the registration of Alberta Distribution Relief Agency Aid Society International (the Organization) was published in the *Canada Gazette* on September 12, 2009. 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* (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 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/tg/rc4424](http://www.cra-arc.gc.ca/E/pub/tg/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 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 Huppé-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: Mr. Robert McMechen, LLB, LLM  
28 Glengarry Road  
Ottawa ON K1S 0L5



**REGISTERED MAIL**

Alberta Distribution Relief Agency Aid Society International  
224-200 Bethel Drive  
Sherwood Park AB T8H 2C4

**JUL 28 2009**

BN: 89117 7578RR0001

Attention: Mr. Lovyl Marian

File: 0987065

**Subject: Notice of Intention to Revoke**  
**Alberta Distribution Relief Agency Aid Society International**

Dear Mr. Marian:

I am writing further to our letter dated December 1, 2008 (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 Alberta Distribution Relief Agency Aid Society International (the Charity) in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

We have reviewed and considered the written response dated February 14, 2009 (copy enclosed without attachments) from your authorized representative Mr. Robert McMechan. However, notwithstanding your reply, our concerns with respect to the Charity's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position is fully described in Appendix "A" attached.

**Conclusion:**

Our audit has concluded that from January 1, 2004 to December 31, 2006, Alberta Distribution Relief Agency Aid Society International (the Charity) issued in excess of \$106 million in receipts for cash received through the Canadian Humanitarian Trust (CHT) tax shelter. Of this amount, an overwhelming majority of the funds were transferred to another charity as compensation for its role in the tax shelter arrangement and to the tax shelter promoters as fundraising fees. The Charity itself retained 1% or \$1.06 million of the total tax-receipted amount for use in its own activities.

The Canada Revenue Agency's (CRA) audit also revealed that substantially all of the monies "donated" to the Charity were returned to the promoters of the tax shelter arrangement – a fact clearly facilitated by the Charity's role of receiving and receipting "donations" and, once received in its accounts, transferring 98% of the monies as per the promoters' instructions.

It is our position that Alberta Distribution Relief Agency Aid Society International (the Charity) has operated for the non-charitable purpose of promoting a tax shelter arrangement, for the private benefit of the tax shelter promoters and has failed to demonstrate its control over its international programs. The Charity has issued receipts for transactions that do not qualify as gifts, issued receipts otherwise than in accordance with the *Income Tax Act* and its Regulations and has failed to maintain sufficient books and records to support its activities. For all of these reasons, and for each of these reasons alone, it is the position of the Canada Revenue Agency (CRA) that the Charity's registration should be revoked.

Consequently, for each of the reasons mentioned in our letter dated December 1, 2008, I wish to advise you that, pursuant to the authority granted to the Minister in subsections 149.1(2) and 168(1) of the Act, which has been delegated to me, I propose to revoke the registration of the Charity. 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)(d) and 168(1)(e) of the Income Tax Act, that I propose to revoke the registration of the organization listed below under subsection 149.1(2) and paragraph 149.1(2)(b) of the Income Tax Act and that the revocation of registration is effective on the date of publication of this notice.*

<b>Business Number</b>	<b>Name</b>
891177578RR0001	Alberta Distribution Relief Agency Aid Society International Sherwood Park AB

Should you wish to object to this Notice of Intention to Revoke the Charity'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

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 Charity's registration will be revoked on the date of publication, unless the Canada Revenue Agency receives an order, **within the next 30 days**, from the Federal Court of Appeal issued under paragraph 168(2)(b) of the Act extending that period.

Please note that the Charity must obtain a stay to suspend the revocation process, notwithstanding the fact that it may have filed a Notice of Objection.

**Consequences of Revocation:**

As of the effective date of revocation:

- a) the Charity 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 Charity 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 Charity 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 "B", 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](http://www.cra-arc.gc.ca/charities);
- c) the Charity will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (ETA). As a result, the Charity 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).

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 prescribed form, containing prescribed information, for each taxation year. The *Return of Income* must be filed without notice or demand thereof.

Yours sincerely,



Terry de March  
Director General  
Charities Directorate

Attachments:

- CRA letter dated December 1, 2008;
- Your letter dated February 1, 2009 (without attachments);
- Appendix "A", Comments on Representations;
- Appendices "B" and "C", Revised Appendices of CRA letter dated December 1, 2008; and
- Appendix "D", Relevant provisions of the Act

cc: Mr. Robert McMechan, LLB, LLM  
28 Glengarry Road  
Ottawa ON K1S 0L5

**BY REGISTERED MAIL**

Alberta Distribution Relief Agency - Aid Society International  
224-200 Bethel Drive  
Sherwood Park, Alberta  
T8H 2C5

Attention: Mr. Lovyl Marian

BN: 89117 7578RR0001

File: 0987065

**SUBJECT: Audit of Alberta Distribution Relief Agency - Aid Society International**

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December 1, 2008

Dear Mr. Marian:

This letter is further to the audit of the books and records of Alberta Distribution Relief Agency - Aid Society International (the "Charity") by the Canada Revenue Agency (the "CRA"). The audit related to the operations of the registered charity for the period from January 1, 2004 to December 31, 2006. A review the Registered Charity Information Return (the "T3010") of fiscal period ending December 31, 2007 was also performed.

The results of this audit indicate that the Charity appears to be in non-compliance of certain provisions of the *Income Tax Act* (the "ITA") or its Regulations. The CRA has identified specific areas of non-compliance with the provisions of the ITA or its Regulations in the following areas:

<b>AREAS OF NON-COMPLIANCE:</b>		
	<b>Issue</b>	<b>Reference</b>
1.	Failure to Devote Resources to Charitable Activities; Failure to Operate for Charitable Purposes	149.1(2), 168(1)(b)
2.	Failure to Accept Valid Gifts in Accordance with the ITA	118.1
3.	Issuing Receipts Not in Accordance with the ITA	149.1(2), 168(1)(d), Regulation 3501
4.	Failure to Maintain Adequate Books and Records & Failing to File an Accurate Information Return	149.1(2), 168(1)(c), 168(1)(e), 230(2)
5.	Failure to Prepare T4/T4A Documentation for Payments to Employees	149.1(2), 168(1)(c)
6.	Failure to Meet its Disbursement Quota	149.1(2)(b)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of our audit as they relate to the legislative provisions applicable to registered charities and to provide the Charity with the opportunity to address our concerns. In order for a registered charity to retain its registration, it is required to comply with the provisions of the ITA and Common Law applicable to registered charities. If these provisions are not complied with, the Minister of National Revenue (the “Minister”) may revoke the Charity’s registration in the manner prescribed in section 168 of the ITA.

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

### **Identified Areas of Non-Compliance:**

#### **1. Failure to Operate for Charitable Purposes and Devote Resources to Charitable Activities**

The Charity is registered as a charitable organization. In order to satisfy the definition of a “charitable organization” pursuant to subsection 149.1(1) of the ITA, “charitable organization” means an organization.... “All the resources of which are devoted to charitable activities”.

To qualify for registration as a charity under the ITA, 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. Firstly, the purposes it pursues must be wholly charitable and secondly, 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 ITA 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.

It is our view, based on our audit that the Charity does not operate for purely charitable purposes and does not devote itself to exclusively charitable activities in pursuit of those purposes. In fact, the evidence on the file, as outlined below, demonstrates that the preponderance of the effort and resources of the Charity are devoted to participating in a tax planning donation arrangement. Operating for the purpose of promoting a tax planning donation arrangement is not a charitable purpose at law.

##### **a) Non-Charitable Purpose**

It is our view, based on our audit, that the Charity is pursuing a non-charitable purpose and non-charitable activities in furtherance of this purpose. In our view, the Charity is primarily operating for the purpose of supporting, promoting and participating in an abusive tax shelter arrangement. As outlined below, by engaging in an artificial series of transactions this appears to have resulted in the Charity receipting over 230<sup>1</sup> million dollars of donations while actually receiving and devoting a comparatively insignificant amount of resources to its own actual charitable activities. By comparison, during the years of participation in the tax shelter

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<sup>1</sup> Total tax-receipted gifts reported between 2004 and 2007.

program, the Charity reports receiving only 400<sup>2</sup> thousand dollars in donations and investment income unrelated to the tax shelter. We acknowledge the Charity has contracted with third parties to undertake the promotion and record keeping associated with its participation in the tax shelter arrangement, however, from a primarily financial analysis, the Charity's main activity is the promotion of and participating in a tax shelter donation arrangement.

The Charity was originally registered effective March 3, 1994 to:

- provide or acquire a Center and suitable meeting place for the various activities of the Society to carry on its functions in the community;
- to provide all necessary equipment and furniture for carrying on its various functions; to raise funds or accept donations to assist those in need;
- to encourage, foster and develop among its members a recognition of the importance of being supportive of assisting those in need;
- to generate funding to be able to support organizations;
- to provide clothing and food depot collection centre for north-eastern Alberta area;
- to implement visitation programs; and
- to conduct healthful life style classes.

The Charity's purposes have shifted since registration to:

- recruit and train volunteers for the purpose of providing humanitarian aide where requested or needed, both locally and internationally;
- to establish clothing depots for collection, sorting, packing and bailing inventory for distribution and shipping;
- to establish warehousing and equipment to receive inventory for storage, staging and shipping humanitarian aide for local needs and international needs;
- to work with agencies or individuals in obtaining funding for the purpose of inventory shipments;
- to work co-operatively with humanitarian agencies for distribution and development upon receipt of requested aide from organizations that are permitted to deal with customs and incur costs;
- to establish a proper system to receive funds and/or in kind donations in compliance with government regulatory standards;
- to encourage, foster and development among its members a recognition of importance of being supporting to those in need; and
- provisions to be made for operating as a registered society outside Canada subject to regulations of the Income Tax Act.

The Charity has participated in the Canadian Humanitarian Trust ("CHT") tax shelter (TS69310), promoted by World Health Initiatives Inc. ("WHI", the "Promoter"), for fiscal periods 2004 to 2008<sup>3</sup> by agreeing to accept cash from Canadian taxpayers that were also participants in the tax shelter. The Charity entered into an agreement with WHI on

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<sup>2</sup> Total donations and investment income reported between 2004 and 2007 excluding tax-receipted donations received from donors participating in the CHT tax shelter program.

<sup>3</sup> As of the date of this letter, the Charity is listed as a participating charity in the Canadian Humanitarian Trust 2008 Donation Program Profile.

July 23, 2004 whereby the Charity “wishes to increase their donor base and to increase the monies it receives from the general population in donations; and ...wishes to increase the level of their support for humanitarian relief in the third world; and ...specifically wishes to provide financial support to the third world medical relief program of the Escarpment Biosphere Foundation (EBF).” The Charity also agreed to “execute an irrevocable Letter of Direction to the law firm where the trust fund is established, directing the law firm to pay 1% of the total money received to the general account of ADRA [the Charity]; 1% (plus GST) of the total money received to WHI, as fees for their services and the balance of the total money received to the Trust account of EBF for their third world pharmaceutical relief program.”

Generally, the 2004 to 2006 CHT donation program involves Canadian individual participants (the “donors”) making a cash donation to a designated registered charity. In this case, the designated charity is the Alberta Distribution Relief Agency - Aid Society International. The donor then makes application to become a capital beneficiary of the Canadian Humanitarian Trust(s) (the “Trust”). The donor indicates on the application the number of pharmaceutical units they wish to receive. The donor also acknowledges on the application that each of the pharmaceutical units is subject to a limited recourse lien. Upon acceptance as a beneficiary, the donor receives a capital distribution from the Trust in satisfaction of his capital interest in the Trust. The capital distribution is in the form of pharmaceutical units, which the donor then “donates” to a second designated Canadian registered charity, in transactions facilitated by the Promoter acting as agent for the donor. The donor receives two official donation receipts for the “gifts” made to both charities: one receipt for the cash “gift” and one receipt for the value of the pharmaceutical units less the lien amount. The purported value of the pharmaceutical units, on average, is three times the value of the cash “gift”.<sup>4</sup>

The CHT donation program also involves the participation of a third designated Canadian registered charity, such as Escarpment Biosphere Foundation (“EBF”) or Canadian Physicians for Aid and Relief (“CPAR”). These designated charities receive “donations” of pharmaceutical units from the second designated charity and also receives “donations” of cash from the first designated charity. The third charity is represented as being a distributor of the pharmaceutical units and as such, has purportedly “distributed” the pharmaceutical units to needy individuals in third world countries. The “donations” of cash from the first designated charity are utilized initially to discharge the lien attached to each pharmaceutical unit then secondly to pay fundraising expenses to the Promoter.

As noted above, the Charity's role in this donation arrangement is to accept and issue receipts for the participant donor's cash contributions and is required to “gift” approximately 98%<sup>5</sup> of all cash contributions received to the third designated Canadian registered charity. The Charity earns, effectively for the use of its tax-receipting ability and registered charity status, 1% of total tax-receipted “gifts” received from participant donors. The Charity also agrees to “pay WHI a consulting fee equal to 1% of the total monies raised by WHI.” The Charity does not appear to have any other role or responsibilities associated with its participation in this tax shelter. As a result, between fiscal periods 2004 to 2007, the Charity

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<sup>4</sup> The proportion of cash to purported value of the pharmaceuticals fluctuates throughout the calendar year as donors participating earlier in a calendar year are rewarded with “cash discounts”. As a result, donors contribute less cash yet receive the same purported value of pharmaceuticals as a donor who participates in the latter part of the year.

<sup>5</sup> Total cash contributions less 1% retained by Charity less 1% + applicable GST paid to WHI as fundraising fees.

issued over \$230 million in tax-receipts directly related to its participation in the CHT tax shelter, and at most, would have been entitled to retain \$2.3 million.

The Charity has not demonstrated the activities it undertook or the resources it engaged as part of its due diligence undertaken to evaluate the authenticity of the program in which it participated. The Board of Director minutes merely record it was voted "*To accept in principle the third world pharmaceutical proposal subject to the executive committee approval of the documentation*" on July 29, 2004. Although the Charity indicates that it reviewed the program, we are unable to conclude satisfactorily that the Charity engaged in proper due diligence given the fact that the Board minutes provided have been redacted and the Charity provided no explicit details on the activities it undertook prior to contracting with CHT and WHI. In fact, the documentation provided to date gives the impression the Charity simply relied upon the opinions provided by and during meetings with the tax shelter promoters.<sup>6</sup>

From the Charity's participation in the CHT program, it is our position the Charity is primarily operating as a conduit for the identified tax shelter by lending its support and tax-receipting privileges to a non-charitable purpose. In the donation arrangement, the Charity has no little to no interaction with donors. By failing to properly conduct due diligence, the Charity, as described below, has issued receipts for transactions that do not qualify as gifts. The Charity has relinquished control over its official donation receipts and indeed to the very accounts to which these donations flow, on behalf of an arrangement which it does not appear to fully comprehend. In excess of \$230 million has flowed through the trust account of the Charity, 98% of which is immediately transferred to another charity participating in the same scheme. Our review of this arrangement is that 98.5% of the total cash donations received by the another participating charity find their way into the hands of the promoters by requiring each of the registered charities involved paying fees and making mandatory transfers to other registered charities. The Charity's role in this arrangement is clearly designed to facilitate this.

It is our view the Charity enthusiastically lent its registered charity status and tax receipting privileges to support this tax shelter arrangement, with little regard for the legitimacy of the arrangement and interests of the Charity itself. As above, the overwhelming majority of the property received by the Charity during the years in question was received through such arrangements – property the Charity neither saw, or distributed itself, but rather was paid to issue tax receipts for 1% of the amount received. In our view, during these years the collateral purpose, if not primary purpose of the organization was, in fact, to support and promote a tax shelter arrangement. It is clear that the Charity had little to no actual involvement in controlling and operating these programs. Operating for the purpose of promoting a tax shelter arrangement is not a charitable purpose at law.

It is further our view, therefore, that by pursuing this non-charitable purpose, the Charity has failed to demonstrate that it meets the test for continued registration under 149.1(1) as a charitable organization "all the resources of which are devoted to charitable activities". For this

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<sup>6</sup> In fact, it does not appear that the Charity itself understands the very program in which it participates. Per the May 15, 2005 minutes, "ADRA-ASI has recently become associated as a partner with WHI. WHI is a humanitarian organization out of Toronto, created as a tax shelter program...ADRA-ASI is the initial agency to receive a cash donation which is then given to a 2nd charity who purchases medication mainly drug overruns from European countries. The pharmaceuticals are donated to a 3rd charity and they issue a tax receipt for the evaluated price of the drugs (which may be 3 or 4 times the initial cash donation)."

reason, it appears to us that there may be grounds for revocation of the charitable status of Alberta Distribution Relief Agency - Aid Society International.

**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 ITA.

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 Charity.

As above, apart from its role issuing receipts on behalf of a tax shelter, the Charity has shifted the focus of its other activities to collecting and shipping goods internationally and to funding projects overseas. The Charity maintains the documentation necessary to substantiate that goods originating at the Charity’s warehouse were shipped to the intended recipients however it is unable to substantiate its direction and control over the distribution and use of the goods upon arrival at their intended recipient. Additionally, the Charity is unable to demonstrate its on-going direction and control of the funds disbursed to persons allegedly working in the Charity’s behalf overseas. Our review of the records made available by and inquiry of the Charity revealed the Charity does not request or receive copies of reports, invoices and other supporting documentation from the organizations or persons it is partnering with internationally. Our review also identified that the Charity infrequently obtains and maintains copies of Request for Humanitarian Aide forms and Cargo Distribution Reports from organizations receiving containers of goods. The Charity merely relies upon the persons

receiving the goods or the persons conducting programs internationally to provide verbal feedback. The Charity has not shown that each of the activities are charitable and that it has continually supervised, directed and controlled each of the programs.

Further, the Charity also appears to enter into partnership agreements with organizations whereby the Charity will permit the partnering organization to flow donations through it for the purposes of tax-receipting. Evidence of the Charity undertaken this activity is supported by clause 3 of the Charity's Partnership Project Funding Agreement, "*Once the project is approved, donations of monies can be made through ADRA-ASI treasury for tax deductible receipting*" and by references recorded in the Charity's minutes such as "*Request from Gloria...she wants to route money through ADRA/ASI for receipts for the Teleophthamology Cameroon Project...Moved by Lovyl...that we approve this project in principle.*"

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

It is our view that by failing to demonstrate the Charity's on-going direction and control of its container shipments and projects carried on overseas and by permitting other organizations to use the Charity's registered status to flow donations through it, the Charity has failed to demonstrate that it meets the test for continued registration under 149.1(1) 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 Alberta Distribution Relief Agency - Aid Society International.

## **2. Failure to Accept Valid Gifts in Accordance with the ITA**

It is our position that the cash donations received by the Charity from "donor" participants in the CHT tax shelter are not valid gifts under section 118.1 of the ITA. We offer the following explanations to support our position.

### **a) No *Animus Donandi***

At law, a gift is a voluntary transfer of property without consideration. In most cases, a gift is a voluntary transfer of property without valuable consideration to the donor. An essential element of a gift is that there be intent to give. It must be clear that the donor intends to enrich the donee, by giving away property, and to grow poorer as a result of making the gift. It is our view, based on the transactions described above that the primary motivation of the donor was not to enrich the Charity, but through a series of artificial transactions and a minimal monetary investment, to make a profit through the tax credits so obtained.

In support of this position, we note the promotion materials primarily focus on the "donor's" substantial return on investment as a result of participation. We note that, surprisingly, that greater returns on investment are offered to participants "donating" early within the calendar year. Minimal investment is required on the participant "donors". Notably, donors need only make a cash "donation" to a participating registered charity in order to receive a "free" distribution of some of the millions of dollars of units of World Health

Organization Essential Medicines purportedly settled in an off-shore trust. These medicines are then transferred, sight unseen, and to another participating charity within a few days of or trust distribution.<sup>7</sup> Minimal information is provided to the prospective "donors" as to how the "donations" will benefit the charity, or to the activities of the charity they are supporting. Transactions are mass-marketed, pre-arranged and handled entirely by promoters or other pre-arranged third parties. Participants in these arrangements are 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 ITA. Participants in these donation arrangements 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**

As above, we are of the opinion that the transactions themselves lack the necessary elements to be considered gifts at law. The "donors" received some form of consideration or benefit that is linked to their cash donation(s) regardless if the cash donation was made to the Charity or another participating charity. It is clear, based upon our audit and the promotional materials of CHT that there was a clear expectation of return with respect to the donation made to the first designated charity. "Donors" received the benefit of becoming owners of medicine units and having the option to distribute them, without cost, from the trust. The donor's entitlement to receiving the units from the trust was clearly linked to and proportionate to the amount of cash "donated".

In our view, it is clear that the cash transferred to the Charity were not gifts in the sense understood at law. The Charity was not entitled to issue official donation receipts for the amounts that it received. In our findings, the Charity has issued in excess of \$230 million in donation receipts for transactions that did not qualify as gifts. It is clear from our audit and the promotional materials of CHT and WHI, which the Charity engaged as fundraisers that the Charity knew, or ought to have known, that there was a clear link between what was "donated" to it and the distribution of goods the donors purportedly would receive from the trust. The Charity knew, or ought to have known, that it was not entitled to issue donation receipt for these transactions.

It is clear that the amount paid by the "donors" is, in effect, not a donation but the price of participation levied by the tax shelter. While the payment was transferred to the Charity, this amount was not a voluntary transfer of property, without expectation of return, within the sense contemplated by the term "gift" at law as all participants expected to receive "pharmaceutical units" in return for their payments. Indeed, and as above, it is all the more disturbing that the Charity freely lent its tax receipting privileges not only for transactions that do not qualify as gifts, but for monies it was not even entitled to retain, beyond its 1% commission, substantially all of which flowed into the hands of the promoters. As above, 98.5% of these funds were returned to the promoters and related parties facilitated by the

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<sup>7</sup> It is interesting to note that the quantities distributed from the trust are such that an average person would not or could not have the ability to accept, let alone, import the pharmaceuticals into Canada without incurring substantial costs.

actions of the Charity. In our view, given that the Charity is responsible for the issuance of \$230 million in improper tax receipts, this represents an extremely serious abuse of the Charity's tax receipting privileges and the tax system as a whole.

### **c) Application of the Proposed Legislation**

Even without reference to the common law definition of a gift, it is clear that proposed section 248(32) of the ITA applies to these transactions as well. While this legislation is still proposed, once passed into law, it applies to all transactions covered by the audit period under review. In our view, the distribution from the trust is an advantage which is in consideration for the gift<sup>8</sup> or is otherwise related to the gift.<sup>9</sup> The Charity was therefore required by the ITA to reduce the value reflected on the receipt by that of the advantage. There is no indication whatsoever that the Charity took these provisions into account when issuing receipts on behalf of the tax shelter arrangement.

Additionally, it appears that the Charity participated in an arrangement designed to avoid the application of proposed subsection 248(35). We would note that proposed 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 main purposes of which is to avoid the application of subsection 248(35) the eligible amount of the property so gifted is nil. It is our view that the purpose of the "gift" to the Charity is to avoid the application of 248(35) by characterizing what is, in fact, a payment to receive pharmaceutical units, instead a gift to the Charity. As it is clear, in our view, that one of the purposes of this transaction is to avoid the application of 248(35) to a gift of property, that proposed subsection 248(38) also applies. As such, it is our view that even if the property received by the Charity is a "gift", which, as described above, given the motivation of the donors, is unlikely, the property so received by the Charity was not eligible for tax receipts reflecting a value greater than zero.

### **d) Due Diligence**

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

As above, we note a failure by the Charity to demonstrate its due diligence in verifying the authenticity of the tax shelter, and by failing to do so, has allowed official donations receipts to be prepared on the Charity's behalf by WHI for transactions that are not valid gifts and has resulted in the Charity issuing receipts for property it did not see or receive.

Under paragraphs 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 ITA and its Regulations. It is our position that the Charity has issued receipts otherwise than in accordance with the ITA and the Regulations.

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<sup>8</sup> See proposed sub-paragraph 248(32)(a)(i)

<sup>9</sup> See proposed sub-paragraph 248(32)(a)(iii)

For each reason identified above, it appears to us that there may be grounds for revocation of the charitable status of Alberta Distribution Relief Agency - Aid Society International.

### **3. Issuing Receipts Not in Accordance with the ITA**

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 ITA and are described in some detail in Interpretation Bulletin IT-110R3 *Gifts and Official Donation Receipts*.

The audit reveals that the donation receipts issued by the Charity do not comply with the requirements of Regulation 3501 of the ITA and IT-110R3 as follows:

- Receipts issued to acknowledge cash contributions received as a result of the Charity's participation in the CHT tax shelter were not valid gifts under section 118.1 of the ITA. 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 position regarding this issue of non-compliance is explained above.
- Testing of the sequential ordering of receipts issued for the CHT cash contributions identified missing receipts. The 2005 donation summary did not contain information for receipt numbers such as 5461, 6511, 4460-4559 and so forth. The donation summary for 2004 did not contain the receipt numbers issued therefore testing was not possible and receipts appear to be omitted from the 2006 donation summary. The Charity reports receiving over \$63 million in donations in 2006 yet provided a donation summary recording over \$43 million in tax-receipted gifts.
- Receipts prepared to acknowledge in-house donations failed to contain a statement that it is an "official receipt for income tax purposes", the Charity's registration number, the Charity's name as recorded with CRA, the Charity's address in Canada, the CRA's name and website and the full address of each donor.
- Receipts prepared in-house for in kind gifts received neglected to contain a description of the goods donated or indication if an appraisal of the goods was undertaken, and if so, by whom. Receipts for in-kind donations were merely indicated as such and some supporting documentation was made available to correlate the in-kind donation to a specific donor and how the value of the goods was substantiated.
- The Charity issued official donation receipts in lieu of reimbursing volunteers for expenses incurred on behalf of the Charity. The Charity's own travel policy includes providing a \$500 in-kind receipt to persons or organizations as compensation, in addition to a reimbursement rate of \$0.50/km rate, when travelling or transporting goods by truck, van or tractor unit. Per Charity Policy Commentary, CPC-012, a charity cannot issue a receipt to a volunteer in lieu of reimbursing expenses. To ensure proper financial records and recording of each transaction, a charity can reimburse volunteers for legitimate expenses incurred on its behalf provided adequate documentation is submitted to substantiate the expenses. The volunteer can later return the reimbursement to the charity as a gift provided the amount returned is a voluntary contribution by the volunteer.

- The Charity issued official donation receipts in lieu of paying for goods and services. The Charity has issued official donation receipts in lieu of payment to its accountant and lawyer and to various suppliers for items such as windows and gloves. As above, a charity cannot simply issue official donation receipts in lieu of payment for services or goods provided to it. Firstly, gifts of services are not gifts of property therefore they do not qualify as gifts for the purposes of issuing official donation receipts. Secondly, proper financial records must exist to record the provision of goods and services to the charity and the subsequent payment for those goods and services. If the supplier so chooses to donate the payment received voluntarily to the charity, the charity may choose to acknowledge the gift of property (i.e. the cash) at that time.
- The Charity has issued official donation receipts to WHI, its third-party fundraiser, to acknowledge disbursements from the Charity's own trust account. The amounts received are the Charity's 1% earnings distributed from the trust account maintained by Daigle & Hancock LLP on behalf of the Charity for all cash contributions received from participants in the CHT tax shelter. Amounts that would have already been tax-receipted and were clearly not donated by WHI. By including these receipts in its total tax-receipted gifts, the Charity has overstated total tax-receipted gifts which consequently affect the Charity's disbursement quota calculation.

Additionally, the Charity was unable to provide details concerning any cancellation and/or issuance of replacement receipts or safeguarding of unused and duplicate official donation receipts issued for cash contributions received and receipted by WHI on the Charity's behalf. Regulation 3501(4) of the ITA stipulates that an official receipt issued to replace an official receipt previously issued shall clearly show that it replaces the original receipt and, in addition to its own serial number, shall show the serial number of the receipt originally issued. Regulation 3501(5) requires that a spoiled official receipt form shall be marked "cancelled" and such form, together with the duplicate thereof, shall be retained by the registered organization or the other recipient of a gift as part of its records. From our review of the receipts available, neither the receipts prepared by WHI on the Charity's behalf or receipts prepared in-house complied with these Regulations.

Additionally, we would like to inform you that certain amendments to the ITA were introduced as part of Bill C-33 tabled in Parliament on March 23, 2004, that came into force May 13, 2005. As part of the amendments, a registered charity that issues an official donation receipt that includes incorrect information is liable 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.

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. We do not believe that this is an appropriate alternative, given the serious nature of the matter of non-compliance.

Under paragraph 168(1)(d) of the ITA, 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 ITA and its Regulations. It is our position the

Charity issued receipts for transactions that do not qualify as gifts at law. For this reason, it appears to us that there may be grounds for revocation of the charitable status of Alberta Distribution Relief Agency- Aid Society International under paragraph 168(1)(d) of the ITA.

#### **4. Failure to Maintain Adequate Books and Records & Failure to File an Accurate T3010:**

The ITA, per subsection 230(2), 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 ITA;
- 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 ITA.

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".

Pursuant to subsection 149.1(14) of the ITA, 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 Charity to ensure the information its records on the T3010, 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 audit indicated the books and records kept by the Charity were incomplete. Noticeable absent from the records, T3010's and financial statements filed were the total tax-receipted "gifts" the Charity received from participant donors in the CHT program, expenditures incurred as a result of the Charity's participation and the Charity's "gifts" to Escarpment Biosphere Foundation. The Charity has since filed form T1240, Request to Amend the Registered Charity Information Return for each of the years under audit following discussions with the CRA auditor. **While we recognize the attempt to correct this deficiency, it is difficult to see this omission as other than deliberate given the fact that it accounts for in excess of \$230 million in tax receipts and funds flowing through its accounts.** A summary of the Charity's original T3010 filed to the amended T3010 is summarized in Appendix "A".

Our review of the books and records provided also identified discrepancies between amounts recorded in the Trust Account summary and total tax-receipted donations, interest income and payments to WHI and EBF. A summary of total amounts as recorded in the Trust Account summary to total amounts recorded by the Charity on its amended T3010 for 2004 to 2006 is attached in Appendix "B". Of particular interest is our finding that the Charity reports it issued tax-receipted donations in excess of \$63 million in 2006 yet has provided its trust account summary and official donation receipts verifying that at least \$43 million in CHT related gifts were received; a discrepancy of over \$20 million in the Charity's records.

The Charity also appears to have overstated tax-receipted income reported on the amended T3010's for 2005 and 2006 as it issued official donation receipts to WHI, its third party fundraiser for the CHT tax shelter, for distributions from the Charity's own trust account.

Under paragraph 168(1)(c) and (e) of the ITA, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it fails to file an Information Return as and when required under the ITA or Regulation and fails to comply with or contravenes section 230 of the ITA dealing with books and records. It is our position Alberta Distribution Relief Agency - Aid Society International has failed to file an Information Return as required under the ITA and failed to comply with and has contravened section 230 of the ITA. For this reason, it appears to us that there may be grounds for revocation of the charitable status of Alberta Distribution Relief Agency - Aid Society International.

## **5. Failure to Prepare T4/T4A Documentation for Payments to Employee:**

Our review of the 2007 T3010 filed and general ledger revealed the Charity is paying stipends to three of its directors and has failed to prepare T4/T4A Summaries and T4/T4A Statements of Remuneration Paid. Where salaries or wages are paid, the ITA requires annual T4 Summaries and T4 Statements of Remuneration Paid be prepared by the employer [Regulation 200(1)]. In addition to the salaries and wages actually paid, the T4 Summaries and T4 Statements of Remuneration Paid must also include the value of all taxable benefits conferred on employees in the year [paragraph 6(1)(a)]. T4 Summaries of remuneration paid must always be based on the calendar year.

In addition to the foregoing annual reporting requirements, where an employer pays an amount in respect of an individual's salary, that employer is required to withhold certain amounts from such payments [subsection 153(1)]. These amounts are in respect of income tax, Canada Pension Plan, Unemployment Insurance, etc. and the withholdings must be remitted to the Receiver General of Canada.

## **6. Failure to Meet its Disbursement Quota**

In this arrangement, all the money donated to the Charity for the CHT program is received by the Trust lawyer. Then, the Charity must, as a condition of its participation transfer approximately 98% of the cash received in its name to EBF, which represents "gifts" of \$226,646,056<sup>10</sup>. In our view, these cash "gifts" made by the Charity are, in fact not gifts.

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<sup>10</sup> Gifts to Escarpment Biosphere Foundation per Charity's T3010: \$104,061,086 in 2007; 63,193,855 in 2006; \$37,347,892 in 2005; and \$22,224,050 in 2004.

First, these fail to meet the definition of a gift as they lack an element of voluntariness. Second, these funds are not in fact given, free and clear, for the use of EBF, but as a part of the same overall donation arrangement earmarked to be paid to the promoter as fundraising fees. Therefore, the Charity is not spending sufficient funds towards its disbursement quota.

**The Charity's Options:**

**a) No Response**

You may choose not to respond. In that case, the Director General of the Charities Directorate may issue a Notice of Intention to Revoke the registration of the Charity in the manner described in subsection 168(1) of the ITA.

**b) Response**

Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above **within 45 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 the issuance of a Notice of Intention to Revoke the registration of the Charity in the manner described in subsection 168(1) of the ITA.

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

If you require further information, clarification, or assistance, I may be reached at (613) 957-2212 or by facsimile at (613) 946-7646.

Sincerely,

Holly Brant  
Senior Audit Advisor  
Charities Directorate  
Charities Directorate  
Canada Revenue Agency  
320 Queen St. 7<sup>th</sup> Floor  
Ottawa, Ontario K1A 0L5

**Appendix "A"**

	2006-12-31			2005-12-31			2004-12-31			
	2006-12-31 per T3010 Revised	per T3010 Filed	Difference	2005-12-31 per T3010 Revised	per T3010 Filed	Difference	2004-12-31 per T3010 Revised	per T3010 Filed	Difference	
<b><u>Income:</u></b>										
Total Received Gifts	4500	\$ 64,139,933	\$ 110,989	\$ 64,028,944	\$ 38,205,304	\$ 52,372	-\$ 38,152,932	\$ 22,733,182	\$ 29,323	\$ 22,703,859
Amount Received from Other Charities	4510	\$ 6,929	\$ 6,929	\$ -	\$ 23,362	\$ 23,362	\$ -	\$ -	\$ -	\$ -
Total Other Gifts	4530	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 100,126	-\$ 100,126
Interest & Investment Income	4580	\$ 7,534	\$ 7,534	\$ -	\$ 64,199	\$ 820	-\$ 63,379	\$ 41,122	\$ 167	\$ 40,955
Total Fundraising	4630	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 64,550	-\$ 64,550
<b>Total Revenue</b>	<b>4700</b>	<b>\$ 64,154,396</b>	<b>\$ 125,452</b>	<b>\$ 64,028,944</b>	<b>\$ 38,292,865</b>	<b>\$ 76,554</b>	<b>-\$ 38,216,311</b>	<b>\$ 22,774,304</b>	<b>\$ 194,166</b>	<b>\$ 22,580,138</b>
<b><u>Expenses:</u></b>										
Advertising & Promotion	4800	\$ 2,341	\$ 2,341	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Travel & Vehicle	4810	\$ -	\$ -	\$ -	\$ 457	\$ 457	\$ -	\$ -	\$ -	\$ -
Interest & Bank Charges	4820	\$ 52	\$ 52	\$ -	\$ 20	\$ 20	\$ -	\$ 13	\$ 20	-\$ 5
Licenses, Memberships, Dues	4830	\$ 178	\$ 178	\$ -	\$ 284	\$ 284	\$ -	\$ -	\$ -	\$ -
Office Supplies & Expenses	4840	\$ 735	\$ 735	\$ -	\$ 1,754	\$ 1,754	\$ -	\$ 292	\$ 292	\$ -
Occupancy Costs	4850	\$ 1,431	\$ 1,431	\$ -	\$ 1,514	\$ 1,514	\$ -	\$ 1,634	\$ 1,988	-\$ 354
Professional Fees & Consulting Fees	4860	\$ 409,403	\$ 967	\$ 408,436	\$ 394,723	\$ 2,395	-\$ 392,328	\$ 177,705	\$ -	\$ 177,705
Education & Training	4870	\$ -	\$ -	\$ -	\$ -	\$ 1,058	\$ 1,058	\$ -	\$ -	\$ -
Donated & Purchases Goods Expensed	4890	\$ 84,656	\$ 67,723	\$ 16,933	\$ 97,232	\$ 30,507	-\$ 66,725	\$ 46,656	\$ 24,662	\$ 21,994
Amortization	4900	\$ 12,615	\$ 12,615	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Expense	4920	\$ 41,805	\$ 25,990	\$ 15,815	\$ 5,810	\$ 25,569	\$ 19,759	\$ 591	\$ 456	\$ 135
<b>Total Expenses</b>	<b>4950</b>	<b>\$ 553,216</b>	<b>\$ 112,032</b>	<b>\$ 441,184</b>	<b>\$ 501,794</b>	<b>\$ 63,558</b>	<b>-\$ 438,236</b>	<b>\$ 226,891</b>	<b>\$ 27,418</b>	<b>\$ 199,473</b>
<b>Net Income</b>		<b>\$ 63,601,180</b>	<b>\$ 13,420</b>	<b>\$ 63,587,760</b>	<b>\$ 37,791,071</b>	<b>\$ 12,996</b>	<b>-\$ 37,778,075</b>	<b>\$ 22,547,413</b>	<b>\$ 166,748</b>	<b>\$ 22,380,665</b>

	2006-12-31			2005-12-31			2004-12-31				
	2006-12-31 per T3010 Revised		per T3010 Filed	Difference	2005-12-31 per T3010 Revised		per T3010 Filed	Difference	2004-12-31 per T3010 Revised		
Total Charitable Programs	5000	\$ 112,032	\$ 112,032	\$ -	\$ 100,182	\$ -	\$ -	\$ 100,182	\$ 46,657	\$ -	\$ 46,657
Total Administrative Expenses	5010	\$ 23,527	\$ -	\$ 23,527	\$ 6,889	\$ -	\$ -	\$ 6,889	\$ 2,530	\$ -	\$ 2,530
Total Fundraising Expenses	5020	\$ 408,436	\$ 2,341	\$ 406,095	\$ 394,723	\$ -	\$ -	\$ 394,723	\$ 177,705	\$ -	\$ 177,705
Total Other Expenses	5040	\$ 25,990	\$ 25,990	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Gifts to Qualified Donees	5050	\$ 63,193,855	\$ -	\$ 63,193,855	\$ 37,347,892	\$ -	\$ -	\$ 37,347,892	\$ 22,224,050	\$ -	\$ 22,224,050
Total Enduring Property Transferred	5060	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Expenditures	5100	<u>\$ 63,763,840</u>	<u>\$ 140,363</u>	<u>\$ 63,623,477</u>	<u>\$ 37,849,686</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 37,849,686</u>	<u>\$ 22,450,942</u>	<u>\$ -</u>	<u>\$ 22,450,942</u>
Expenditures Outside Canada	5400	\$ 121,253	\$ -	\$ 121,253	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Gross Fundraising Revenue	5450	\$ 63,655,254	\$ -	\$ 63,655,254	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Paid to Fundraiser	5460	\$ 408,436	\$ -	\$ 408,436	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Net Fundraising Revenue	5470	<u>\$ 63,246,818</u>	<u>\$ -</u>	<u>\$ 63,246,818</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
										2004-12-31	
2006-12-31			2005-12-31			2004-12-31			per T3010		
2006-12-31 per T3010 Revised	Filed	Difference	2005-12-31 per T3010 Revised	Filed	Difference	2004-12-31 per T3010 Revised	Filed	Difference			
<b>Assets:</b>											
Cash on Hand & In Bank Accounts	\$ 12,346,158	\$ 746,783	\$ 11,599,375	\$ 5,498,929	\$ 738,353	\$ 4,760,576	\$ 4,697,223	\$ 182,293	\$ 4,514,930	\$ -	\$ -
Amounts Receivable from Non-Arm's Length Parties	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Amounts Receivable from Others	\$ 75,668	\$ 203,532	\$ -	\$ 127,864	\$ 29,262	\$ 29,262	\$ -	\$ 197,116	\$ 508	\$ 196,608	\$ -
Inventory	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Assets	\$ 333,229	\$ 333,229	\$ -	\$ 316,926	\$ 316,926	\$ -	\$ 121,129	\$ 121,129	\$ 121,129	\$ -	\$ -
	<u>\$ 12,755,055</u>	<u>\$ 1,283,544</u>	<u>\$ 11,471,511</u>	<u>\$ 5,845,117</u>	<u>\$ 1,084,541</u>	<u>\$ -</u>	<u>\$ 4,760,576</u>	<u>\$ 5,015,468</u>	<u>\$ 303,930</u>	<u>\$ 4,711,538</u>	<u>\$ -</u>
<b>Liabilities:</b>											
Amounts Payable to Founders, etc	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Amounts Payable to Others	\$ 11,444,015	\$ -	\$ 11,444,015	\$ 4,941,402	\$ -	\$ -	\$ 4,941,402	\$ 4,554,930	\$ -	\$ 4,554,930	\$ -
Other Liabilities	\$ -	\$ 958,212	\$ -	\$ 958,212	\$ -	\$ 767,615	\$ 767,615	\$ -	\$ -	\$ -	\$ -
	<u>\$ 11,444,015</u>	<u>\$ 958,212</u>	<u>\$ 10,485,803</u>	<u>\$ 4,941,402</u>	<u>\$ 767,615</u>	<u>\$ -</u>	<u>\$ 4,173,787</u>	<u>\$ 4,554,930</u>	<u>\$ -</u>	<u>\$ 4,554,930</u>	<u>\$ -</u>

## Appendix "B"

Amounts per Trust Account Summary	2004	2005	2006	Total
Total Donations Received	\$ 22,721,020.62	\$ 39,332,626.47	\$ 43,464,980.51	\$ 105,518,627.60
Returned (NSF)	\$ 163,613.00	\$ 632,948.00	\$ 640,157.00	\$ 1,436,718.00
Interest Income	\$ 6,285.17	\$ 66,690.49	\$ 94,494.17	\$ 167,469.83
to ADRA	\$ 180,827.34	\$ 379,240.75	\$ 375,204.31	\$ 935,272.40
to WHI	\$ 193,485.25	\$ 406,357.78	\$ 419,943.31	\$ 1,019,786.34
to EBF	\$ 17,669,120.26	\$ 36,780,592.66	\$ 35,956,761.84	\$ 90,406,474.76

### Adjustments

Payment to WHI at EBF Direction	\$ 510,967.21
Deposit Error	\$ 40,000.00
Interest Income - GIC	\$ 34,670.04

### Amount per ADRA-ASI Amended Financial Statements

Donations	\$ 22,681,020.62	\$ 38,182,990.80	\$ 63,655,254.24
NSF	-\$ 163,613.00	-\$ 632,948.00	\$ -
Interest	\$ 6,285.17	\$ 63,380.20	\$ -
GIC Interest	\$ 34,670.04	\$ -	\$ -
to WHI	\$ 161,925.49	\$ 378,299.52	\$ 396,928.83
to EBF	\$ 22,224,050.24	\$ 37,167,065.22	\$ 63,193,854.93

### Discrepancies

Donations	\$ -	\$ 886,897.67	-\$ 20,190,273.73
NSF	\$ -	\$ -	-\$ 640,157.00
Interest	\$ -	\$ 3,310.29	\$ 94,494.17
GIC Interest	\$ -	\$ -	\$ -
to WHI	\$ 31,559.76	\$ 28,058.26	\$ 23,014.48
to EBF	-\$ 4,554,929.98	-\$ 386,472.56	-\$ 27,237,093.09

**ALBERTA DISTRIBUTION RELIEF AGENCY AID SOCIETY INTERNATIONAL**

**COMMENTS ON REPRESENTATIONS OF FEBRUARY 1, 2009**

**Failure to Devote Resources to Charitable Activities**

Based on the Canada Revenue Agency's (CRA) audit of Alberta Distribution Relief Agency Aid Society International (the Charity), the Charity primarily operates for the purpose of furthering the Canadian Humanitarian Trust (CHT) tax shelter by agreeing, for a fee, to act as a receipting agent in the tax shelter. *Per* our previous letter, it is CRA's position that the Charity is operating as a conduit for the tax shelter. In operating as such, the Charity has entered into agreements with persons associated with the tax shelter program to facilitate the Charity's acceptance, and subsequent receipting, of all cash contributions made by participating donors and to "donate" substantially all cash contributions received to another participating charity. For its role in the entire donation arrangement, the Charity retains 1%<sup>1</sup> of total tax-receipted cash contributions received. The Charity then pays fundraising fees equivalent to 1% + GST of the cash contributions received to World Health Initiatives (WHI), the promoter of the tax shelter.

The submissions of February 1, 2009 argue that "[t]here is no prohibition in the *Income Tax Act* (Canada) (the "Act") against a charity participating in, that is receiving donations in the course of, a charitable donation program that is registered as a "tax shelter"...The participation by [the Charity] in the CHT Program, a registered "tax shelter", by receiving cash donations from individual participants in the CHT Program, was properly part of [the Charity's] charitable activities." The submissions are correct that there is no explicit prohibition in the Act against a charity participating in a tax shelter. However, at law, where an activity becomes so predominant it becomes an end in and of itself, it may cause an organization to cease to qualify as an organization operating for exclusively charitable purposes. As described in our letter of December 1, 2008, it is clear that, from our audit, the Charity has operated for the purpose of furthering a tax shelter arrangement by agreeing, for a fee, to act as a receipting agent in the arrangement. Given that the overwhelming majority of funds received by the Charity are received from and devoted to its participation in this arrangement, and the manner in which the Charity has structured itself to accommodate this arrangement, undoubtedly demonstrates that this activity has become an end in itself. Operating for the purpose of promoting a tax planning donation arrangement is not a charitable purpose at law and, for this reason alone, we are of the view that the Charity does not operate for exclusively charitable purposes as required by subsection 149.1(1) of the Act.

In support of this we note that based on the Charity's revised<sup>2</sup> annual information returns, the CHT tax shelter is the Charity's primary activity. During the audit period, the Charity issued official donation receipts for \$106 million in cash from participants in the CHT tax shelter and

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<sup>1</sup> Per the Charity's submission, it retains 0.25% of total cash gifts received in 2007.

<sup>2</sup> The Registered Charity Information Returns (T3010A) originally filed by the Charity failed to include the tax-receipted revenue, expenditures and "gifts" to Escarpment Biosphere Foundation as a result of its participation in the CHT program. Two subsequent sets of revised T3010As have been submitted. Financial figures throughout this letter refer to the revised T3010A submitted on January 21, 2009.

had at least \$1.06 million contributed to its own programs. During this same fiscal period, the Charity received non-tax shelter related income of nearly \$581,000. It remains our position that, rather than fundraising to pursue its own charitable activities, the Charity's involvement and promotion of the CHT tax shelter has become its primary purpose.

The representations find that statements made in our previous letter "manifestly distort the nature of [the Charity's] participation in the CHT Program, a registered tax shelter, and are wrong in fact and in law." The representations assert that "[the Charity] did not "support" or "promote" the CHT program" but go onto further state "[the Charity] agreed to participate in and at all times voluntarily participated in the CHT program in support of the CHT program's charitable aims and accomplishment." The Charity agreed to voluntarily participate in the program by retaining WHI to fundraise on their behalf and it is in this one regard, that we consider the Charity involved in the promotion of the program. The Charity's involvement in, and promotion of the CHT Program, provide the facts to support our statements that:

- "the Charity is primarily operating for the purpose of supporting, promoting and participating in an abusive tax shelter arrangement;
- the Charity is primarily operating as a conduit for the identified tax shelter by lending its support and tax-receipting privileges to a non-charitable purpose;
- the Charity enthusiastically lent its registered charity status and tax receipting privileges to support this tax shelter arrangement, with little regard for the legitimacy of the arrangement and interests of the Charity itself; and
- [o]perating for the purpose of promoting a tax shelter arrangement is not a charitable purpose at law."

The submissions further state, "[t]he Act contains no prohibition against [the Charity] entering into such a services agreement with WHI [World Health Initiatives], nor against [the Charity] paying WHI the said services fee, and [the Charity] paid such fee in the course of its charitable activities. And, the voluntary disbursement by [the Charity] to EBF [Escarpment Biosphere Foundation], again another qualified donee, of 98% of the cash donated to it was...properly part of [the Charity's] charitable activities." We do not disagree that the Act permits a charity to engage in fundraising contracts and to transfer funds to qualified donees. However, it is our conclusion that the Charity's primary purpose for making these transfers to EBF was merely an orchestrated step in the overall CHT tax shelter arrangement and were not intended to be used for charitable purposes of the Charity. We also disagree that the transfers to EBF were part of the Charity's own charitable activities. The transfer of cash from one participating charity to another CHT participating charity, such as EBF, was established prior to the Charity's involvement in the tax shelter, thereby making it difficult for the CRA to concur the Charity's actions were voluntary, of their own design and in furtherance of their own charitable activities.<sup>3</sup> The Charity's involvement in the tax shelter arose as a result of another former participating charity's decision to no longer participate. The Charity's activities of shipping containers of humanitarian relief goods overseas fail to convince the CRA that transfers of funds to EBF, a charity established to "establish, maintain and manage a system of nature reserves in the area of the Niagara Escarpment"<sup>4</sup>, was part of its own charitable activities and done in furtherance of its own charitable purposes.

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<sup>3</sup> Prior to and during its involvement in the CHT program, the Charity has gifted to only one other qualified donee unrelated to the CHT program.

<sup>4</sup> [www.escarpment.ca](http://www.escarpment.ca)

The Charity made "gifts" to a predetermined registered Canadian charity regularly and consistently upon notification the cash contributions were "gifted" by participants pursuant to its participation in the CHT tax shelter. This is clear from the selection of EBF, which is named in the tax shelter's promotional materials, as well as the pattern of participant "gifts" and subsequent transfers to this other registered and participating charity. In fact, it appears the Charity only made gifts to EBF as directed to do so by the tax shelter promoter. Your submission asserts that "[c]harities participating in the CHT program were identified in advance to program participants. There was no "designated registered charity", nor was [the Charity] a "designated charity"." We disagree that the Charity was not a "designated charity". The Charity was clearly designated as a cash receipting charity participating in the tax shelter as it has operated as such for the four years it has participated in the tax shelter.

Per our previous letter, the Charity received cash from participants as per its involvement in the donation arrangement and simply received and transferred the cash, as per the arrangements entered into, to another participating registered charity, EBF. It is further our position, as stated in our earlier letter, that EBF returned substantially all of the "gifts" received from the Charity to the promoter of the tax shelter. The Charity contests that "these funds could not be "returned" to the promoter by either [the Charity] or EBF." CRA does not dispute the Charity's statement that WHI was not the source of the participants' funds. It is the CRA's position that the funds made available by participants to the Charity were merely disguised as "donations" - flowing through the participating charities to WHI under the guise of fundraising, administration and lien payments. The Charity acknowledges it is aware EBF paid a portion of the cash disbursed to it to WHI as fundraising and administration fee and applied another portion to discharging the liens attached to the pharmaceuticals. Per our audits, these fundraising, administration and lien discharge payments comprise at least 90% of the funds disbursed by the Charity to EBF.

As noted in our previous letter, the monies "donated" to the Charity are not monies the Charity can use freely in its own charitable activities. At all times the monies are segregated in a separate trust account maintained solely for the purpose of facilitating the CHT tax shelter and only the Charity's 1% earnings are distributed from the trust account. Our finding is further confirmed by the fact that the Charity issued official donation receipts to WHI upon receipt of their 1% earnings; if the Charity had unfettered use of these funds and was aware of the donations, it would not acknowledge the distributions with an official donation receipt. The funds received through the CHT donation arrangement are tax-receipted by the Charity but are earmarked to be transferred to the EBF and WHI. As noted in that letter and in your submission, the Charity consistently distributed 98% of the proceeds of cash gifts received to EBF and 1% plus GST to WHI.

In this regard, it is difficult to see how the Charity's participation can be characterized in any other way but as being paid to act as the receipt issuing entity in a tax shelter arrangement. We note the Charity continually argues it merely issued official donation receipts "equal to the amount of each cash donation, as required by the Act". First, the Act does not require a Charity to issue an official donation receipt for each gift received and second, we do not accept the Charity's simplistic rationale that the cash contributions received by it were in no way connected to a participants' pharmaceutical donation. The Charity has retained fundraisers without any consideration as to how the funds would be raised or its role in the entire tax shelter donation arrangement. As above, the overwhelming financial activity of the

Charity was its role in receiving and issuing tax receipts on behalf of the CHT program. The Charity, through its agents, passed approximately \$106 million through its accounts, as instructed, for a 1% fee.

Accordingly, it remains our position that the Charity has willingly lent its name and tax receipting privileges to the CHT tax shelter in exchange for monetary compensation and has participated in a program designed to abuse the charitable gift incentive provisions of the Act. The Charity's participation in this program is to issue receipts for cash and to forward substantially all cash so received to a predetermined qualified donee. In our view, the Charity's participation in this program has become an end in and of itself. Whereas the representations state that the audit letter contradicts itself, our position is that the Charity has little or no involvement in controlling or operating the program, yet permitted over \$106 million in tax-receipted donations to flow through its accounts with little control or involvement. As stated in your response, "[the Charity] at no time controlled or operated the CHT program" yet it voluntarily entered into agreements whereby all facets of the Charity's participation in the program would be controlled by parties affiliated with the program. Accordingly, it is our position that the Charity has operated for the non-charitable purpose of promoting and participating in tax shelter arrangement and, therefore cannot be considered to be a charitable foundation *operated exclusively for charitable purposes*.

The Charity has failed to demonstrate that it meets the test for continued registration under 149.1(1) as a charitable organization, "...All the resources of which are devoted to charitable activities". Therefore under paragraph 168(1)(b) of the Act, the Minister may, by registered mail, give notice to the organization that the Minister proposes to revoke its registration because it ceases to comply with the requirements of the Act related to its registration as such. For this reason, there are grounds for revocation of the charitable status of Alberta Distribution Relief Agency Aid Society International.

### **Failure to Devote all of its Resources to its own Charitable Activities**

We acknowledge that the Charity has evolved in its existence and has shifted its charitable focus to collecting and distributing humanitarian aid; however, we must disagree that the Charity has provided CRA with a copy of the amended objects. We acknowledge receipt of the Charity's revised by-laws as filed with the Province of Alberta Corporate Registry yet the revised by-laws do not contain a statement of objects. The revised by-laws indicate the objects will be determined by the members under provision 16 of the *Societies Act* (Alberta) and that the objects can only be amended by a passage of a Special Resolution; neither of which was provided to the CRA if the Charity did amend its registered objects with the Province of Alberta. During the course of the audit, the Charity did provide a draft copy of its undated by-laws which differ from the amended by-laws referred to above.

Per our previous letter, we recognized that the Charity maintains the documentation necessary to substantiate the collection and shipping of goods to the intended recipients; however, it failed to substantiate its direction and control over the distribution and use of the goods upon arrival at their intended recipient. In your representations you have further confirmed these findings by providing a summary of shipments and a listing of people who have visited projects. The information provided fails to contain any reference to a specific project undertaken by the Charity thereby making it difficult for the CRA to conclude that the

persons were visiting projects operated and controlled by the Charity and that shipments were distributed for charitable purposes.

Also per our previous letter, we found that the Charity was unable to demonstrate its on-going direction and control of the funds disbursed to persons allegedly working on the Charity's behalf overseas and entered into partnership agreements with organizations whereby the Charity permitted the partnering organization to flow donations through it for the purposes of tax-receipting. The representations fail to address these concerns therefore it remains our position that the Charity has not shown that it has continually supervised, directed and controlled each of the programs and that it permitted other organizations to use its registered status for tax-receipting purposes.

It remains our position that by failing to demonstrate the Charity's on-going direction and control of its container shipments and projects carried on overseas and by permitting other organizations to use the Charity's registered status to flow donations through it, the Charity has failed to demonstrate that it meets the test for continued registration under 149.1(1) of the Act. For this reason, there are grounds for revocation of the charitable status of Alberta Distribution Relief Agency Aid Society International.

#### **Failure to Accept and Issue Receipts for Valid Gifts:**

##### *Animus Donandi*

Our position remains that the cash contributions received by the Charity from participants are not valid gifts under section 118.1 of the Act due to the fact that the primary motivation of the donor was not to enrich the Charity, but through a series of artificial transactions and a minimal monetary investment, to enrich themselves from the aggregate tax credits so obtained. The representations are correct in stating that there are two conditions<sup>6</sup> which must be satisfied in order for a transfer of property to be considered a gift. However, it is our position the representations erroneously consider the only benefit received by a participating donor in the CHT tax shelter to be the charitable tax credit.

We agree that the tax credit available with respect to a donation is 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, through a series of artificial transactions (usually involving the bulk purchase of property, sight-unseen), the participant will be able to claim tax credits for charitable donations far in excess of the expenditures actually made lack the requisite *animus donandi* for the transactions to be considered gifts.

It remains our position that the investors entered into the CHT donation program as a result of the estimated income tax saving benefits and positive return on investment promoted; income tax savings and return on investment which are based on the donor's aggregate "gift" of cash and pharmaceuticals units which have been valued at amounts many times higher than the donor's cost to participate in the arrangement. The income tax savings and return on

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<sup>5</sup> *Vancouver Society*, supra, footnote 1 at p. 131 (paragraph 194)

<sup>6</sup> The two conditions are: 1) a voluntary transfer of property by the donor, and 2) no benefit or consideration flowing in return to the donor.

investment are based on the participant donor's aggregate "gift" of cash and pharmaceutical units which have been valued at amounts many times higher than the participant donor's cost to participate in the arrangement. The participant donors fully intend to recoup their out-of-pocket cash outlay and to profit from the tax shelter through the artificial manipulation of the charitable gifting provisions. The Charity's role in the donation arrangement was to facilitate this by accepting the cash contributions and nearly immediately transferring it to another participating charity as instructed by the tax shelter's promoters. Your submissions erroneously assume CRA's definition of "profit" is limited to the charitable tax credit available. As it applies to these transactions, "profit" is defined as the financial gains a participant receives as a result of participating in the tax shelter program. The financial gains are based on the fact that a participant makes minimal cash investment, receives goods valued at four times the cash investment and receives a refund/reduction in taxes payable in excess of the cash investment<sup>7</sup>.

Accordingly, it is our position the cash contributions lack *animus donandi*; participants did not necessarily enrich, or intend to enrich, the Charity<sup>8</sup> but rather enriched themselves through artificial transactions and the income tax saved. As such, it is our position the Charity was not entitled to issue an official donation receipt in these circumstances.

#### Benefit Received

Per our previous letter, the CHT donation program involves Canadian participant donors making a cash donation to a participating charity then applying to become a capital beneficiary of the Canadian Humanitarian Trust(s) (the Trust). The participant indicates on the application form, the number of pharmaceutical units they wish to receive and acknowledges that each of the pharmaceutical units is subject to a limited recourse lien. Upon acceptance as a beneficiary, the participant receives a capital distribution from the Trust in satisfaction of his capital interest in the Trust. The capital distribution is in the form of pharmaceutical units, which the participant then "donates" to a participating charity in transactions facilitated by the promoter acting as agent for the participant. The purported value of the pharmaceutical units, on average, is three to four times the value of the cash "gift".<sup>9</sup>

Your letter states that "[a]t no time did participants in the CHT Program who applied to become beneficiaries of an as-yet-to-be-settled trust have any "entitlement", that is any enforceable right, to (1) require the settlement of the trust; (2) become a beneficiary of the trust; or (3) receive a distribution of any of the trust's property. The receipt by a taxpayer of a gift of property from an unrelated third party, in the participants' case a distribution without consideration of pharmaceuticals from a resident Canadian trust, after making a cash donation to [the Charity] does not, in and of itself, constitute a "benefit" or "consideration" in

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<sup>7</sup> Per the promotional materials, a cash contribution of \$2,460 equates to receiving pharmaceuticals of \$10,000. By claiming charitable tax credits of \$12,460, an individual in Ontario would receive a refund/reduction in taxes payable of \$5,105. The Ontario individual would realize a profit or financial gain of \$2,645 (5,105 – 2,460).

<sup>8</sup> We do recognize the 1% retained by the Charity is enrichment beyond what the Charity would have received otherwise; however, it is preposterous that the Charity is satisfied retaining a mere 1% of the \$106 million in 2004, 2005 and 2006 or 0.25% of the \$105 million in 2007 flowed through its bank accounts.

<sup>9</sup> The proportion of cash to purported value of the pharmaceuticals fluctuates throughout the calendar year as donor's participating earlier in a calendar year is rewarded with "cash discounts". As a result, donors contribute less cash yet receive the same purported value of pharmaceuticals as a donor who participates in the latter part of the year.

return for the prior cash gift to [the Charity] which would render this prior cash gift invalid." We make no comment on whether participants had an "enforceable right" to receive pharmaceuticals but we disagree with the Charity's submission that the pharmaceuticals so received by the participating donors is not a "benefit" or "consideration" received as a result of the cash gift. It should be noted that the common law does not require there to be a legally enforceable right to receive property, but rather that a payment be made in expectation of return.<sup>10</sup> We note, however, that the promotional materials describe, in detail how the scheme works, including the requisite "donation" to the specified charities such as the Charity. We note that the distribution of pharmaceuticals from the Trust is proportionate to the amount given to the specified charities. The CRA audits have revealed substantially all donors participating in the CHT program and making a cash contribution to the Charity did receive, as a result of an application to a Trust, distributions of pharmaceuticals in amounts equivalent to the formulas outlined in the CHT promotional materials. It is as a result of these findings, that the CRA considers the pharmaceutical units received by the participating donors to be the advantage, benefit or consideration received by a donor directly linked to the donors' cash contribution. As such, the Charity was not entitled to issue a receipt to the participants given that the purported value of the pharmaceuticals exceeded the participant's cash outlay.

### Application of Proposed Subsections

Per our previous letter, proposed subsections 248(32), (35) and (38) of the Act apply to the transactions described in our December 1, 2008 letter. Regardless that the legislation remains proposed, once passed into law it will apply to all transactions covered by the audit period under review. The CRA's expectation of these provisions is that, once announced, donors and charities alike should have begun to follow this legislation as, when passed, would be applied retroactively and therefore provides grounds for the revocation of a registered charity.

The representations state "the audit letter is incorrect in suggesting that distribution by a trust of pharmaceuticals to a participant in the CHT Program, who had previously donated cash to another charity, is an "advantage" to be deducted in calculating the amount of receipts issued to donors" and goes on to further conclude there must be an enforceable contract between the donor, the registered charity or a third party from which the consideration flows. The representations consider the cash contribution and distribution of pharmaceuticals as two distinct separate transactions.

With respect, it is simply not sufficient to state that there is no link between the cash payment and the distribution from the Trust where the audit evidence has revealed a clear link. From the information provided, it is evident that the pharmaceuticals received by the participant donors were received as a result of the participant's cash contribution to the Charity. We refer you to the CHT promotional packages whereby the participant indicates the number of pharmaceutical units he wishes to receive at the same time he contributes a cash amount equivalent to one-third (or another portion) of the pharmaceuticals purported fair market value to a participating charity. Our audits have revealed participants rarely become beneficiaries of the Trust unless a cash contribution is made to a participating charity and, if they do make this contribution; they receive a distribution from the Trust proportionate to the amount of cash contributed. In our view, the distribution from the Trust is clearly an advantage in

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<sup>10</sup> See, for example, McPherson v. the Queen (2007) DTC 326

"consideration"<sup>11</sup>, "gratitude"<sup>12</sup> or "in any other way related to the gift or monetary contribution"<sup>13</sup>.

Our position remains that the Charity was required by the Act to reduce the value reflected on the official donation receipt by that of the advantage received regardless if the advantage was received directly from the Charity or from another third party.

### Due Diligence

The representations state "The extent of the due diligence which [the Charity] may or may not have performed in respect of the CHT program is irrelevant to the issue of whether donations of cash by CHT participants to [the Charity] constituted valid gifts at law." We disagree. The Charity has failed to demonstrate that it undertook an independent review of the program prior to entering into and at each agreement re-signing, and only consulted with persons affiliated with the program. As a result, the Charity allowed official donation receipts to be prepared on its behalf by WHI for transactions that are not valid gifts. The representations outline the steps the Charity undertook to verify the legitimacy and authenticity of the tax shelter which included meetings with WHI and recommendations from [REDACTED] a close friend of the tax shelter creator and WHI president, Mr. Stephen Rosen. These meetings occurred after the Charity had already signed agreements with WHI. *Per* our previous letter, we noted the Charity entered into an agreement with WHI on July 23, 2004 yet the Board voted to "accept in principle" its participation in the program on July 29, 2004 then met with WHI sometime after September 7, 2004.

Under paragraphs 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 Charity has issued receipts otherwise than in accordance with the Act and the Regulations. For each reason identified above, there are grounds for the revocation of the charitable status of Alberta Distribution Relief Agency Aid Society International.

### **Failure to Issue Receipts in Accordance with the Act**

The representations of February 1, 2009 do not alter our findings and our position that the official donation receipts issued by the Charity to acknowledge cash contributions received from participants in the Canadian Humanitarian Trust tax shelter are not valid gifts under section 118.1 of the Act. We have fully discussed our position on this subject above.

In the absence of supporting documentation and details of policies implemented, we accept the Charity's assertion that official donation receipts were not issued bearing receipt numbers such as 5461, 6511, 4460-4559 and so forth; that it complied with Regulation 3501(4) and (5); and that receipts will not be issued for services. However, the representations fail to address our findings that receipts prepared to acknowledge in-house donations fail to comply with the prescribed information contained in Regulation 3501; that the Charity issued official donation receipts in lieu of reimbursing volunteers for expenses incurred on behalf of the

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<sup>11</sup> Ss. 248(32)(a)(i)

<sup>12</sup> Ss. 248(32)(a)(ii)

<sup>13</sup> Ss. 248(32)(a)(iii)

Charity; and that the Charity issued official donation receipts to WHI, its third-party fundraiser, to acknowledge disbursements from the Charity's own Trust account. As such, it is our position that the Charity as issued receipts otherwise than in accordance with the Act and its Regulations.

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 the Regulations. It is the CRA's position that the Charity issued receipts for transactions that do not qualify as gifts at law and breached Regulation 3501. For these reasons alone there are grounds for revocation of the charitable status of Alberta Distribution Relief Agency Aid Society International under paragraph 168(1)(d) of the Act.

### **Failure to Maintain Books and Records and File an Accurate Registered Charity Information Return**

Per our previous letter, we noted the records maintained by the Charity were incomplete as they failed to contain the CHT transactions. The Charity has filed two amendments to the annual information returns filed for 2004 to 2007 and has undertaken to implement accounting policies, hire a competent bookkeeper and engage a chartered accountant to perform an audit. We accept the Charity's admission of the errors and the actions taken to date to rectify omissions.

The Charity's representations also state that the restated accounts address the discrepancies identified in Appendix B of our December 1, 2008 letter. With respect, the amounts stated on the January 21, 2009 amended T3010A do not address the discrepancies (refer to Appendix B attached). Rather, the Trust account information provided by Douglas Hancock remains irreconcilable to either amended T3010A. Our position remains that the Charity has demonstrate a lack of due diligence regarding the maintenance of its records, and has failed to verify that its amended information is consistent with its source documents.

Your representations also do not address our finding that the Charity overstated its tax-receipted income reported on the amended T3010As for 2005 and 2006 as a result of issuing official donation receipts to WHI for distributions from the Charity's own Trust account.

Accordingly, 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 under paragraph 168(1)(e) of the Act. It is our position the Charity has contravened section 230 of the Act for failing to maintain complete records to verify the information contained within its Registered Charity Information Returns and financial statements. For this reason, there are grounds for revocation of the charitable status of Alberta Distribution Relief Agency Aid Society International.

### **Failure to Issue T4/T4A Summaries and T4/T4A Statements of Remuneration Paid**

Per our previous letter, the Charity paid stipends to three of its directors in 2007 and failed to prepare T4/T4A Summaries and T4/T4A Statements of Remuneration Paid. Your representations that the individuals are contractors and that the Charity inadvertently used the term "stipend" instead of "contract payments" does not relieve the Charity of its obligations

under the Act. The Charity is required to complete T4A Statement of Pension, Retirement, Annuity, and Other Income in all instances where payments in a calendar year exceed \$500.

### **Failure to Meet Disbursement Quota:**

Per our previous letter, and per our discussion above, we remain of the position that the cash contributions made by participating donors were not valid "gifts" within section 118.1 of the Act but were cash contributions made by participants seeking participation in the Canadian Humanitarian Trust tax shelter. As per above, it remains our position that the primary motivation of the participants was not to enrich the Charity, but to enrich themselves from the aggregate tax credits available. It is also our position that the Charity's motivation was to enrich itself by agreeing to the pre-established terms of the tax shelter arrangement. The Charity is not obligated by the Act to acknowledge all cash contributions by issuing official donation receipts nor is it mandated to characterize all funds directed to a registered charity as a "gift". Simply issuing official receipts containing the prescribed information contained in Regulation 3501 also do not deem the cash contributions to be valid gifts under section 118.1 of the Act.

It further remains our position that directing 98% of the cash contributions so received to EBF does not deem the funds to be gifts made to a qualified donee. The representations state "[The Charity] is not aware that EBF used the proceeds of the cash distributions for anything other than carrying on its charitable activities" and "the distributions by [the Charity] of cash to EBF, another qualified donee under the Act, were both permitted by the Act and identified by the Act as part of the proper charitable activities of [the Charity]. As such, such disbursements were properly included in determining that [the Charity] met its disbursement quota." Your letter goes onto further state that CRA has not provided support for our position that the transfers were a condition of participation in the CHT program. As per above, the Charity routinely "gifted" 98% of cash contributions received to another participating charity in the CHT program. Coincidentally, the Charity provided no evidence to contradict our findings and to otherwise demonstrate that it had unfettered use of the cash contributions and that it could opt to use the funds so received for other purposes. It therefore remains our position, that in order to receive its 1% fee, the Charity was obligated to transfer 98% of the cash contributions to EBF.

Finally, the Charity is correct in stating that there is no provision in the Act prohibiting a charity from incurring fundraising and administrative expenses; however, as detailed in our previous letter and above, the issue surrounding the cash "gifts" stems from the fact that the Charity received and receipted cash contributions which were intended to be paid, either by the Charity or by EBF, to WHI as fundraising and administrative expenses. CRA audits have not concluded funds directed to EBF were used for its own charitable purposes or for the distribution of pharmaceuticals but our audits have revealed substantially all funds were paid to WHI as fundraising, administrative and lien expenses.

Accordingly, it remains our position that the Charity has not met its disbursement quota as per paragraph 149.1(2)(b) of the Act. Therefore under paragraph 168(1)(b), the Minister may, by registered mail, give notice to the Charity that the Minister proposes to revoke its registration because it ceases to comply with the requirements of the Act related to its registration as such. For this reason, there are grounds for revocation of the charitable status of Alberta Distribution Relief Agency Aid Society International under paragraph 168(1)(d) of the Act.

## Appendix "B"

	2007-12-31 per T3010 Revised (21.01.2009)	2007-12-31 per T3010 Filed	2006-12-31 per T3010 Revised (21.01.2009)	2006-12-31 per T3010 Revised	2006-12-31 per T3010 Filed	2005-12-31 per T3010 Revised (21.01.2009)	2005-12-31 per T3010 Revised	2005-12-31 per T3010 Filed	2004-12-31 per T3010 Revised (21.01.2009)	2004-12-31 per T3010 Revised	2004-12-31 per T3010 Filed
<b><u>Income:</u></b>											
Total Receipts	4500	\$ 105,297,616	\$ 105,574,280	\$ 43,639,299	\$ 64,139,933	\$ 110,989	\$ 40,365,334	\$ 38,205,304	\$ 52,372	\$ 22,653,623	\$ 22,733,182
-CHT Donations		\$ 105,138,920		\$ 43,521,434			\$ 40,085,952			\$ 22,482,398	
Amount Received from Other Charities	4510	\$ -	\$ -	\$ -	\$ 6,929	\$ 6,929	\$ -	\$ 23,362	\$ 23,362	\$ -	\$ -
Total Other Gifts	4530	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 100,126
Total Government Revenue	4570	\$ 25,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Interest & Investment Income	4580	\$ 81,738	\$ 6,942	\$ 103,485	\$ 7,534	\$ 7,534	\$ 40,554	\$ 64,199	\$ 820	\$ 16,455	\$ 41,122
Net Proceeds of Disposition	4600	\$ 4,463	\$ -2,235	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Fundraising	4630	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 64,550
Total Revenue	4700	\$ 105,408,817	\$ 105,578,987	\$ 43,742,784	\$ 64,154,396	\$ 125,452	\$ 40,405,888	\$ 38,292,865	\$ 76,554	\$ 22,670,078	\$ 22,774,304
Amount/T3010		\$ 105,408,817	\$ 105,578,987	\$ 43,742,713	\$ 64,154,396	\$ 125,452	\$ 40,405,888	\$ 38,292,865	\$ 76,554	\$ 22,670,078	\$ 22,774,304
Discrepancy		\$ -	\$ -	\$ 71	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b><u>Expenses:</u></b>											
Advertising & Promotion	4800	\$ -	\$ 4,627	\$ -	\$ 2,341	\$ 2,341	\$ -	\$ -	\$ -	\$ -	\$ -
Travel & Vehicle	4810	\$ -	\$ 6,326	\$ 4,857	\$ -	\$ -	\$ 2,542	\$ 457	\$ 457	\$ 219	\$ -
Interest & Bank Charges	4820	\$ 47	\$ 45	\$ 62	\$ 52	\$ 52	\$ -	\$ 20	\$ 20	\$ -	\$ 13
Licences, Memberships, Dues	4830	\$ -	\$ 769	\$ -	\$ 178	\$ 178	\$ -	\$ 284	\$ 284	\$ -	\$ -
Office Supplies & Expenses	4840	\$ 4,383	\$ 3,782	\$ -	\$ 735	\$ 735	\$ -	\$ 1,754	\$ 1,754	\$ 293	\$ 292
Occupancy Costs	4850	\$ 11,401	\$ 9,984	\$ 5,738	\$ 1,431	\$ 1,431	\$ 2,746	\$ 1,514	\$ 1,514	\$ 1,988	\$ 1,634
Professional Fees & Consulting Fees	4860	\$ 1,039,072	\$ 1,045,387	\$ 464,053	\$ 409,403	\$ 967	\$ 417,756	\$ 394,723	\$ 2,395	\$ 233,317	\$ 177,705
Education & Training	4870	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,058	\$ -	\$ -	\$ -
Salaries	4880	\$ -	\$ 26,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Donated & Purchases Goods Expensed	4890	\$ 226,273	\$ 227,179	\$ 75,593	\$ 84,656	\$ 67,723	\$ 70,847	\$ 97,232	\$ 30,507	\$ 35,587	\$ 46,656
Amortization	4900	\$ 38,616	\$ -	\$ 39,738	\$ 12,615	\$ 12,615	\$ 25,758	\$ -	\$ -	\$ 13,186	\$ -
Other Expense	4920	\$ 69,635	\$ 3,188	\$ 61,473	\$ 41,805	\$ 25,990	\$ 76,138	\$ 5,810	\$ 25,569	\$ 11,387	\$ 591
Total Expenses	4950	\$ 1,389,427	\$ 1,327,767	\$ 651,514	\$ 553,216	\$ 112,032	\$ 595,587	\$ 501,794	\$ 63,558	\$ 295,977	\$ 226,891
Amount/T3010		\$ 1,401,148	\$ 1,327,767	\$ 654,769	\$ 553,216	\$ 112,032	\$ 574,887	\$ 501,794	\$ 63,558	\$ 282,804	\$ 226,891
Discrepancy		\$ -11,721	\$ -	\$ 3,255	\$ -	\$ -	\$ 20,700	\$ -	\$ -	\$ 13,173	\$ -
Net Income		\$ 104,019,390	\$ 104,251,220	\$ 43,091,270	\$ 63,601,180	\$ 13,420	\$ 39,810,301	\$ 37,791,071	\$ 12,996	\$ 22,374,101	\$ 22,547,413

	2007-12-31 per T3010 Revised (21.01.2009)	2007-12-31 per T3010 Filed	2006-12-31 per T3010 Revised (21.01.2009)	2006-12-31 per T3010 Revised	2006-12-31 per T3010 Filed	2005-12-31 per T3010 Revised (21.01.2009)	2005-12-31 per T3010 Revised	2005-12-31 per T3010 Filed	2005-12-31 per T3010	2004-12-31 per T3010 Revised (21.01.2009)	2004-12-31 per T3010 Revised	2004-12-31 per T3010 Filed
Total Charitable Programs	5000	\$ 230,201	\$ 229,747	\$ 141,023	\$ 121,253	\$ 112,032	\$ 139,589	\$ 100,182	\$ -	\$ -	\$ 46,657	\$ -
Total Administrative Expenses	5010	\$ 133,818	\$ 52,653	\$ 50,660	\$ 23,527	\$ -	\$ 16,937	\$ 6,889	\$ -	\$ 2,830	\$ 2,530	\$ -
Total Fundraising Expenses	5020	\$ 1,037,129	\$ 1,045,367	\$ 463,086	\$ 408,436	\$ 2,341	\$ 415,361	\$ 394,723	\$ -	\$ 233,317	\$ 177,705	\$ -
Total Other Expenses	5040	\$ -	\$ -	\$ -	\$ -	\$ 25,990	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Gifts to Qualified Donees	5050	\$ 103,800,485	\$ 104,061,086	\$ 42,973,303	\$ 63,193,855	\$ -	\$ 39,241,638	\$ 37,347,892	\$ -	\$ 22,031,728	\$ 22,224,050	\$ -
-Gifts to Escarpment Biosphere Foundation		\$ 103,800,485	\$ 105,061,086	\$ 42,973,303	\$ 63,193,855	\$ -	\$ 39,241,638	\$ 37,167,065	\$ -	\$ 22,031,728	\$ 22,224,050	\$ -
-Gifts to Mennonite Foundation of Canada		\$ -	\$ -	\$ -	\$ -	\$ 180,827	\$ 180,827	\$ -	\$ -	\$ -	\$ -	\$ -
Total Expenditures	5100	\$ 105,201,633	\$ 105,388,853	\$ 43,628,072	\$ 63,747,071	\$ 140,363	\$ 39,813,525	\$ 37,849,686	\$ -	\$ 22,267,875	\$ 22,450,942	\$ -
Amount/T3010		\$ 105,201,633	\$ 105,388,853	\$ 43,628,072	\$ 63,747,071	\$ -	\$ 39,842,283	\$ 37,849,686	\$ -	\$ 22,317,718	\$ 22,450,942	\$ -
Discrepancy		\$ -	\$ -	\$ -	\$ -	\$ 140,363	\$ -	\$ 28,758	\$ -	\$ 49,843	\$ -	\$ -
Expenditures Outside Canada	5400	\$ 228,201	\$ 135,063	\$ 141,023	\$ 121,253	\$ -	\$ 139,589	\$ -	\$ -	\$ 46,657	\$ -	\$ -
Gross Fundraising Revenue	5450	\$ 105,138,920	\$ 105,113,682	\$ 43,521,434	\$ 63,655,254	\$ -	\$ 40,085,952	\$ -	\$ -	\$ 22,482,398	\$ -	\$ -
Paid to Fundraiser	5460	\$ 1,010,734	\$ 988,698	\$ 463,086	\$ 408,436	\$ -	\$ 415,361	\$ -	\$ -	\$ 233,317	\$ -	\$ -
Net Fundraising Revenue	5470	\$ 104,128,186	\$ 104,124,984	\$ 43,058,348	\$ 63,246,818	\$ -	\$ 39,670,591	\$ -	\$ -	\$ 22,249,081	\$ -	\$ -
 <b>Assets:</b>												
Cash on Hand & In Bank Accounts	4100	\$ 1,078,226	\$ 11,825,585	\$ 14,452,401	\$ 12,346,158	\$ 746,783	\$ 7,475,861	\$ 5,498,929	\$ 738,353	\$ 4,592,696	\$ 4,697,223	\$ 182,293
Amounts Receivable from Others	4120	\$ 83,778	\$ 151,769	\$ 28,842	\$ 75,668	\$ 203,532	\$ 21,389	\$ 29,262	\$ 29,262	\$ 189,225	\$ 197,116	\$ 508
Long-Term Investments	4140	\$ 734,370	\$ 910,612	\$ 241,151	\$ -	\$ -						
Other Assets	4170	\$ 2,176	\$ 21,201									
Capital Assets	4160	\$ 271,161	\$ 343,135	\$ 293,471	\$ 333,229	\$ 333,229	\$ 309,982	\$ 316,926	\$ 316,926	\$ 107,943	\$ 121,129	\$ 121,129
	4200	\$ 2,169,711	\$ 13,252,302	\$ 15,015,865	\$ 12,755,055	\$ 1,283,544	\$ 7,807,232	\$ 5,845,117	\$ 1,084,541	\$ 4,889,864	\$ 5,015,468	\$ 303,930
 <b>Liabilities:</b>												
Amounts Payable to Others	4300	\$ 804,746	\$ 11,751,128	\$ 13,857,787	\$ 11,444,015	\$ -	\$ 6,764,092	\$ 4,941,402	\$ -	\$ 4,410,329	\$ 4,554,930	\$ -
Other Liabilities	4330	\$ -	\$ -	\$ -	\$ -	\$ 958,212	\$ -	\$ -	\$ 767,615	\$ -	\$ -	\$ -
	4350	\$ 804,746	\$ 11,751,128	\$ 13,857,787	\$ 11,444,015	\$ 958,212	\$ 6,764,092	\$ 4,941,402	\$ 767,615	\$ 4,410,329	\$ 4,554,930	\$ -

Appendix "C"

Amounts per Trust Account Summary	2004	2005	2006	Total
Total Donations Received	\$ 22,721,020.62	\$ 39,332,626.47	\$ 43,464,980.51	\$ 105,518,627.60
Returned (NSF)	\$ 163,613.00	\$ 632,948.00	\$ 640,157.00	\$ 1,436,718.00
Interest Income	\$ 6,285.17	\$ 66,690.49	\$ 94,494.17	\$ 167,469.83
to ADRA	\$ 180,827.34	\$ 379,240.75	\$ 375,204.31	\$ 935,272.40
to WHI	\$ 193,485.25	\$ 406,357.78	\$ 419,943.31	\$ 1,019,786.34
to EBF	\$ 17,669,120.26	\$ 36,780,592.66	\$ 35,956,761.84	\$ 90,406,474.76

Adjustments

Payment to WHI at EBF Direction	\$ 510,967.21
Deposit Error	\$ 40,000.00
Interest Income - GIC	\$ 34,670.04

Amount per ADRA ASI Amended Financial Statements (21.01.2009)

Donations	\$ 22,482,398.00	\$ 40,085,952.00	\$ 43,521,434.00
Interest	\$ 15,914.00	\$ 37,575.00	\$ 94,546.00
to WHI	\$ 223,317.00	\$ 415,361.00	\$ 463,086.00
to EBF	\$ 22,031,728.00	\$ 39,241,638.00	\$ 42,973,303.00

Discrepancies

Donations	\$ -	-\$ 1,016,063.53	-\$ 56,453.49
Interest	-\$ 9,628.83	\$ 29,115.49	-\$ 51.83
to WHI	-\$ 29,831.75	-\$ 9,003.22	-\$ 43,142.69
to EBF	-\$ 4,362,607.74	-\$ 2,461,045.34	-\$ 7,016,541.16