



COPY

REGISTERED MAIL

FEb. 16 2005

Mr. Sol Neger, President
Bayit Lepletot
465 Coldstream Avenue
Toronto, Ontario
M5N 1Y6

BN 100422930 RR0001

FILE 0430157

Subject: Notice of Intent to Revoke Bayit Lepletot

Dear Mr. Neger:

In our letters dated May 7, 2002, July 11, 2002, and April 8, 2003 (copies attached for your convenience), Canada Customs and Revenue Agency (hereinafter the "CCRA") invited Bayit Lepletot (the "Organization"), to submit representations as to why the Minister of National Revenue should not revoke its registration, and received the Organization's responses dated July 4, 2002, August 27, 2002, September 12, 2002, and September 19, 2003 (copies attached for your convenience).

Every opportunity was provided to the Organization to help it address CCRA's concerns. Your repeated requests for extensions and deferrals to June 28, 2002, then to July 29, 2002, June 20, 2003, August 11, 2003, September 8, 2003, and finally up to September 22, 2003, were all allowed by CCRA in order to give you time to comply.

We have carefully reviewed the representations included in your letters, and it is our conclusion that these submissions do not provide sufficient reasons why the Organization's status as a registered charity should not be revoked. We offer the following explanations to help you understand our decision.

We identified various concerns in our letters dated May 7, 2002, July 11, 2002, and April 8, 2003 (copies attached for your convenience), regarding the audit of the Organization for the period ending December 31, 1998. Many of these concerns repeated non-compliance issues noted in our audits of the 1992 and 1993 fiscal periods in regard to the Organization's activities outside Canada.

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Direction and Control

Statutory provisions concerning the tax treatment of charitable gifts generally do not provide tax relief for donations made to charities or other organizations outside of Canada, nor does the legislative scheme permit registered Canadian charities to collect and receipt donations on behalf of such organizations. The *Income Tax Act* (hereinafter, the "Act") states in section 149.1(1) that a charitable organization must devote all of its resources to charitable activities carried on by the organization itself.

The Organization was informed in the letters dated May 7, 2002, July 11, 2002, and April 8, 2003, that pursuant to statutory provisions, it must exercise direction and control over the activities of its overseas agent in order to be considered as carrying on its own activities, as opposed to making passive transfers of money to a non-qualified donee.

A charity is allowed to have another organization or individual carry on activities on its behalf. The registered Canadian charity, however, must be responsible in a direct, effectual, and constant manner for all charitable activities to which its resources are being applied. The fact that the activities being undertaken by another organization may be consistent with the goals and objectives of the registered charity is insufficient to meet this operational test.

The Act authorizes the Minister to revoke the registration of a charity if it fails to make required expenditures on charitable activities carried on by it and by way of gifts to qualified donees.

Documentation

By observing guidelines given at the time of registration, as well as those available through our information channels, such as our toll free telephone numbers, our Internet site and more particularly, the advice in our letters, and by keeping proper books and records, a charity should be able to discharge its evidentiary burden of establishing that its principal-agent relationship existed in fact, and that it maintained effective direction and actual control over its resources at all times.

In the final analysis, the true test of whether a charity was responsible in a direct and effectual manner over its resources and activities is not shown by how well it has crafted an agreement, but rather, how well it has implemented it over time. Furthermore, through documented evidence, the charity must demonstrate that actual events transpired which prove the continued existence of the principal-agent relationship.

The charity must provide CCRA with a means of examining the internal decision-making mechanisms within the charity's own structure through records, such as: minutes of board meetings, inspection reports, internal communications (i.e., memoranda), as well as policies and procedures that show that the charity directed and controlled each of its activities.

CCRA twice audited the books and records of the Organization. Each audit revealed that the Organization exercised little or no control over the activities reportedly carried on in Israel to which its resources were devoted. In fact, the Organization's only function was to raise funds in Canada, to transfer its resources to its overseas agent, Mr. Samuel I. Stern, and to act as a conduit for foreign non-qualified donees (see Appendix A for a list of qualified donees).

Amended Agency Agreements

Our review of the Organization's agreement with its overseas agent showed that it disbursed \$6,359,376 during the fiscal period ending December 31, 1998, and \$5,204,681 during the fiscal period ending December 31, 1999 to the agent. The agency agreements and their administration did not meet the requirements of the CCRA. The agency agreement signed on July 27, 1983 did not specify the "charitable activities and programs" that the Organization required the agent to administer, nor did it provide any guidance as to the nature of the projects. The new agency agreement received by CCRA on September 18, 2002 merely stated in very general terms that the Organization's funds were to be gifted to "organizations as sponsor and assist the care, training, education, and rehabilitation and guidance of orphaned persons".

Bayit Lepletot Orphans and Refugee Girls Home, Girls Town Jerusalem, and the Mother and Baby Convalescent Home and Medical Centre (the "foreign recipients") were named as the intended foreign beneficiaries of the Organization's funds. But the agent's role was merely to pass on the Organization's funds to the non-qualified donees. This shortcoming was pointed out in our letter of April 8, 2003. In response, the Organization amended its agency agreement dated August 18, 2003, to include a list of activities:

"to provide food, clothing, religious educational materials and equipment and medical supplies and equipment; to maintain the building dormitory and the hospital; to pay for all the operating expenses for the buildings, including cleaning, utilities, property taxes and repairs; to pay for religious teachers; and to pay the salaries and fees of other professionals;"

In our view the above is a description of the core activities of the stated foreign recipients, rather than the Organization's own activities, since the Organization did not demonstrate that it was running the program itself.

The Organization did not provide CCRA with the internal decision-making mechanisms or records to show that it directed and controlled each of these activities as the guiding-mind in the principal-agent relationship.

Sending food, clothing, religious or medical supplies overseas would be acceptable if the Organization purchases these items in Canada or if the agent purchases them in Israel and provides invoices for the purchases. But it is not acceptable for the agent in the present case to merely transfer the funds to the foreign recipients and to let them make the purchases. In order for the foreign beneficiaries to make their own purchases, they are required to provide supporting invoices and all other documentation to the Canadian charity for its records. Both Mr. Stern and the foreign recipients have failed to support their expenditures with invoices.

Similarly, it is not acceptable for a Canadian registered charity to fund dormitory and hospital building operations, cleaning, utilities, property taxes and repairs unless the expenditures are justified with supporting invoices and proof of payment. Again, the agent has never supported such expenditures with invoices and payment documentation. Furthermore, the Organization cannot send funding outside Canada for salaries and fees of teachers and other professionals without being able to provide a full description of the programs as well as supporting invoices or payroll documentation. These documents were never provided to the CCRA.

The rest of the agreement and amendment describes administrative functions, not activities. In addition, the activities relate to obtaining funds as opposed to spending them.

With reference to the budgets of January 2, and August 10, 2003; provided by the foreign recipients, items such as Recreation & Transport were never justified with a fully documented description of each instance of travel, its purpose and benefit to a charitable program, nor supported fully with expense records and invoices.

Other budget items discussed above would also need to be supported as we have described. In the absence of documentation supporting the reported expenditures, and the ability to command such records, we conclude that the activities were not the Organization's own, and that it only acted as a conduit to send the funds outside Canada.

Monitoring

We have reviewed the correspondence listed below between the Organization, the agent, and the foreign recipients, that was included in your letter dated September 19, 2003, and which purported to demonstrate how the Organization monitors and controls the use of its funds overseas. Our comments are listed below:

- Numerous one-page written requests from the foreign recipients to Mr. Stern for funds to pay for expenses described simply as: medical/psychological fees, salaries, computers, food, professional expenses, maintenance, electricity, transportation, utilities, cleaning products, dishes, repairs, education, elevator expenses, supplies, Purim entertainment, medicine, furniture, clothing, recreation, library, curtains, tuition, utensils, equipment, air conditioning, summer camp, etc.
- The foreign recipients failed to provide any documentation to describe the purpose of these expenses, the intended beneficiaries, the professionals who were to receive salaries, whether they were charitable-program or administrative staff, and the reason and description of the travel. Where a request was made for multiple reasons, no breakdown of the expenses was ever provided. The foreign recipients consistently failed to provide any supporting documentation, invoices, payroll information, or proof of payment for any of the expenditures.
- Mr. Stern's approval of the foreign recipients' demand for funds each time without any input into the decision or any demand for supporting invoices.
- Mr. Stern's recommendation to the Organization to provide funding, and his assurance that he had investigated the request and found it to be valid. However, Mr. Stern failed to support his recommendation with supporting documentation or descriptions.
- The Organization's written approval of the funds, in some cases for an amount greater than that requested by the foreign recipients. The Organization failed to provide any documented means of examining the internal decision making mechanisms within the charity's own structure through records, such as: minutes of board meetings, internal communications (i.e., memoranda), policies and procedures to show that the charity, by directing and controlling each of its activities, acted as the guiding-mind in the principal-agent relationship. In none of the cases did the Organization initiate the expense or the program; it merely responded to the foreign recipients' requests for funds.

It is CCRA's conclusion that the Organization operates no charitable programs or activities of its own in Israel, whether directly or through any agent. The agent's Israeli bank account bears the address of the foreign

recipients, so it appears that it is in fact the foreign recipients' bank account and they have direct control over the Organization's funds without any supervision or direction by the Organization or its agent. The Organization merely sends funds to foreign non-qualified donees, over whose activities it does not exercise any control or direction. Further, the Organization failed to demonstrate that after forwarding its funds overseas, it monitored or attempted to evaluate the use or effectiveness of those funds.

We conclude furthermore, that by making an outright gift of its resources to foreign recipients, the Organization did not devote its resources to the pursuit of exclusively charitable purposes. Therefore, even after it put in place the agency agreement dated August 1, 2002, and the amendment dated August 18, 2003, the Organization was not responsible for its resources in a direct, effectual, and constant manner consistent with the Act.

Despite the letters and communications that have ensued since the Organization was registered as a Canadian charity, your letters confirm the results of the second audit; namely, that the Organization has continued its practice of simply gifting its resources to non-qualified donees. As such, it failed to meet the requirements of section 149.1(1) of the Act.

Gifts to non-qualified donees are not considered charitable expenditures for the purposes of the Act. For the fiscal periods that were audited, expenditures were made by the Organization that were claimed to be charitable, but were in fact gifts made to non-qualified donees. Consequently, the Organization has not demonstrated that these expenditures were charitable in nature. Moreover, it did not unequivocally show that all similar expenditures claimed in prior years were in fact charitable expenditures.

Conclusion

I therefore conclude that Organization does not meet the requirements of a charitable organization under section 149.1(1) of the Act.

Consequently, I wish to advise you that for each of the reasons outlined above and pursuant to the authority granted to the Minister in section 168(1) of the Act and delegated to me by the Minister, I propose to revoke the registration of the Organization.

By virtue of section 168(2) of the Act, the revocation will be effective on the date of publication in the Canada Gazette of the following notice:

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

| Business Number | Name |
|------------------------|------------------------------------|
| 100422930 RR0001 | Bayit Lepletot Toronto, Ontario |

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

Supreme Court Building
Wellington Street
Ottawa, Ontario
K1A 0H9

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

Consequences of a Revocation

As of the date of revocation of the registration of the Organization, which is the date upon which the above-noted notice is published in the Canada Gazette, the Organization will no longer be exempt from Part I tax as a registered charity and will no longer be permitted to issue official donation receipts.

Additionally, the Organization may be subject to tax exigible pursuant to Part V, section 188 of the *Act*. For your reference, I have attached a copy of the relevant provisions of the *Act* concerning revocation of registration, tax applicable to revoked charities, and appeals (Appendix).

By virtue of subsection 188(1) of the *Act*, the Organization will be required to pay a tax within one year after the effective date of revocation. This revocation tax is calculated on prescribed form T2046 "Tax Return Where Registration of a Charity is Revoked".

The return must be filed and the tax must be paid on or day that is one year after the effective date of revocation. The amount of revocation tax payable will be equal to the total fair market value of the Organization's assets on valuation day plus the amount of received donations and gifts from other charities received by the charity after that day. Valuation day is 120 days before the date of mailing of this Notice of Intent to Revoke.

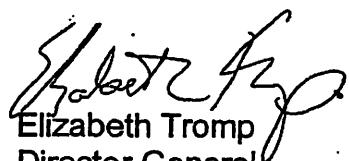
The amount of tax payable will then be reduced by the value of any assets or funds that the organization transferred to qualified donees, disbursed on its own charitable activities, used to repay its debts and/or used to cover reasonable expenses in the period from the valuation day to one year from the date on which the revocation is effective. A copy of form T2046 has been included for your information.

I also wish to advise you that organizations that lose their registered charity status may be subject to the requirements of section 150 of the Act for filing returns of income. Accordingly, a return of income that is in prescribed form and that contains prescribed information shall be filed with the Minister, without notice or demand for the return, for each taxation year of a taxpayer.

However, the Organization might be eligible for non-profit organization status which is defined in paragraph 149(1)(l) of the Act. Subsection 149(12) states the filing requirements for a non-profit organization.

Determination of an organization's status as a non-profit organization is the responsibility of our Tax Services Offices. I would stress that such recognition does not convey authority to issue official donation receipts for income tax purposes. If you need further information with regard to non-profit status, please contact your local Toronto Tax Services Office directly.

Yours sincerely,



Elizabeth Tromp
Director General
Charities Directorate

Enclosures



REGISTERED MAIL

President
Bayit Lepletot
C/o Zeifman & Company
201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7

BN 100422930RR0001
REG 0430157

May 7, 2002

Dear Sir or Madam:

Re: Charity Audit

This letter is further to the audit of the books and records of account of Bayit Lepletot (the "Organization"), for the fiscal period ended December 31, 1998, which was conducted by a representative of the Canada Customs and Revenue Agency (the "CCRA"). Due to current workload demands in the Charities Directorate, we were unable to formally communicate to you sooner the results of this audit. We apologize for this delay.

The results of the audit indicate the Organization has contravened certain provisions of the *Income Tax Act* (the "Act") or its Regulations. For a registered charity to retain its registration, it must comply with the provisions of the *Act*. If a particular registered charity does not comply with these provisions, the Minister may revoke that charity's registration in the manner described in subsection 168(2) of the *Act*. The balance of this letter describes CCRA's concerns.

1. Charitable Activities Outside Canada

The *Act* permits a registered charity to carry out its charitable purposes, both inside and outside Canada, in two ways. First, it can fund other organizations that are qualified donees as described in the subsection 149.1(1) of the *Act*, (see Appendix "A"). Second, it can carry on its own charitable activities. In contrast to the relatively passive transfer of money or other resources involved in making contributions to qualified donees, carrying on one's own activities implies active participation on the part of the Canadian charity in a program or project that directly achieves a charitable purpose.

The *Act* states in subsection 149.1(1) that a charitable organization must devote all its resources to charitable activities carried on by the organization itself. The *Act* reinforces this requirement in paragraph 149.1(2)(b), by authorizing the Minister to revoke the registration of a charity if it fails to make required expenditures on charitable activities carried on by it and by way of gifts to qualified donees.

The legislative intent conveyed by the expression “carried on by the organization itself” of paragraph 149.1(1)(a) is to require a charitable organization to actively engage in its own charitable activities. A charity is allowed to have another organization or individual act on its behalf. In such a relationship however, the registered Canadian charity must be responsible in a direct, effectual, and constant manner for charitable activities to which its resources are being applied. The fact that the activities being undertaken by another organization may be consistent with the goals and objectives of the registered charity is insufficient to meet this operational test.

A registered charity can work with other organizations or persons and still meet the “own activities” test provided it employs certain arrangements that enable it to retain direction and control over its resources. Such can be accomplished through agents, contractors or other intermediaries under structured arrangements set out in written agreements that allow it to retain direction and control of its resources. While there is no requirement at law that an agency agreement has to be in written form, it is essential for the registered Canadian charity to establish the parameters of its relationship with its agent by maintaining adequate bookkeeping and record systems.

From time to time the Charities Directorate has suggested certain guidelines for agency agreements in order to help charities understand all the requirements of the *Act*. We are enclosing a copy of our brochure, “Registered Charities: Operating Outside Canada” which discusses these guidelines in greater detail. Our publications are also available on our website at: www.cra-adrc.gc.ca/tax/charities. By observing these guidelines and by keeping proper books and records, a charity should be able to discharge its evidentiary burden of establishing that its principal-agent relationship existed in fact, and that it maintained effective direction and actual control over its resources at all times. In the final analysis, the true test of whether a charity was responsible in a direct, effectual, and constant manner over its resources and activities is not shown by how well it has crafted an agreement but rather, how well it has implemented it through time. Therefore, it is incumbent upon the charity to show that it has properly implemented any agreement it claims is in place.

The existence of either a written or verbal agency agreement is only one example of evidence required to show that a sufficient principal-agent relationship truly exists. The charity, through documented evidence, must demonstrate that actual events transpired which prove the continued existence of the principal-agent relationship. Thus, the charity must provide the CCRA with a means of examining the internal decision making mechanisms within the charity’s own structure through records, such as: minutes of board meetings; internal communications (i.e., memoranda); as well as, policies and procedures

that show that the charity, by directing and controlling each of its activities, acted as the guiding-mind in the principal-agent relationship. In addition, the charity must provide source documentation, reports, and the various other instruments it received from its agent showing that throughout the life of the principal-agent relationship, the agent reported back to the principal in such a manner and frequency as to allow the principal to make informed decisions about the resources and projects for which the principal was responsible.

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

The Organization entered into Agency Agreements with its overseas Agent for the operation of projects to whom it disbursed \$6,359,376 during the fiscal period ending December 31, 1998, and \$5,204,681 during the fiscal period ending December 31, 1999. Our review concludes that the Agency Agreement and its administration did not meet the requirements of the CCRA.

The Agency Agreement signed on July 27, 1983 provided to the auditor did not specify the "charitable activities and programs" that the Organization required the agent to administer, nor provided any guidance as to the nature of projects. The agreement did not mention that Bayit Lepletot Orphans and Refugee Girls Home, Girls Town Jerusalem, and the Mother and Baby Convalescent Home and Medical Centre (all of which are non-qualified donees) were the intended foreign beneficiaries of the Organization's funds. The auditor was informed that the agreement was never amended to correct this shortcoming.

The results of the audit also revealed that the terms of the agreement were not complied with. The Organization did not maintain full and complete direction, control and supervision over the application of its funds. The Organization never maintained direct correspondence with Rabbi Naftoli Rosenfeld, the Director of the three beneficiary institutions, and never inquired or received a report as to their activities. In every case Rabbi Rosenfeld requested an amount from the agent without providing any details as to the intended use of funds. The agent always approved the payment, without first informing the Organization or seeking its approval. There was no evidence to suggest that the Organization and its agent ever questioned any request or made any effort to monitor the use of the Organization's funds.

Furthermore, there was no evidence in the form of Minutes of the Organization's Board meetings to document any discussion or correspondence between the agent and the directors of the Organization. The decisions made, the consideration of any information, which might have been submitted by the agent, and any efforts by the Organization to act as the guiding-mind for the agent's activities were not documented in writing or in the Minutes of directors' meetings.

The funds of the Organization did not remain separate and apart from the funds of the agent, and the role of the Organization was not separately identifiable as its own charitable activity. Bank statements and addition tapes submitted to the auditor to support the expenditures of the agent, were not in one of Canada's official languages, and refer to the total funds and expenses of the non-qualified donees for the year, (not on at least a quarterly or semi-annual basis) without segregating the funds of the Organization.

The agent did not submit a budget to the Organization two months before the first day of the Organization's fiscal year, as required by the Agency Agreement. The agent also did not provide some system of continuous and comprehensive documented reporting, including expense vouchers, to the charity (on at least a quarterly or semi-annual basis) concerning its ongoing activities, which are carried out on behalf of the Organization. The expenditures of its funds were not pursuant to the written direction of the Organization.

Supporting documentation, such as expense documentation and invoices, was not available at the Organization's offices for our review. As a result, the Organization was not able to demonstrate to CCRA's satisfaction that it at all times maintained control and full accountability over the use of its monies transferred to the agent.

Disbursing funds to third parties who are not qualified donees (as defined by subsection 149.1(1) of the *Act*) is not considered as being a charitable activity. For purposes of the *Act*, when a registered charity merely transfers its resources to another entity (assuming the entity is a non-qualified donee), but fails to maintain effective direction and actual control over those resources, the result is the same as a gift to a non-qualified donee. Allowing a non-qualified donee to take complete control of the resources of a registered charity nullifies the purpose and intent of the *Act*.

Based on the above observations, it appears that the Organization does not sufficiently exercise control or direction over the use of its funds outside Canada.

Pursuant to paragraph 168(1)(b) of the *Act*, the Minister may give notice to a registered charity that she proposes to revoke its registration because it ceases to comply with the requirements of the *Act* related to its registration as such.

2. Information Return

Subsection 149.1(14) of the *Act* requires every registered charity to file a Registered Charity Information and Public Information Return, (form T3010), without notice or demand within six months from the end of each fiscal period. This return must be in prescribed form and contain prescribed information. It was noted that the Information Returns for the years 1998, 1999 and 2000 were all filed late, well after the June 30 due date.

Under paragraph 168(1)(c) of the *Act*, the Minister may, by registered mail, give notice to the Organization that she proposes to revoke its registration because it fails to file an information return as and when required under the *Act* or its Regulation.

3. Board of Directors

The audit results indicate that the Board of Directors do not deal with each other at arm's length. It was determined that two of the three directors are related.

Subsection 149.1(1)(b)(iii) of the *Act* stipulates that as a charitable organization, more than 50% of the directors, trustees, officers or like officials of the Organization which deal with each other and with each of the other directors, trustees, officers or officials must do so at arm's length.

Pursuant to paragraph 168(1)(b) of the *Act*, the Minister may give notice to a registered charity that she proposes to revoke its registration because it ceases to comply with the requirements of the *Act* related to its registration as such.

2. Official Donation Receipts

Regulation 3501 of the *Act* provides various requirements in respect of official donation receipts issued by registered charities. Interpretation Bulletin IT-110R3 entitled "*Gifts and Official Donation Receipts*", enclosed, sets out our policy regarding other requirements. Our review indicated the following non-conformities:

- The donation receipts did not include the statement "*Official Receipt for Income Tax Purposes*".
- The Organization issued official receipts to an individual for a gift received from a company owned by that individual. Official donation receipts may only be given to the actual donor of the gift and not to any third party identified by that donor.

Under paragraph 168(1)(d) of the *Act*, the Minister may, by registered mail, give notice to the Organization that she proposes to revoke its registration because it issues a receipt otherwise than in accordance with the *Act* and the Regulations.

Conclusion

For all the reasons listed above there are grounds to revoke the Organization's status as a registered charity. The consequences of revocation include:

1. The loss of its tax exempt status as a registered charity, which means that the Organization would become a taxable entity under Part I of the *Act* unless, in the opinion of the Director of the applicable Tax Services office, it qualifies as a non-profit organization as described in paragraph 149(1)(l) of the *Act*;
2. The loss of the right to issue official donation receipts for income tax purposes which means that gifts made to the Organization would not be allowable as a tax credit to individual donors as provided at subsection 118.1(3) of the *Act* or as a deduction allowable to corporate donors under paragraph 110.1(1)(a) of the *Act*; and
3. The possibility of a tax payable under Part V, subsection 188(1) of the *Act*.

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

If you do not agree with the facts outlined above, or if you wish to present any serious reasons why the Minister should not revoke the registration of the Organization in accordance with subsection 168(2) of the *Act*, we invite you to submit your representations within 30 days from the date of this letter. After this date, the Director General of the Charities Directorate will decide whether or not to proceed with the issuance of a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the *Act*.

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

If you require further information, clarification, or assistance, please write to the undersigned at Canada Customs and Revenue Agency, Charities Directorate, Place de Ville, Tower A, 320 Queen St, 6th Floor, Ottawa, Ontario, K1A 0L5, telephone (613) 954-1193 or fax (613) 946-7646.

Sincerely,



N.M.J. Quraishi
Compliance Section
Charities Directorate

Attachments



REGISTERED MAIL

Mr. Robert Benmergui
Representative,
Bayit Lepletot
C/o Zeifman & Co., Chartered Accountants
201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7

BN 100422930RR0001
REG 0430157

July 11, 2002

Dear Sir:

Re: Charity Audit

We acknowledge receipt of your letter, dated July 4, 2002 relating to an audit of the books and records of Bayit Lepletot (the "Organization"), that was conducted by a representative of the Canada Customs and Revenue Agency, ("CCRA") for the fiscal period ended December 31, 1998.

We have reviewed the response that was provided with respect to the following items, and have noted the steps the Organization hopes to take in order to implement the changes necessary to comply with the requirements of the *Income Tax Act*, as described in our letter, dated May 7, 2002:

1. Charitable Activities Outside Canada
2. Information Return
3. Board of Directors
4. Official Donation Receipts

The balance of this letter describes CCRA's comments on the undertaking provided.

1. Charitable Activities Outside Canada

To assess the steps the Organization offers to take in order to exercise direction and control over its funds disbursed outside Canada, CCRA will require the following:

- A copy of the amended Agency Agreement with the Organization's overseas Agent to demonstrate how it specifies the "charitable activities and programs" that the

Organization requires the agent to administer, and how it provides guidance as to the nature of projects;

- Copies of recent correspondence, demonstrating how the overseas recipients justify requests for funding to the Agent;
- Copies of recent correspondence, demonstrating how the Agent justifies requests for funding to the Organization;
- Copies of documentation, demonstrating the process by which the Organization reviews and approves the expenditure;
- Copies of banking and other documentation, demonstrating that the funds of the Organization now remain separate and apart from the funds of the agent;
- Documentation demonstrating how the role of the Organization will be separately identifiable as its own charitable activity;
- A copy of a budget submitted to the Organization by the Agent, for the Organization's current fiscal year, as required by the Agency Agreement;
- Examples of continuous and comprehensive documented reporting by the Agent to the Organization (on at least a quarterly or semi-annual basis) for the Organization's current fiscal year, concerning its ongoing activities, which are carried out on behalf of the Organization.

Furthermore, the Organization must undertake to ensure that the Agent will obtain required documents in one of Canada's official languages, not merely endeavour to do so.

2. Information Return

Subsection 149.1(14) of the *Act* requires every registered charity to file a Registered Charity Information and Public Information Return, (form T3010); without notice or demand within six months from the end of each fiscal period. This return must be in prescribed form and contain prescribed information. It was noted that the Information Returns for the years 1998, 1999 and 2000 were all filed late, well after the June 30 due date.

Our records again indicate that the T3010 Information Return for the fiscal period ended December 31, 2001 has not been filed on the required date, June 30, 2002.

Under paragraph 168(1)(c) of the *Act*, the Minister may, by registered mail, give notice to the Organization that she proposes to revoke its registration because it fails to file an information return as and when required under the *Act* or its Regulation.

3. Board of Directors

The Organization has not provided documentation reflecting a new composition of the Organization's Board of Directors.

4. Official Donation Receipts

The Organization has not provided a copy of the Organization's amended donation receipt to demonstrate compliance with Interpretation Bulletin IT-110R3 entitled "*Gifts and Official Donation Receipts*".

Conclusion

We have taken into consideration the representations made in your letter dated July 4, 2002. It remains our opinion that your response does not fully address our concerns and that for all the reasons listed above there still are grounds to revoke the Organization's status as a registered charity. The consequences of revocation include:

1. The loss of its tax exempt status as a registered charity, which means that the Organization would become a taxable entity under Part I of the *Act* unless, in the opinion of the Director of the applicable Tax Services office, it qualifies as a non-profit organization as described in paragraph 149(1)(l) of the *Act*;
2. The loss of the right to issue official donation receipts for income tax purposes which means that gifts made to the Organization would not be allowable as a tax credit to individual donors as provided at subsection 118.1(3) of the *Act* or as a deduction allowable to corporate donors under paragraph 110.1(1)(a) of the *Act*; and
3. The possibility of a tax payable under Part V, subsection 188(1) of the *Act*.

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

If you do not agree with the facts outlined above, or if you wish to present any serious reasons why the Minister should not revoke the registration of the Organization in accordance with subsection 168(2) of the *Act*, we invite you to submit your representations **within 30 days from the date of this letter**. After this date, the Director General of the Charities Directorate will decide whether or not to proceed with the issuance of a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the *Act*.

If you require further information, clarification, or assistance, please write to the undersigned at Canada Customs and Revenue Agency, Charities Directorate, Place de Ville, Tower A, 320 Queen St, 6th Floor, Ottawa, Ontario, K1A 0L5, telephone (613) 946-7537 or fax (613) 946-7646.

Sincerely,



N.M.J. Quraishi
Compliance Section
Charities Directorate

Attachments



Canada Customs
and Revenue Agency Agence des douanes
et du revenu du Canada

REGISTERED MAIL

Mr. Robert Benmergui, Representative,
Bayit Lepletot
C/o Zeifman & Co., Chartered Accountants
201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7

Your file Votre référence

Our file Notre référence

BN 100422930RR0001
REG 0430157

April 8, 2003

Dear Sir:

Re: Charity Audit: Bayit Lepletot

We acknowledge receipt of your letter, dated August 27, 2002 relating to an audit of the books and records of Bayit Lepletot (the "Organization"), that was conducted by a representative of the Canada Customs and Revenue Agency, ("CCRA") for the fiscal period ended December 31, 1998.

We have reviewed the response that was provided with respect to the following items, and have noted the steps the Organization hopes to take in order to implement the changes necessary to comply with the requirements of the *Income Tax Act*, as described in our letters, dated May 7, 2002, and July 11, 2002. Although it is not CCRA policy to extend the response deadline in such cases, CCRA has granted you time from August 27, 2002, to the date of this letter to respond to our concerns.

1. Charitable Activities Outside Canada
2. Information Return
3. Board of Directors
4. Official Donation Receipts

The balance of this letter describes CCRA's comments on the undertaking provided.

1. Charitable Activities Outside Canada

The *Act* permits a registered charity to carry out its charitable purposes, both inside and outside Canada, in two ways. First, it can fund other organizations that are qualified donees as described in the subsection 149.1(1) of the *Act*, (see Appendix "A"). Second, it can carry on its own charitable activities. In contrast to the relatively passive transfer of

money or other resources involved in making contributions to qualified donees, carrying on one's own activities implies active participation on the part of the Canadian charity in a program or project that directly achieves a charitable purpose.

The *Act* states in subsection 149.1(1) that a charitable organization must devote all its resources to charitable activities carried on by the organization itself. The *Act* reinforces this requirement in paragraph 149.1(2)(b), by authorizing the Minister to revoke the registration of a charity if it fails to make required expenditures on charitable activities carried on by it and by way of gifts to qualified donees.

The legislative intent conveyed by the expression "carried on by the organization itself" of paragraph 149.1(1)(a) is to require a charitable organization to actively engage in its own charitable activities. A charity is allowed to have another organization or individual act on its behalf. In such a relationship however, the registered Canadian charity must be responsible in a direct, effectual, and constant manner for charitable activities to which its resources are being applied. The fact that the activities being undertaken by another organization may be consistent with the goals and objectives of the registered charity is insufficient to meet this operational test.

A registered charity can work with other organizations or persons and still meet the "own activities" test provided it employs certain arrangements that enable it to retain direction and control over its resources. Such can be accomplished through agents, contractors or other intermediaries under structured arrangements set out in written agreements that allow it to retain direction and control of its resources. While there is no requirement at law that an agency agreement has to be in written form; it is essential for the registered Canadian charity to establish the parameters of its relationship with its agent by maintaining adequate bookkeeping and record systems.

From time to time the Charities Directorate has suggested certain guidelines for agency agreements in order to help charities understand all the requirements of the *Act*. We are enclosing a copy of our brochure, "Registered Charities: Operating Outside Canada" which discusses these guidelines in greater detail. Our publications are also available on our website at: www.ccra-adrc.gc.ca/tax/charities. By observing these guidelines and by keeping proper books and records, a charity should be able to discharge its evidentiary burden of establishing that its principal-agent relationship existed in fact, and that it maintained effective direction and actual control over its resources at all times. In the final analysis, the true test of whether a charity was responsible in a direct, effectual, and constant manner over its resources and activities is not shown by how well it has crafted an agreement but rather, how well it has implemented it through time. Therefore, it is incumbent upon the charity to show that it has properly implemented any agreement it claims is in place.

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

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

The Organization entered into Agency Agreements with its overseas Agent for the operation of projects to whom it disbursed \$6,359,376 during the fiscal period ending December 31, 1998, and \$5,204,681 during the fiscal period ending December 31, 1999. Our review concludes that the Agency Agreement and its administration did not meet the requirements of the CCRA.

The Agency Agreement signed on July 27, 1983 provided to the auditor did not specify the "charitable activities and programs" that the Organization required the agent to administer, nor provided any guidance as to the nature of projects. The agreement did not mention that Bayit Lepletot Orphans and Refugee Girls Home, Girls Town Jerusalem, and the Mother and Baby Convalescent Home and Medical Centre (all of which are non-qualified donees) were the intended foreign beneficiaries of the Organization's funds. The auditor was informed that the agreement was never amended to correct this shortcoming.

We acknowledge that a new Agency Agreement received by CCRA on September 18, 2002, identifies the intended beneficiaries. However the new Agreement continues to fail to specify the Organization's own "charitable activities and programs" (other than the foreign recipients' own core programs), that the Organization required the agent to administer, nor provided any guidance as to the nature of projects. The agent's function is to transfer the Organization's funds to non-qualified donees, rather than to carry out any activities for the Organization. Such activities, with or without the presence of an agency agreement cannot be considered charitable.

The results of the audit also revealed that the terms of the agreement were not complied with. The Organization did not maintain full and complete direction, control and supervision over the application of its funds. The Organization never maintained direct correspondence with Rabbi Naftoli Rosenfeld, the Director of the beneficiary institutions, and never inquired or received a report as to their activities. In every case Rabbi Rosenfeld requested an amount from the agent without providing any details as to the intended use of funds. The agent always approved the payment, without first informing the Organization or seeking its approval. There was no evidence to suggest that the Organization and its agent ever questioned any request or made any effort to monitor the use of the Organization's funds.

Furthermore, there was no evidence in the form of Minutes of the Organization's Board meetings to document any discussion or correspondence between the agent and the directors of the Organization. The decisions made, the consideration of any information, which might have been submitted by the agent, and any efforts by the Organization to act as the guiding-mind for the agent's activities were not documented in writing or in the Minutes of directors' meetings.

- The funds of the Organization did not remain separate and apart from the funds of the agent, and the role of the Organization was not separately identifiable as its own charitable activity. Bank statements and addition tapes submitted to the auditor to support the expenditures of the agent, were not in one of Canada's official languages, and refer to the total funds and expenses of the non-qualified donees for the year, (not on at least a quarterly or semi-annual basis) without segregating the funds of the Organization.
- We acknowledge that in its letter of August 27, 2002, the Organization provided a copy of the Agent's bank statement in English. But the bank statement provided did not identify the accountholder, and the documentation of the Organization's transfers of funds, reconciled to the statement, was not provided.
- The agent did not submit a budget to the Organization two months before the first day of the Organization's fiscal year, as required by item 3 of the Agency Agreement. The agent also did not provide some system of continuous and comprehensive documented reporting, including expense vouchers, to the charity (on at least a quarterly or semi-annual basis) concerning its ongoing activities, which are carried out on behalf of the Organization. The expenditures of its funds were not pursuant to the written direction of the Organization.

Supporting documentation, such as expense documentation and invoices, was not available at the Organization's offices for our review. As a result, the Organization was not able to demonstrate to CCRA's satisfaction that it at all times maintained control and

full accountability over the use of its monies transferred to the agent.

Disbursing funds to third parties who are not qualified donees (as defined by subsection 149.1(1) of the *Act*) is not considered as being a charitable activity. For purposes of the *Act*, when a registered charity merely transfers its resources to another entity (assuming the entity is a non-qualified donee), but fails to maintain effective direction and actual control over those resources, the result is the same as a gift to a non-qualified donee. Allowing a non-qualified donee to take complete control of the resources of a registered charity nullifies the purpose and intent of the *Act*.

Based on the above observations, it appears that the Organization does not sufficiently exercise control or direction over the use of its funds outside Canada. To assess the steps the Organization offered to take in order to exercise direction and control over its funds disbursed outside Canada, CCRA will require the following:

- A copy of the amended Agency Agreement with the Organization's overseas Agent to demonstrate how it specifies the "charitable activities and programs" that the Organization requires the agent to administer, and how it provides guidance as to the nature of projects;
- Copies of recent correspondence, demonstrating how the overseas recipients justify requests for funding to the Agent;
- Copies of recent correspondence, demonstrating how the Agent justifies requests for funding to the Organization;
- Copies of documentation, demonstrating the process by which the Organization reviews and approves the expenditure;
- Copies of banking and other documentation, demonstrating that the funds of the Organization now remain separate and apart from the funds of the agent; the bank statements provided did not identify the accountholder, and the documentation of the Organization's transfers of funds, reconciled to the statement, was not provided;
- Documentation demonstrating how the role of the Organization is separately identifiable as its own charitable activity;
- A copy of a budget submitted to the Organization by the Agent, for the Organization's current fiscal year, as required by the Agency Agreement;
- Examples of continuous and comprehensive documented reporting by the Agent to the Organization (on at least a quarterly or semi-annual basis) for the Organization's current fiscal year, concerning its ongoing activities, which are carried out on behalf of the Organization.

Furthermore, the Organization must undertake to ensure that the Agent will obtain required documents in one of Canada's official languages, not merely endeavour to do so.

Pursuant to paragraph 168(1)(b) of the *Act*, the Minister may give notice to a registered charity that she proposes to revoke its registration because it ceases to comply with the

requirements of the *Act* related to its registration as such.

2. Information Return

Subsection 149.1(14) of the *Act* requires every registered charity to file a Registered Charity Information and Public Information Return, (form T3010), without notice or demand within six months from the end of each fiscal period. This return must be in prescribed form and contain prescribed information. It was noted that the Information Returns for the years 1998, and 1999 were all filed late, well after the June 30 due date. We acknowledge your undertaking to comply in future. However, our records again indicate that the T3010 Information Return for the fiscal period ended December 31, 2001 has not been filed on the required date, June 30, 2002. It was received by CCRA on August 19, 2002.

Under paragraph 168(1)(c) of the *Act*, the Minister may, by registered mail, give notice to the Organization that she proposes to revoke its registration because it fails to file an information return as and when required under the *Act* or its Regulation.

Conclusion

We have taken into consideration the representations made in your letter dated July 4, 2002. It remains our opinion that your response does not fully address our concerns and that for all the reasons listed above there still are grounds to revoke the Organization's status as a registered charity. The consequences of revocation include:

1. The loss of its tax exempt status as a registered charity, which means that the Organization would become a taxable entity under Part I of the *Act* unless, in the opinion of the Director of the applicable Tax Services office, it qualifies as a non-profit organization as described in paragraph 149(1)(l) of the *Act*;
2. The loss of the right to issue official donation receipts for income tax purposes which means that gifts made to the Organization would not be allowable as a tax credit to individual donors as provided at subsection 118.1(3) of the *Act* or as a deduction allowable to corporate donors under paragraph 110.1(1)(a) of the *Act*; and
3. The possibility of a tax payable under Part V, subsection 188(1) of the *Act*.

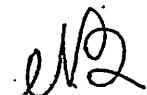
For your reference, we have attached a copy of the relevant provisions of the *Act* concerning revocation of registration and the tax applicable to revoked charities as well as appeals against revocation.

If you do not agree with the facts outlined above, or if you wish to present any serious reasons why the Minister should not revoke the registration of the Organization in

accordance with subsection 168(2) of the *Act*, we invite you to submit your representations within 40 days from the date of this letter. After this date, the Director General of the Charities Directorate will decide whether or not to proceed with the issuance of a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the *Act*.

If you require further information, clarification, or assistance, please write to the undersigned at Canada Customs and Revenue Agency, Charities Directorate, Place de Ville, Tower A, 320 Queen St, 6th Floor, Ottawa, Ontario, K1A 0L5, telephone (613) 946-7537 or fax (613) 946-7646.

Sincerely,



N.M.J. Quraishi
Compliance Section
Charities Directorate

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