



DEC 21 2009

REGISTERED MAIL

Canadian Ptach Society Inc.  
3101 Bathurst Street, Suite 401  
Toronto ON M6A 2A6

BN: 888120847RR0001

Attention: Akiva Medjuck

File #:0859678

**Subject:     Notice of Intention to Revoke  
                  Canadian Ptach Society Inc.**

Dear Mr. Medjuck:

I am writing further to our letter dated February 20, 2009 (copy enclosed), in which you were invited to submit representations as to why the Minister of National Revenue (the Minister) should not revoke the registration of Canadian Ptach Society Inc. in accordance with subsection 168(1) of the *Income Tax Act*.

We have now reviewed and considered your written response dated April 20, 2009 from your authorized representative, Adam Aptowitzer. However, notwithstanding your reply, our concerns, with respect to the Canadian Ptach Society Inc.'s non-compliance with the requirements of the *Income Tax Act* for registration as a charity, have not been alleviated. Our position is fully described in Appendix "A" attached.

**Conclusion:**

It is our position that the Canadian Ptach Society Inc. (the Organization) has operated for the non-charitable purpose of soliciting and assisting individuals in obtaining various disability tax credits from the Canada Revenue Agency (CRA) for a commission. The Organization has issued receipts for transactions that do not qualify as gifts, issued receipts not in accordance with the *Income Tax Act* (the Act), and has failed to maintain adequate books and records to support its activities. For all of these reasons, and for each of these reasons alone, it is the position of CRA that the Organization's registration should be revoked.

Consequently, for each of the reasons mentioned in our letter dated February 20, 2009, I wish to advise you that, pursuant to the authority granted to the Minister in subsections 149.1(4) and 168(1) of the Act, which has been delegated to me, I propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

*Notice is hereby given, pursuant to paragraphs 168(1)(b), and 168(1)(d) of the Income Tax Act, that I propose to revoke the registration of the organization listed below under subsection 149.1(4), and paragraph 149.1(4)(b), of the Income Tax Act and that the revocation of registration is effective on the date of publication of this notice.*

<b>Business Number</b>	<b>Name</b>
BN: 888120847RR0001	Canadian Ptach Society Inc. Toronto ON

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

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

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, unless the CRA receives an order, **within the next 30 days**, from the Federal Court of Appeal issued under paragraph 168(2)(b) of the Act extending that period.

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

### **Consequences of Revocation**

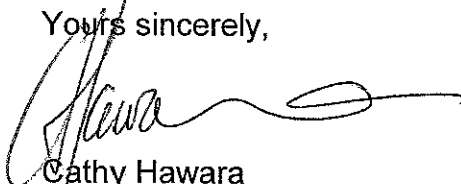
As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I Tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;

- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046 *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the relevant provisions of the Act concerning revocation of registration, the tax applicable to revoked charities, and appeals against revocation, can be found in Appendix "B" attached. Form T-2046, and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our website at [www.cra-arc.gc.ca/charities](http://www.cra-arc.gc.ca/charities);
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (ETA). As a result, the Organization may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (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  
A/Director General  
Charities Directorate

Attachments:

- CRA letter dated February 20, 2009;
- Appendix "A", Comments on Representations; and
- Appendix "B", Relevant provisions of the Act

c.c.: Adam Aptowitzer, Drache LLP  
222 Somerset St West – 2<sup>nd</sup> Floor  
Ottawa, Ontario K2P 2G3

**REGISTERED MAIL**

Canadian Ptach Society Inc.  
3101 Bathurst Street, Suite 401  
Toronto, Ontario M6A 2A6

Attn: Akiva Medjuck

888120847RR0001  
File: 0859678

February 20, 2009

**Subject: Audit of Canadian Ptach Society Inc.**

Dear Mr. Medjuck:

This letter is further to the audit of the books and records of Canadian Ptach Society Inc. (the "Charity") by the Canada Revenue Agency (the "CRA"). The audit related to the operations of the registered charity for the periods ending December 31, 2005 to December 31, 2007.

The results of this audit and review indicate specific areas of non-compliance with the provisions of the *Income Tax Act* (the "Act") and/or its *Regulations*. The specific areas of non-compliance identified are:

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Failure to Devote Resources to Charitable Activities	149.1(2), 168(1)(b)
2.	Carrying on a Business that it not a Related Business of the Charity	149.1(2)(a)
3.	Failure to Accept Valid Gifts in Accordance with the Act	118.1
4.	Issuing Receipts Not in Accordance with the Act	118.1, 149.1(2), 168(1)(d)
5.	Failure to Maintain Adequate Books and Records	149.1(2), 168(1)(e), 230(2)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of our audit as they relate to the legislative provisions applicable to registered charities and to provide the Charity with the opportunity to address our concerns. In order for a registered charity to retain its registration, it is required to comply with the provisions of the Act and common law applicable to registered charities. If these provisions are not complied with, the Minister of National

**Canada**

Revenue (the Minister) may revoke the Charity's registration in the manner prescribed in section 168 of the Act.

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

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

#### **1. Failure to Devote Resources to Charitable Activities:**

To qualify for registration as a charity under the Act, an organization must be established for charitable purposes and to devote all its resources to its own charitable activities.<sup>1</sup> This is a two-part test. First, the purposes it pursues must be wholly charitable and second, the activities that a charity undertakes on a day-to-day basis must further its charitable purposes in a manner consistent with charity law.<sup>2</sup> Charitable purposes are not defined in the Act and it is therefore necessary to refer, in this respect, to the principles of the common law governing charity. An organization that has one or more non-charitable purposes and/or devotes resources to activities undertaken in support of non-charitable purposes does not meet the necessary legislative and common law provisions to be a registered charity.

#### **Non-Charitable Purpose and Activities**

It is our position that the Charity does not operate for charitable purposes. Based on our review, the Charity appears to be primarily operating for the purpose of assisting customers in obtaining various disability tax credits/rebates from the CRA for a commission. The evidence on the file, as outlined below, demonstrates that the preponderance of the effort and resources of the Charity are devoted to this purpose. Operating for the purpose of acting as a commission agent to obtain various tax credits/rebates from CRA is not a charitable purpose at law.

The Charity was registered, effective April 23, 1990, and its objects at the time of registration were:

- a) *"to disseminate information about learning disabilities, particularly among parents and educators of Jewish children;*
- b) *to develop programs in Jewish educational institutions for the remedial education of children affected by learning disabilities;*
- c) *to assist children with learning disabilities and the parents and educators of such children in coping with such disabilities by referring such persons to the appropriate psychological and therapeutic services;*

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<sup>1</sup> See *Income Tax Act* (Canada) at s. 248(1) and *Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10, at paragraph 159

<sup>2</sup> *Vancouver Society v. MNR*, supra, footnote 1, at paragraph 154

- d) *to set up model learning disability centres and to train and employ teachers and counsellors; and*
- e) *to provide scholarships, bursaries and financial assistance to Jewish children who have learning disabilities in order to allow them to attend Jewish educational institutions which provide remedial education, with emphasis on those children who without financial assistance, might not otherwise be able to obtain such special education in the appropriate environment".*

Based on our review, the Charity has not undertaken activities or utilized its resources in a manner which furthers the purposes for which it was constituted. Instead, it appears the Charity uses its resources for the purpose of soliciting clients to utilize its services, in order to generate income, instead of adhering to the mandate set out in its purposes. Given the manner in which the Charity structures and conducts its activities, and the proportional levels of involvement in this arrangement, it is our view that the primary purpose of the Charity is, in fact, to participate in this non-charitable arrangement.

It appears that the Charity was inactive for many years after its registration on April 23, 1990. Audit evidence indicates that in 2007 the Charity entered into the practice of soliciting the public, and assisting its customers in obtaining various disability tax credits/rebates from CRA for a fee. This activity was not disclosed when the Charity sought registration, and is not charitable. While certain activities involving the referral of persons with disabilities to appropriate medical and assistive services may serve to promote health in a recognized charitable manner, assisting people to obtain tax credits for the purpose of deriving income does not qualify in this regard.

The Charity has advertised its services with the unauthorized use of the CRA logo. The Charity's website, newspapers and brochures advertise the information conveyed as "Canada Revenue Agency Information", suggesting that the CRA has provided or consented to the use of this information by the Charity on its behalf, which is not the case. Advertisements indicate that adults and children are eligible for a "Disability Tax Rebate up to \$30,000 (cash payment)" if professionally assessed in the past 10 years with any of the following conditions:

1. ADD
2. Addiction
3. Alzheimers
4. Anxiety
5. Bi-Polar
6. Cancer
7. Depression
8. Eating Disorders
9. Epilepsy
10. Learning Disabilities
11. Mental Illness

- 12. OCD
- 13. Post Traumatic Stress Disorder
- 14. Physical Disabilities
- 15. Schizophrenia
- 16. Seniors

The Charity entered into agreements with individuals, acting as an agent on their behalf with CRA, physicians and any other necessary parties for the purpose of obtaining disability tax credits relating to the above conditions from CRA. As per the agreements entered into by Charity and its customers, the Charity was entitled to a fee of 15% in 2007, and 20% in 2008, of the tax credits received by the individuals. The Charity issued official donation receipts for the fees paid by the individuals enabling them to claim donation tax credits.

For the year 2007, the Charity collected over \$60,000 in "fees" from its clients and issued official donation receipts for the "fees" it collected. Financial statements and the T3010 information return show that the Charity paid \$61,981 as professional and consulting fees for 2007.

It is our view, therefore, that by operating primarily to carry out this non-charitable program, the Charity has failed to demonstrate that it meets the test for continued registration under 149.1(1) as a charitable organization "all the resources of which are devoted to charitable activities". For this reason, it appears to us that there are grounds for revocation of the charitable status of Canadian Ptach Society Inc.

## **2. Carrying on a Business that it not a Related Business of the Charity:**

The Act specifies that the Minister may revoke the registration of a charitable organization which carries on a business that is not a related business.<sup>3</sup> By implication, the Act allows charities to carry on related businesses.

It is the CRA's policy position<sup>4</sup> that an organization is considered to be carrying on a business if it operates a commercial activity, undertaken with the intention to earn profit, on a continuous or regular basis.

In order to be characterized as a related business, a business must be substantially run by volunteers, meaning at least 90% of those operating the business are unpaid volunteers, or it must be linked and subordinate to a Charity's charitable purposes.

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<sup>3</sup> s. 149.1(2)(a)

<sup>4</sup> See the CRA's policy statement entitled "What is a Related Business" at <http://www.cra-arc.gc.ca/tx/chrts/plcy/cps/cps-019-eng.html>

Relating the forgoing to the Charity, it is our view that operating to obtain tax credits for customers on a continuous basis, for the purpose of deriving income from services fees charged, constitutes a business activity. This activity has not, apparently, been run substantially by volunteers. Nor is it linked and subordinate to another charitable purpose pursued by the Charity. As a result, it is our position that this activity constitutes an unrelated business activity, which is a basis for revocation under section 149.1(2)(a) of the Act.

### 3. Failure to Accept Valid Gifts in Accordance with the Act:

It is our position that the Charity has contravened the Act by accepting and issuing receipts for transactions that do not qualify as gifts. We offer the following explanations to support our position.

#### a) No *Animus Donandi*

The common law defines a gift as a voluntary transfer of property without consideration<sup>5</sup>. An additional essential element of a gift is *animus donandi* - that the donor must be motivated by an intention to give. It must be clear that the donor intends to enrich the donee, by giving away property, and to generally grow poorer as a result of making the gift.<sup>6</sup>

It is our view that the vast majority of the transactions involving the Charity fail to meet this latter element. The common theme, found throughout all of these transactions, is that by receiving a donation receipt for the fee paid to the Charity as per the agreement signed, "donors" profit through the tax credits so obtained. The clients were agreed to pay 20% (15% in 2007) of the disability tax credit/rebate obtained as a fee to the Charity. The Charity issued official donation receipts for the "fees" it received from its clients. It is clear that the primary motivation of the "donors" who received the donation receipt is intent to profit, and, as such, these transactions fail to qualify as gifts at law.

In support of this position, we note the Charity's promotion materials and website primarily focus on the substantial tax credits/rebates up to \$30,000 in cash that people can obtain from CRA for a fee of 15% in 2007 and 20% in 2008. Also, Charity issued official donation receipts for the "fees" it received from the participants. As such, it is our position that there is no intention to make a "gift" within the meaning assigned at 118.1 of the Act. Participants in this program are primarily motivated by the desire to profit from the disability tax incentives and also from the donation tax credit for the fee paid to the Charity rather than a desire to enrich the charity. In our view, these transactions, given the combination of the tax credits and other benefits received, lack the requisite *animus donandi* to be considered gifts.

<sup>5</sup> *Queen v. Friedberg*, 92 DTC 6031, at p. 6032

<sup>6</sup> *The Queen v. Burns*, 88 DTC 6101, at p. 6105

## **b) Fees not gifts - Benefit received**

Additionally, we are of the opinion that the transactions themselves lack the necessary elements to be considered gifts at law. The "donors" received some form of consideration or benefit for the fees (cash donations) they paid to the Charity for the service. It is clear, based upon our audit and the promotional materials of Canadian Ptach Society that there was a clear expectation of return with respect to the contract signed and the donation made to the Charity. "Donors" received a service from the Charity acting as an agent assisting them for obtaining various disability tax credits/rebates from CRA. The donor's liability to pay a fee for the service was clearly linked to and proportionate to the amount of disability tax credits/rebates obtained from CRA.

In our view, it is clear that the fees paid to the Charity were not gifts as that term has been defined in law. The Charity was, therefore, not entitled to issue official donation receipts for the amounts that it received as a fee for their service. In our findings, the Charity has issued in excess of \$60,000 in donation receipts in 2007 for transactions that did not qualify as gifts. The Charity knew, or ought to have known, that it was not entitled to issue donation receipts for these transactions.

It is clear that the amount paid by clients is, in effect, not a donation but the price of service levied by the Charity and a payment to receive various disability tax credits/rebates from CRA. While the payment was made to the Charity, this amount was not a voluntary transfer of property, without expectation of return, in accordance with legal definition of the concept of a gift, given that all participants expected to receive a "service" and "tax credits from CRA" in return for their payments.

In our view, given that the Charity is responsible for the issuance of \$60,635 in 2007 in improper tax receipts, this represents an extremely serious abuse of the Charity's tax receipting privileges. For this reason, it appears to us that there are grounds for revocation of the charitable status of Canadian Ptach Society Inc. under paragraph 168(1)(d) of the Act.

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

Even without reference to the common law definition of a gift, proposed section 248(32) of the Act applies to these transactions as well. While this legislation is still proposed, once passed into law, it will apply retroactively to all transactions covered by the audit period under review. In our view, the agency service provided by the Charity is an advantage which is in consideration for the gift<sup>7</sup> or is otherwise related to the gift.<sup>8</sup> The Charity was therefore required by the Act to reduce the value reflected on the receipt by that of the advantage. As such, the value of the gift is deemed, according to the Act, to be nil and the Charity was not entitled to issue tax receipts for any of the

<sup>7</sup> See proposed sub-paragraph 248(32)(a)(i)

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

payments made to it. There is no indication whatsoever that the Charity took these provisions into account when issuing receipts for the fee received from its clients.

#### **4. Issuing Receipts not in Accordance with the Act:**

The law provides various requirements with respect to the issuing of official donation receipts by registered charities. These requirements are contained in Regulations 3500 and 3501 of the Act and are described in some detail in Interpretation Bulletin IT-110R3 *Gifts and Official Donation Receipts*.

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

- Receipts issued to acknowledge "fees" received as a result of the Charity's agency service to its clients were not valid gifts under section 118.1 of the Act. Under the *Income Tax Act*, a registered charity can issue official donation receipts for income tax purposes for donations that legally qualify as gifts;
- Donation receipts were missing the full name of the donor who made the payment. Many donation receipts were issued to husband and wife (Mr. and Mrs. xxx );
- There were missing receipts. Charity was unable to provide copies of receipt numbers 103, 111, 112 and 119 issued during 2007; and
- Receipts were not issued in sequential order (Regulation 3501(1)(c)). Receipt number 137 was issued to [REDACTED] for \$3,700 on December 31, 2007 and also receipt number 137 was issued [REDACTED] for \$100 on December 31, 2007.

Additionally, we would like to inform you that certain amendments to the Act were introduced as part of Bill C-33 tabled in Parliament on March 23, 2004, that came into force May 13, 2005. As part of the amendments, a registered charity that issues an official donation receipt that includes incorrect information is liable to a penalty equal to 5% of the eligible amount stated on the receipt. This penalty increases to 10% for a repeat infraction within 5 years.

A registered charity that issues an official donation receipt that includes false information is liable to a penalty equal to 125% of the eligible amount stated on the receipt, where the total does not exceed \$25,000. Where the total exceeds \$25,000, the charity is liable to a penalty equal to 125% and the suspension of tax-receipting privileges. We do not believe that this is an appropriate alternative, given the serious nature of the matter of non-compliance.

Under paragraphs 168(1)(d) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and the Regulations. It is our position the Charity issued receipts for transactions that do not qualify as gifts at law.

For this reason alone there are grounds for revocation of the charitable status of Canadian Ptach Society Inc. under paragraph 168(1)(d) of the Act.

#### **5. Failure to Maintain Adequate Books and Records:**

The Act, per subsection 230(2), requires that every registered charity shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing:

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

In addition, subsection 230(4) also states "every person required by this section to keep books of account shall retain:

- a) the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such period as is prescribed; and
- b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the date of the last taxation year to which the records and books relate".

The audit indicated the books and records kept by the Charity were inadequate for the purposes of the Act. In the course of the audit, the following deficiencies were noted:

- The Charity was unable to answer and properly address most of the written audit queries given to the Charity on August 21, 2008 and August 22, 2008.
- The Charity was unable to provide complete details of and supporting documentation for all recorded expenditures.
- Details and supporting documentation for payment of \$61,981 professional fee were inadequate and incomplete. Charity provided supporting documents for \$2,919 professional fees paid during 2007. This includes \$954 invoice #7099 dated August 23, 2007 and \$1,060 invoice #8010 dated December 13, 2007 from [REDACTED]. There were discrepancies in the invoice #8010 amount \$1,060 and the payment of \$1,065 shown in the ledger on December 13, 2007 to [REDACTED]. The Charity was unable to provide details and supporting documentation for remaining \$59,062 professional fee for 2007.

- Charity was unable to provide copies of all official donation receipts issued by the charity during 2007. Receipt numbers 103, 111, 112 and 119 were missing.
- Official donation receipts were not issued in sequential order. Receipt number 137 was issued to [REDACTED] for \$3,700 on December 31, 2007 and also receipt number 137 was issued [REDACTED] for \$100 on December 31, 2007
- The Charity failed to prepare and file T4 statements of remuneration slips and summaries for the wages and benefits paid during 2007.
- T4A statements of remuneration slips and summaries were not prepared and filed for the payments of professional fees to individual consultants/casual workers/individual contractors.

Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it fails to comply with or contravenes section 230 of the Act dealing with books and records. It is our position Canadian Ptach Society Inc. has failed to comply with and has contravened section 230 of the Act. For this reason alone there are grounds to revoke the registered status of Canadian Ptach Society Inc.

#### The Charity's Options:

##### **a) No Response**

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

##### **b) Response**

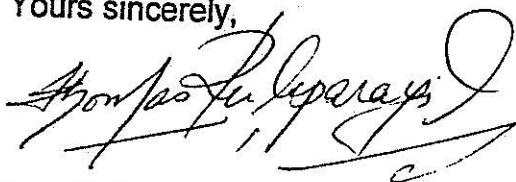
Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter. After considering the representations submitted by the Charity, the Director General of the Charities Directorate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

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

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

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

Yours sincerely,

A handwritten signature in black ink, appearing to read "Tony P. Thomas". The signature is fluid and cursive, with a large loop at the end.

Tony P. Thomas  
Audit Division  
Kitchener-Waterloo TSO



**CANADIAN PTACH SOCIETY INC.**

**COMMENTS ON REPRESENTATIONS OF APRIL 20, 2009**

**1. Failure to Devote Resources to Charitable Activities:**

In the Canadian Ptach Society Inc. (the Organization) representations of April 20, 2009, Mr. Adam Aptowitzer states, *"In this case, obtaining disability tax credit is a prima facie charitable activity done in furtherance of object 'e' - specifically under reference to 'financial assistance' and object 'e' is "to provide scholarships, bursaries and financial assistance to Jewish children who have learning disabilities in order to allow them to attend Jewish educational institutions which provide remedial education, with emphasis on those children who without financial assistance, might not otherwise be able to obtain such special education in the appropriate environment".*

We respectfully disagree with this statement. As set out below, our findings are supported by the documentary evidence obtained during the course of our audit. The audit conducted by the Canada Revenue Agency (CRA), identified that the Organization does not operate for charitable purposes based on its activities and the level of financial activity and resources devoted for the purpose of assisting customers in obtaining various disability tax credits/rebates from the CRA for a commission. The evidence on the file, as outlined below, demonstrates that the preponderance of the effort and resources of the Organization are devoted to this purpose. Operating for the purpose of acting as a commission agent to obtain various tax credits/rebates from CRA is not a charitable purpose at law. CRA is concerned that the integrity of the disability tax credit is undermined by the Organization.

The Organization was registered on April 23, 1990 for the following objects:

- a) *"to disseminate information about learning disabilities, particularly among parents and educators of Jewish children;*
- b) *to develop programs in Jewish educational institutions for the remedial education of children affected by learning disabilities;*
- c) *to assist children with learning disabilities and the parents and educators of such children in coping with such disabilities by referring such persons to the appropriate psychological and therapeutic services;*
- d) *to set up model learning disability centres and to train and employ teachers and counsellors; and*

- e) *to provide scholarships, bursaries and financial assistance to Jewish children who have learning disabilities in order to allow them to attend Jewish educational institutions which provide remedial education, with emphasis on those children who without financial assistance, might not otherwise be able to obtain such special education in the appropriate environment".*

Based on our review, the Organization has not undertaken activities or utilized its resources in a manner which furthers the purposes for which it was constituted. It appears that, in order to generate income, the Organization uses its resources for the purpose of soliciting clients to utilize its services instead of adhering to the mandate set out in its purposes. Given the manner in which the Organization structures and conducts its activities, and the proportional levels of involvement in this arrangement, it is our view that the primary purpose of the Organization is, in fact, to participate in this non-charitable arrangement.

Audit evidence indicates that in 2007 the Organization entered into the practice of soliciting the public, and assisting its customers in obtaining various disability tax credits/rebates from CRA for a fee. This activity was not disclosed when the Organization sought registration, and is not charitable. While certain activities involving the referral of persons with disabilities to appropriate medical and assistive services may serve to promote health in a recognized charitable manner, assisting people to obtain tax credits for the purpose of deriving income does not qualify in this regard.

The Organization's website details how to claim the disability tax credit for such illnesses as migraines, anorexia, alcoholism, attention deficit disorder, common sleep apnea, etc. It is our opinion that a number of items that the Organization claims as legitimate disabilities with respect to the disability tax credit do not meet the conditions found in Section 118.3 of the *Income Tax Act* (the Act) for severe and prolonged mental and physical impairment.

The Organization's website advises that funds can be claimed by or on behalf of a family member if the applicant does not have enough income to receive maximum funds available from CRA. The Organization also states that a person can claim the disability tax credits for more than ten years for a deceased family member. It appears that the Organization is endeavouring to make peoples' illnesses fit the criteria for the tax credit. This strategy is used to generate disability tax credits for individuals who do not actually meet the criteria. It appears that the motivation is not to assist people who are disabled in the ways set out in the Organization's purposes, but to assist T4 income earners to decrease tax payable for a commission.

It is our view, therefore, that by operating primarily to carry out this non-charitable program, the Organization has failed to demonstrate that it meets the test for continued registration as a charitable organization under section 149.1(1) of the Act wherein "all the resources of which are devoted to charitable activities". Therefore, under paragraph

168(1)(b) of the Act, the Minister of National Revenue (the Minister), may by registered mail give notice to the organization that the Minister proposes to revoke its registration because it ceases to comply with the requirements of the Act related to its registration as such. For this reason, it appears to us that there are grounds for revocation of the charitable status of Canadian Ptach Society Inc.

## **2. Carrying on a Business that it not a Related Business of the Organization:**

In the representations of April 20, 2009, Mr. Aptowitz states, *"Where an organization devoted to helping the disabled helps the disabled obtain a disability tax credit there is a prima facie link and I do not see how you could possibly take the position that it is neither linked nor subordinate to the Organization's charitable purposes"*.

We respectfully disagree with the statement. The Act specifies that the Minister may revoke the registration of a charitable organization which carries on a business that is not a related business (Paragraph 149.1(2)(a)).

Relating to the Organization, it is our view that operating to obtain tax credits for customers on a continuous basis for the purpose of deriving income from service fees charged, constitutes a business activity. This activity has not, apparently, been run substantially by volunteers; nor is it linked and subordinate to another charitable purpose pursued by the Organization. The Organization is actively marketing its products in school newsletters and in meetings with school boards stating that it is a charitable organization that gives tax advice to the parents of children with learning and other disabilities on how to get tax credits for out-of-pocket expenses for tutoring, special schools, etc. The Organization also states that their service is free and all they ask in return is a tax deductible donation of 15% of any tax savings. The Organization is advising taxpayers how much of their refund to donate (15%) and will give the taxpayer a donation receipt for the monies paid.

The Organization is advertising its services in doctors' offices on posters using letterhead similar to CRA letterhead, and also appeared at Trade Shows as an exhibitor. It is our opinion that active solicitation of clients in this manner is akin to a normal commercial activity and demonstrates that the Organization is operating as a business.

As stated above, it appears that the Organization is endeavouring to make individuals' illnesses fit the criteria for the tax credit. This strategy is used to generate disability tax credits for individuals who do not actually meet the criteria. These credits are being used by either the individual claiming to be disabled or a family member to lower taxable income and the credit can be claimed for up to 10 years of prior tax filings. The Organization has a calculator on its website where the taxpayer can plug in the number of years suffered from disability and it will generate a calculated "rebate" for the taxpayer. There is a \$25 fee to review the individual's personal information and the Organization is charging a fee contingent on the tax refunds that the individual receives.

The charging of funds to review personal information by the organization demonstrates a business practice and this would not qualify as a charitable activity. As a result, it is our position that this activity constitutes an unrelated business activity, which is a basis for revocation under section 149.1(2)(a) of the Act.

### **3. Failure to Accept Valid Gifts in Accordance with the Act:**

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

In the Organization's representations of April 20, 2009, Mr. Aptowitzer states, *"Thus, where there is no consideration for a payment there is a rebuttable presumption that the payment was a gift. You have not provided any evidence to rebut this presumption. It would therefore follow that the receipts were validly issued in the first place"*.

The common law defines a gift as a voluntary transfer of property without consideration<sup>1</sup>. An additional essential element of a gift is *animus donandi* - that the donor must be motivated by an intention to give. It must be clear that the donor intends to enrich the donee, by giving away property, and to generally grow poorer as a result of making the gift.<sup>2</sup>

As explained above, the Organization is charging a \$25 fee to review an individual's personal information, as well as an advised donation of 15% of the tax refund received for the service provided. This donation is not voluntary but is made mandatory by the Organization.

To demonstrate that the 15% donation is mandatory, the Organization took one of their clients to court recently for not paying the full amount of the "donation". The taxpayer used the services of the Organization to claim the disability tax credit for her grandson. The grandson, being a minor, became eligible for the disability tax benefit as well as the disability tax credit. The taxpayer paid the 15% on the disability tax credit to the Organization but refused to pay 15% of the disability tax benefit, believing that the disability tax benefit belongs to her grandson.

On July 28, 2008, the Organization sent a letter to the taxpayer threatening to take them to court for their "donation" money as follows:

*"We are surprised at your lack of response to our numerous efforts to contact you. We trust things are well with you and your family."*

*Our assistance with your disability tax application was successful as you were accepted by Revenue Canada, which resulted in your receiving a tax refund of \$13,603.28. In*

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<sup>1</sup> *The Queen v. Friedberg*, 92 DTC 6031, at p. 6032

<sup>2</sup> *The Queen v. Burns*, 88 DTC 6101, at p. 6105

*addition, as a direct result to your acceptance for the DTC you were eligible for the Child Disability Benefit of which you received \$6,052.18 from Revenue Canada. As per our agreement, you owe us a 15% donation on those monies received. To date we have received \$2,040.49. The balance on your account is \$910.00.*

*We kindly request that you pay our enclosed invoice by certified cheque within 72 hours of receipt of this letter. We trust you will honour your enclosed agreement in this matter. Failure to do so will result in our taking all legal action available to us."*

As the taxpayer refused to pay 15% of the disability tax benefit to the Organization, it took the taxpayer to the court for not paying the full amount of the donation.

It is our view that the vast majority of tax-receipted income of the Organization fails to meet the essential elements of a gift as explained above. The "donors" did not make a voluntary transfer of property and also the "donors" received a benefit in the form of service from the Organization. It is also clear that the primary motivation of the "donors" who received the donation receipt is intent to profit through the donation tax credits so obtained. As such, it is our position that there is no intention to make a "gift" within the meaning assigned at 118.1 of the Act. In our view, these transactions, given the combination of the tax credits and other benefits received, lack the requisite *animus donandi* to be considered gifts. It is clear from the above that these transactions fail to qualify as gifts at law.

#### **b) Fees not gifts - Benefit received**

In the representations of the Organization dated April 20, 2009, Mr. Aptowitzer states, *"The appropriate treatment, assuming your position is correct, would be to deduct from the \$60,635 worth of receipts the total value of services provided to the individuals."*

We respectfully disagree with the statement. There is no need to deduct the value of services provided since no part of the \$60,635 of receipted income would qualify as a gift as explained above. The "donor's" liability to pay a mandatory fee for the service received was clearly linked to and proportionate to the amount of disability tax credits/rebates obtained from the CRA.

It is clear that no part of the 15% of the disability tax credit paid to the Organization was a gift as that term has been defined in law. The Organization was, therefore, not entitled to issue official donation receipts for the amounts that it received for the service provided. The Organization knew, or ought to have known, that it was not entitled to issue donation receipts for these transactions.

It is our view that the issuance of \$60,635 in 2007 in improper tax receipts represents an extremely serious abuse of the Organization's tax receipting privileges. For this reason, it appears to us that there are grounds for revocation of the charitable status of Canadian Ptach Society Inc. under paragraph 168(1)(d) of the Act.

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

The Organization's representations of April 20, 2009, Mr. Aptowitzer states, *"Your assumption that the advantage returned to the donor is sufficient to reduce the receipts to nil is without basis. Again, the proposed legislation requires the receipt to be reduced by the fair market value of the advantage returned"*.

We respectfully disagree with the statement. There is no need for split receipting since the mandatory "donation" paid to the Organization does not qualify a gift as explained above. As such, the value of the gift is deemed, according to the Act, to be nil and the Organization was not entitled to issue tax receipts for any of the payments made to it.

### **4. Issuing Receipts not in Accordance with the Act:**

Our responses to each of the representations, regarding the issuance of receipts, presented in the letter of April 20, 2009, are as follows:

(1) Under the *Income Tax Act* (the Act), a registered Organization can issue official donation receipts for income tax purposes for donations that legally qualify as gifts. As stated above, the mandatory donation of 15% of the disability tax credit received by the client does not legally qualify as a gift.

(2) The donations to the Organization are a percentage of taxpayers' disability tax credit refunds and are not donations that are made jointly by a husband and wife. Therefore, donation receipts issued jointly to a husband and wife are incorrect.

(3 & 4) The law provides various requirements with respect to the issuing of official donation receipts by registered charities. These requirements are contained in Regulations 3500 and 3501 of the Act and are described in some detail in Interpretation Bulletin IT-110R3, *Gifts and Official Donation Receipts*. Registered charities are required to exercise adequate control over the donation receipts as required by the law.

Under paragraphs 168(1)(d) of the Act, the Minister may, by registered mail, give notice to the registered Organization that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and the Regulations. It is our position the Organization issued receipts for transactions that do not qualify as gifts at law. For this reason alone there are grounds for revocation of the charitable status of Canadian Ptach Society Inc. under paragraph 168(1)(d) of the Act.

### **5. Failure to Maintain Adequate Books and Records:**

In the representations of the Organization dated April 20, 2009, Mr. Aptowitzer states, *"While I do not have first-hand knowledge of the Organization's books and records I take on face value your findings and am, at this point, forced to agree with you that there are certain deficiencies in the Organization's books and records."*

The Act, per subsection 230(2), requires that every registered Organization shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing:

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

In addition, subsection 230(4) of the Act also states "[e]very 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 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 audit indicated the books and records kept by the Organization were inadequate for the purposes of the Act as explained in our letter dated February 20, 2009. It is our position that the Organization has failed to comply with and has contravened section 230 of the Act. For this reason alone there are grounds to revoke the registered status of Canadian Ptach Society Inc.

#### **Appropriateness of Revocation:**

Finally, we note that in the representations of the Organization dated April 20, 2009, Mr. Aptowitzer argues, *"I would further point out that this Charity has ceased to operate the alleged business and is moving towards a fuller and better implementation of its charitable objects. I doubt very much that there will be another infraction of any of the points you have raised but even more so the Charity is committed to keeping proper books and records so that these errors do not happen again. Finally, it seems to me that many of the more serious issues here are more matters of interpretation rather than clear violations of the spirit of the law. Under the circumstances it would seem that the best solution would be to proceed by way of compliance agreement rather than revocation. The Charity has already wound down the activity you have found offensive so there is no danger of the Charity transgressing in this manner again"*.

We disagree. The Organization has failed to demonstrate that it operates exclusively for charitable purposes, has improperly issued receipts in excess of \$60,000 in 2007 in transactions that do not qualify as gifts, and has breached numerous other requirements

of the Act. It appears that as a result of the Organization's aggressive marketing of its tax strategy in the Toronto area, the claims for disability tax credits including requests for disability tax credits going back to 1998 have increased in Ontario. Further as it also appears that the Organization inserts the wording on the disability tax credit certificate so to ensure that its clients are approved for the disability tax credit, and the fact that, if the disabled individual is a minor, the Organization is also charging 15% "donation" on the disability tax benefit, the CRA is concerned that the integrity of the disability tax credit is undermined by the Organization. It is the CRA's position that these are serious contraventions of the Act and warrant the revocation of the Organization's registered status.