



REGISTERED MAIL

Canadian Friends of Kashau
1921, Clinton
Montreal QC H3S 1L2

MAY 01 2014

BN: 886141597RR0001

Attention: Mr. Morris Weiss

File #: 0820134

**Subject: Notice of Intention to Revoke
Canadian Friends of Kashau**

Dear Sir:

I am writing further to our letter dated November 15, 2013 (copy enclosed), in which you were invited to submit representations as to why the registration of Canadian Friends of Kashau (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act*.

As of this date, we still have not received any response to our letter.

Conclusion

The audit by the Canada Revenue Agency (CRA) has revealed that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization failed to devote resources to its own charitable activities; transferred resources to non-qualified donees; failed to file its annual *Registered Charity Information Return* since 2008; failed to maintain adequate books and records; and issued receipts not in accordance with the Act and its Regulations. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements necessary for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letter dated November 15, 2013, I wish to advise you that, pursuant to subsection 168(1) and 149.1(2) of the Act, I propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d), 168(1)(e) and subsection 149.1(2) 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.

Canada

Business Number
886141597RR0001

Name
Canadian Friends of Kashau
Montreal QC

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

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

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

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

Consequences of Revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form 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. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix "A". Form T-2046 and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our Web site at www.cra-arc.gc.ca/charities;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act*. As a result, the Organization may be subject to obligations and entitlements under the *Excise Tax Act* that apply to organizations other than charity. If you have any questions about your Goods and services

tax/harmonized sales tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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

Yours sincerely,



Cathy Hawara
Director General
Charities Directorate

Attachments:

- CRA letter dated November 15, 2013; and
- Appendix "A", Relevant provisions of the Act

c.c.: Unger, Mendel Leib Rabbi



Weber, Yeshaya





REGISTERED MAIL

Canadian Friends of Kashau
1921, Clinton
Montreal (Quebec) H3S 1L2

BN: 886141597RR0001

Attention: Mr. Morris Weiss

File #: 0820134

November 15, 2013

Subject: Audit of Canadian Friends of Kashau

Dear Sir:

This letter is further to the audit of the books and records of the Canadian Friends of Kashau (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from 01-01-2007 to 12-31-2008.

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

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Failure to meet the requirements for registration a) Failure to devote resources to its own charitable activities b) Transfers to non-qualified donees c) Inactive status	149.1(1), 149.1(2), 168(1)(b)
2.	Failure to maintain adequate books and records	149.1(2), 168(1)b), 168(1)e), 230(2)
3.	Failure to file <i>Registered Charity Information Return</i> (T3010)	149.1(2), 149.1(14), 168(1)c)
4.	Issuing receipts not in accordance with the Act and its Regulations	149.1(2), 168(1)d), Regulation 3501(1)

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

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

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

Background:

The Organization reports to have three directors as per its publicly filed *Registered Charity Information Return* (Form T3010): Mr. Morris Weiss, Mr. Mendel Leib Unger and Mr. Yeshaya Weber. During the audit, Mr. Weiss, volunteer bookkeeper said that Rabbi and President Mr. Mendel Leib Unger was responsible for the Organization's foreign activities and Mr. Yeshaya Weber, the vice-president, was responsible for the Organization's selection of recipients. Mr. Weiss also said that the Organization's principal activities are supporting private schools in Canada and the Yeshiva of Kashau school in the suburb of the United States.

We spoke with Rabbi and President Unger who said that he did not know this Organization and has no involvement with it.

Mr. Morris Weiss said that he has resigned from the Organization and has informed other members on the board of directors of his resignation. It is unclear when this resignation was to have taken place.

During our audit, we were provided with limited records; Mr. Weber only provided copies of the official donation receipts he had not used. At the end of our audit, we did not receive additional information nor did we obtain a response to our requests for information.

The last information return filed by the Organization was 2008 taxation year; however, it is unclear if the Organization continues to operate.

Identified Areas of Non-Compliance

- 1. Failure to meet the requirements for registration**
 - a) Failure to devote resources to its own charitable activities**
 - b) Transfers to non-qualified donees**

Legislation:

In order for an organization to be recognized as a charity, it must be constituted exclusively for charitable purposes, and devote all its resources to charitable activities in furtherance thereof.¹ In the Supreme Court decision of *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.* [1999] 1 S.C.R. 10, Iacobucci J. speaking for the majority, summarized the requirements for charitable registration at paragraph 159, as follows:

"In conclusion, on the basis of the Canadian jurisprudence, the requirements for registration under s. 248(1) come down to two:

- (1) the purposes of the organization must be charitable, and must define the scope of the activities engaged in by the organization; and*
- (2) all of the organization's resources must be devoted to these activities."*

The term "charitable" is not defined in the Act; therefore it is necessary to rely on the jurisprudence in the common law. The courts have recognized four general categories of charitable purposes: (1) the relief of poverty; (2) the advancement of religion; (3) the advancement of education; and (4) other purposes beneficial to the community as a whole (or a sufficient section thereof) in a way that the law regards as charitable. This last category identifies an additional group of purposes that have been held charitable at law rather than qualifying any and all purposes that provide a public benefit as charitable.

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

- It can make gifts to other organizations that are qualified donees as defined by the Act. Qualified donees include Canadian registered charities, certain universities outside Canada, the United Nations and its agencies and a few charitable organizations outside Canada that have received a gift from Her Majesty in right of Canada. Note that individuals and most organizations outside Canada, such as foreign charities and international aid agencies, are **not** qualified donees.
- It can carry out its own charitable activities. These activities are usually carried out by persons under the registered charity's immediate control (for example - members, employees, or volunteers), or by its intermediaries (for example - agents or contractors). In contrast to the relatively passive transfer of money or other resources involved in making gifts to qualified donees, carrying on one's own activities implies that the Canadian charity is an active and controlling participant in a program or project that directly achieves a charitable purpose.

¹ *Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10, at page 110 (paragraph 152, 154, 156)

In both cases, a charity must maintain a record of steps taken to direct and control the use of its resources, as part of its books and records, to allow the CRA to verify that all of the charity's resources have been used for its own activities.

We refer to the comments of the court in *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*²:

“Pursuant to subsection 149.1 (1) of the [Income Tax Act], a charity must devote all its resources to charitable activities carried on by the organization itself. While a charity may carry on its charitable activities through an agent, the charity must be prepared to satisfy the Minister that it is at all times both in control of the agent, and in a position to report on the agent's activities...”

And

“Under the scheme of the Act, it is open to a charity to conduct its overseas activities either using its own personnel or through an agent. However, it cannot merely be a conduit to funnel donations overseas”.

As re-iterated by the Federal Court of Appeal, it is not enough for a charity to fund an agent that carries on certain activities. The Act requires that the agent actually conduct those activities *on the organization's behalf*³:

“...A charity that chooses to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any acts that purport to be those of the charity are effectively authorized, controlled and monitored by the charity.”⁴

Based on our findings, the Organization did not operate in accordance with the above requirements during the audit period.

Audit findings:

The audit has raised serious concerns with respect to the Organization's foreign activities. The Organization has not demonstrated adequate direction and control over its foreign activities.

² *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, 2002 FCA 72 at paragraphs (FCA) at paragraphs 40 and 30

³ *Bayit Lepletot v. Minister of National Revenue*, [2006] FCA 128

⁴ *Canadian Magen David Adom for Israel v. Minister of National Revenue*, [2002] FCA 323 at paragraph 66

The Organization was registered as a charitable organization effective January 1, 1989. As stated in its Letters Patent, the purposes for which the Organization was established and have never been modified since then are the following:

- The purpose of the Organization is to collect, raise and solicit funds, subscriptions, gifts and bequests in Canada in order to relieve poverty, advance religion and education with emphasis to be placed on needy students and orphans;
- The Organization shall be carried on with the purpose of gain for its members and any profits or other accretions to the Organization shall be used in promoting its objectives;
- The means of achieving the above stated objectives will be to subsidize or provide free, tuition, secular and religious, lunches and meals, clothing, medical attention, room and board, medical services and other such charitable activities as may properly conform to the above mentioned purpose;
- The above activities are to be done in close co-operation with Ohel Shmuel (Ohel Shmuel is a charitable organization in the United States carrying out similar activities), an institution long established and renowned for its dedication for charitable functions;

During our audit, we noted that the Organization transferred its funds not just to Yeshiva of Kashau school; it also sent its funds to other institutions, such as Yeshiva Beth Moshe, Camp Achim Inc., Scrantur Community Kollel, all located in the United States.

We noted that the Organization issued the bank drafts to the following non-qualified donees:

Recipient	Amount	Year
École Beth Jacob de Rav Hirschprung	\$3 500	2007
[REDACTED]	\$15 000	2007
[REDACTED]	\$14 210	2007
[REDACTED]	\$3 500	2007
[REDACTED]	\$29 000	2006
[REDACTED]	\$4 500	2006
[REDACTED]	\$12 000	2005
Weiss in Trust	\$15 000	2005

During our audit, the Organization did not provide any books and records to support its established direction and control of its foreign activities, such as:

- list of criteria for selection of beneficiaries or recipients;
- list of beneficiaries or recipients;

- written agreement signed between the Organization and each organization outside of Canada or an agent (intermediary);
- all deposits statement from the organizations outside of Canada which have received the funds of the Organization;
- all financial statement of the organizations outside of Canada or the agent;
- report from the organizations outside of Canada on how the transferred funds have been used, or have been given to the selected beneficiaries or recipients;
- all documents supporting Organization's control and direction of its resources carrying out of Canada.

Whether a registered charity carries out its own foreign activities through persons under its immediate control, or through intermediaries, it should put the following measures in place:

- provide to persons under its immediate control or its intermediaries clear and detailed directions concerning the activity, and how it is to be carried out;
- receive reports from those persons or organizations that describe their activities and use of resources; and
- monitor and supervise the activity on an ongoing basis.

However, the Organization did not demonstrate that these measures were put in place.

Furthermore, the Organization records all expenditures on the T3010 on line 5000, total expenditures on charitable programs yet our audit revealed that the amounts reported were either amounts transferred to the United States, were gifts made to qualified donees or could not be verified. In 2007, the Organization transferred \$45 202 to the non-qualified donees in the United States identified above and another \$28 200 transferred could not be verified to whom resulting in nearly 80% of the Organization's total expenditures being not utilized in charitable activities carried on by it. Also, our bank statement analysis revealed the Organization had withdrawals of \$120 112 which we interpret as a further \$30 000 in transfers that are unreported and unaccounted for.

c) Inactive status

It is our view the Act requires a registered charity be active in order to be meeting the requirements for which it obtained registration. It is our opinion that based on the interpretation of a combination of wording used in particular provisions of the Act, the Minister of National Revenue has the authority to grant registered status to those entities that are active and the discretion to revoke those that are inactive.

As per above, it does not appear that the Organization has been active since 2008 as this was the last T3010 filed and there appears to be inconsistency amongst the Board

as to who is a member and their association with the Organization. Mr. Unger said that he did not know this Organization and has no involvement with it and Mr. Weiss said that he has resigned from the Organization.

Conclusion:

Our view that the Organization has failed to demonstrate it meets the test for continued registration under subsection 149.1(1) of the Act as a charitable organization that operated exclusively for charitable purpose. During our audit, the Organization did not provide any documents demonstrating that it has taken all necessary measures to direct and control the use of its resources when carrying out activities through an intermediary or by its own. However defined, when carrying out activities through an intermediary or by its own, the Organization cannot merely be a conduit to funnel money to an organization that is not a qualified donee. In addition, the Organization could neither demonstrate to CRA that all its resources were devoted to its own activities or by way of gifts to qualified donees as in the Organization's registered charitable purposes.

As such, it is our view the Organization did not devote all its resources to charitable activity by transferring a significant portion of its resources to non-qualified donees and failing to demonstrate how these transfers were in furtherance of its own charitable activities. Under paragraph 168(1)(b) of the Act, the Minister may, by registered mail, give notice to the charity that she proposes to revoke its registration because it fails to comply with the requirements of this Act for its Registration as such. For this reason alone there are grounds for revocation of the Organization's registered status.

2. Failure to maintain proper books and records

Legislation:

Pursuant to subsection 230(2) of the Act, 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:

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

In addition, subsection 230(4) also states "Every person required by this section to keep records and 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 a 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 end of the last taxation year to which the records and books of account relate."

The policy of the CRA relating to the maintenance of books and records, and books of account, is based on several judicial determinations, which have held that:

- it is the responsibility of the registered charity to prove that its charitable status should not be revoked⁵;
- a registered charity must maintain, and make available to the CRA *at the time of an audit*, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto⁶; and
- the failure to maintain proper books, records and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status⁷.

Audit findings:

As per above, the Organization has not provided adequate records to demonstrate whether charitable activities are being undertaken and if those activities were in accordance with the objects for which it was registered. We note the Organization has transferred, by way of wire transfers, funds outside Canada yet we are unable to verify the Organization's on-going direction and control over the use of the funds. Furthermore, due to the lack of cooperation, inconsistent statements from the Board and lack of records, we are unable to ascertain if the Organization is active presently or if it ceased activities some time ago. We issued requests for information and documentation letters to the Board members but failed to receive any responses.

We also reconciled the Organization's bank records with the amounts reported on its publicly available information returns. For the years audited, the bank statements show that total deposits equal total withdrawals yet in comparison to the information returns

⁵ *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, 2002 FCA 72 (FCA)

⁶ *Supra*, footnote 3; *The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada*, (2004) FCA 397

⁷ *College Rabbinique de Montreal Oir Hachaim D'Tash v. Canada (Minister of the Customs and Revenue Agency)*, (2004) FCA 101; Act subsection 168(1)

filed, significant discrepancies were identified. For example, in 2007, the Organization reported total income and expenditures of approximately \$89,500 yet had total deposits and withdrawals of \$120,000; a discrepancy of \$30,500.

Additionally, we noted several discrepancies and omissions in the Organization's official donation receipt books. Our audit revealed a substantial number of receipts, purportedly issued in sequential order, were missing. As such, the CRA is unable to verify if the tax-receipted income reported on the Organization's public information returns are accurate or the total value of the official donation receipts issued. According to Mr. Weiss, he is responsible for the Organization's books and records but all members of the board of directors could issue official donation receipts; no control or reconciliation of donation receipts issued was made at years' end.

Conclusion:

It is our view that the Organization's books and records are not sufficient to support the Organization's actual activities or to demonstrate that the Organization is involved in charitable activities. Also, given the inconsistencies noted with the Board, it does not appear the Organization has a Board that is active or responsible for establishing and maintaining an adequate internal control structure that minimizes the risks associated with any misstatement in the financial reporting of the organization, safeguards the organization's assets, and prevents or detects error and fraud. Therefore it is determined that the Organization failed to maintain adequate books and records as required under subsection 230(2) of the Act. Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to the charity that she proposes to revoke its registration because it fails to comply with or contravenes any sections 230 to 231.5 of this Act. For this reason alone there are grounds for revocation of the Organization's registered status.

3. Failure to file *Registered Charity Information Return* (T3010)

Legislation:

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal year end, file a *Registered Charity Information Return* (T3010) with the applicable schedules.

It is the responsibility of the charity to ensure that the information that is provided in its return, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirements to file an Information Return for the year in prescribed form and containing prescribed information if it fails to exercise due care with respect to ensuring the accuracy thereof.

As a result, if the charity failed to file registered charity information return on time could have its charitable registered statute revoked.

Audit findings:

Our audit revealed that the Organization made the following errors or omissions on the 2007 and 2008 T3010s:

- The Organization transferred funds to qualified donees yet failed to complete Form T1236, *Qualified Donees Worksheet / Amounts Provided to Other Organizations* and failed to report the amounts at line 5050, Total amount of gifts made to all qualified donees on the information returns filed.
- The Organization reported that it carried on programs, directly or indirectly, outside Canada by employees or volunteers at question C4 of the T3010 but the Organization did not have any employees or volunteers.

Conclusion:

It is our position that the Organization has failed to comply with and has contravened to subsection 149.1(2) of the Act. Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, give notice to the charity that she proposes to revoke its registration because it fails to file an information return as and when required under the Act or a Regulation. For this reason alone there are grounds for revocation of the Organization's registered status.

4. Issuing receipts not in accordance with the Act and its Regulations

Legislation:

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

Audit findings:

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

- a) All receipts are not issued in a reasonable manner with respect to the unique serial numbers used. The following donation receipts were missing in the

books and records: #1027, #1030, #1032, #1038 to #1252, #1271 to #1525, #1532, #1545, #1564, #1625, #1632, #1633, #1635 to #2105, #2112, #2113, #2122 to #2125, #2149, #2150.

- b) The donation receipts were not issued in order, i.e. the donation receipts issued in 2005 had serial numbers greater than those issued in 2006 and after.
- c) Each member on the board keeps and issues separately preprinted official donation receipts. The receipts are not reconciled at year end. The Organization has not demonstrated that it takes control of its donation receipts properly by implementing security procedure to protect them. The CRA could not ensure that the Organization has all of the receipts issued or all of the preprinted receipts given to its members. Therefore the Organization does not comply with the requirements of Regulation of the Act;
- d) During our audit, we noted three different signatures affixed on the donation receipts issued in 2007, two in 2008 and three in 2009. We noted five different signatures for all receipts that were issued by the Organization for these three years. According to the information from our initial interview and on the Form T1235, *Directors/Trustees worksheet*, the Organization has not had any other members or volunteers other than the three official members on the board of directors.
- e) Furthermore, the address indicated on all donation receipts was not the same as the one which was recorded with the CRA.
- f) The donor's name was not indicated on the receipts #1253 issued on July 7, 2008 and #1559 issued on July 18, 2009.

Conclusion:

Under paragraph 168(1)(d) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it issues an official donation receipt otherwise than in accordance with the Act. It is our position the Organization has contravened Regulation 3501 of the Act regarding the issuance of official donation receipts. For these reasons alone there may be grounds to revoke the registered status of the Organization under paragraph 168(1)(d) of the Act.

The Organization's Options:

a) No Response

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

b) Response

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

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

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

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

Yours sincerely,

Verification and Enforcement Division
Tax Services Office: 08 - Montréal
Section: 445-1-3
Telephone: [REDACTED]
Facsimile: 514 - 283-8208
Address: 305 René-Lévesque Boulevard West,
7th floor
Montreal, QC H2Z 1A6
Internet: www.cra.gc.ca/charities

Enclosure

c.c.: Unger, Mendel Leib Rabbi



Weber, Yeshaya



Section 149.1 Qualified Donees

149.1(2) Revocation of registration of charitable organization

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

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

149.1(3) Revocation of registration of public foundation

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

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

149.1(4) Revocation of registration of private foundation

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

- (a) carries on any business;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (c) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

149.1(4.1) Revocation of registration of registered charity

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

- (a) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;
- (b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;
- (c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;
- (d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length; and
- (e) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever.

Section 168:

Revocation of Registration of Certain Organizations and Associations

168(1) Notice of intention to revoke registration

Where a registered charity or a registered Canadian amateur athletic association

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

168(2) Revocation of Registration

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

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

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

168(4) Objection to proposal or designation

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

- (a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);
- (b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or
- (c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

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

Where the Minister

- (a) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.2) and (22) and 168(1) by the Minister, to a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for registration as a registered Canadian amateur athletic association, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,
- (a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that

proposal, decision or designation within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,

- (a.2) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.3), (22) and 168(1) by the Minister, to a person that is a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1) that is or was registered by the Minister as a qualified donee or is an applicant for such registration, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,
- (b) refuses to accept for registration for the purposes of this Act any retirement savings plan,
- (c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,
- (e) refuses to accept for registration for the purposes of this Act an education savings plan,
- (e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,
- (f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,
- (f.1) refuses to accept an amendment to a registered pension plan, or
- (g) refuses to accept for registration for the purposes of this Act any retirement income fund,

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

180(1) Appeals to Federal Court of Appeal

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

- (a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),
- (c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),
- (c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1), or
- (d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

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

Section 188: Revocation tax

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

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

- (a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;
- (b) a new taxation year of the charity is deemed to begin immediately after that day; and
- (c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

188(1.1) Revocation tax

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

$$A - B$$

where

A is the total of all amounts, each of which is

- (a) the fair market value of a property of the charity at the end of that taxation year,
- (b) the amount of an appropriation (within the meaning assigned by subsection (2) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or
- (c) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

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

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

188(1.2) Winding-up period

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

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

188(1.3) Eligible donee

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

- (a) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;
- (b) that is not the subject of a suspension under subsection 188.2(1);
- (c) that has no unpaid liabilities under this Act or under the Excise Tax Act;
- (d) that has filed all information returns required by subsection 149.1(14); and
- (e) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable.

188(2) Shared liability — revocation tax

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

188(2.1) Non-application of revocation tax

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

- (a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and
- (b) the charity has, before the time that the Minister has so registered the charity,
 - (i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the Excise Tax Act in respect of taxes, penalties and interest, and
 - (ii) filed all information returns required by or under this Act to be filed on or before that time.

188(3) Transfer of property tax

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

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

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

188(4) Transfer of property tax

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

188(5) Definitions

In this section,

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

$$A - B$$

where

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

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

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

$$A - B$$

Where

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

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

189(6) Taxpayer to file return and pay tax

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

- (a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;
- (b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

189(6.1) Revoked charity to file returns

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

- (a) file with the Minister
 - (i) a return for the taxation year, in prescribed form and containing prescribed information, and
 - (ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and
- (b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

189 (6.2) Reduction of revocation tax liability

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

- (a) the amount, if any, by which
 - (i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was sent and ends at the end of the one-year period exceeds
 - (ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and
- (b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

189(6.3) Reduction of liability for penalties

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

- (a) the consideration given by the other person for the transfer, and
- (b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

189 (7) Minister may assess

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