



**REGISTERED MAIL**

Childhood Asthma Foundation  
3646 Cardinal Drive  
Niagara Falls ON L2H 2Y1

Attention: Jodi Henderson

BN: 86910 2897

File #: 3003748

August 14, 2012

**Subject: Revocation of Registration**  
**Childhood Asthma Foundation**

Dear Sir:

The purpose of this letter is to inform you that a notice revoking the registration of Childhood Asthma Foundation (the Organization) was published in the *Canada Gazette* on August 11, 2012. Effective on that date, the Organization ceased to be a registered charity.

**Consequences of Revocation:**

- a) The Organization is no longer exempt from Part I Tax as a registered charity and is no longer permitted to issue official donation receipts. This means that gifts made to the Organization are no longer allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the *Income Tax Act*, respectively.
- b) By virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the Return is enclosed. The related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, is available on our website at [www.cra-arc.gc.ca/E/pub/tg/rc4424](http://www.cra-arc.gc.ca/E/pub/tg/rc4424).

Section 188(2) of the Act stipulates that a person (other than a qualified donee) who receives an amount from the Organization is jointly and severally

liable with the Organization for the tax payable under section 188 of the Act by the Organization.

c) The Organization no longer qualifies as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (ETA). As a result, the Organization may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

In accordance with *Income Tax Regulation* 5800, the Organization is required to retain its books and records, including duplicate official donation receipts, for a minimum of two years after the Organization's effective date of revocation.

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

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

Yours sincerely,

*Monogram for Danie Huppé-Cranford*

Danie Huppé-Cranford  
Director  
Compliance Division  
Charities Directorate  
Telephone: 613-957-8682  
Toll free: 1-800-267-2384

Enclosures

- Copy of the Return (form T-2046)
- Canada Gazette publication

c.c.: Mark Scappatcci





July 26 2010

**REGISTERED MAIL**

Childhood Asthma Foundation  
P.O. Box 22033, Riall Heights  
Niagara Falls ON L2J 9Z9

BN: 869102897RR0001

Attention: Jodi Henderson

File #: 3003748

**Subject: Notice of Intention to Revoke  
Childhood Asthma Foundation**

Dear Ms Henderson:

I am writing further to our letter dated November 6, 2008 (copy enclosed), in which you were invited to submit representations as to why the Minister of National Revenue (the Minister) should not revoke the registration of Childhood Asthma Foundation (the Organization) in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

We have now reviewed and considered your written response dated January 12, 2009. However, notwithstanding your reply, our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. The basis for our concerns is explained below.

**Devotion of Resources & Disbursement Quota**

Per our letter of November 6, 2008, we stated that the Organization failed to satisfy its annual disbursement quota requirements for the fiscal periods ending December 31, 2004 through December 31, 2006. Our audit found that the Organization devoted a significant portion of its resources to fundraising and administration expenses resulting in a failure to satisfy its disbursement quota under subsection 149.1(1) of the Act and a failure to meet the definition of a charitable organization under paragraph 149.1(1)(a) of the Act, "all the resources of which are devoted to charitable activities carried on by the organization itself".

The Canada Revenue Agency's (CRA) audit has concluded that from January 1, 2004 to December 31, 2006, the Organization issued official donation receipts in excess of \$2.26 million and received over \$770,000 in other gifts. Of the \$3 million received, the Organization paid \$2 million to third-party fundraisers, \$200,000 for management and administrative expenses and devoted \$678,800, or 22% of gross

revenues, to its own charitable activities.<sup>1</sup> Based on the amounts devoted by the Organization to fundraising costs, which do not constitute charitable program expenditures, it is our position the Organization fails to devote substantially all its resources to charitable activities and is therefore unable to satisfy its annual disbursement quota. A disbursement quota shortfall in excess of \$1.5 million was calculated by the CRA and the Organization has been unable to demonstrate how it will address the lack of resources devoted to its own charitable activities, including gifts to qualified donees.

Our audit found that the Organization was allocating 33% of its third-party fundraising expenses to charitable programs. Therefore, the amount spent on charitable programs was overstated. The Organization had committed to the CRA to cease this misallocation of expenditures; however, a review of the 2007 and 2008 Registered Charity Information Returns (T3010) filed, revealed that the Organization continued to receive, at most, 48% of gross fundraising revenues received, after paying its third-party fundraiser. A review of the 2007 and 2008 T3010 returns also revealed that the Organization continues to devote, at most, 26% of gross revenues to its own charitable activities.

The CRA has had on-going discussions with the Organization concerning its disbursement quota shortfalls, including consideration of whether the Organization could continue to meet the obligations of registration, subject to satisfying certain expectations. Our discussion began with our letter of September 7, 2007, continuing to our letters of January 8, 2008, May 15, 2008, and November 6, 2008 (copies enclosed). To date, the Organization has not satisfied the expectations for continued registration as discussed in these communications. Your response of January 12, 2009 relies upon statements made in a draft fundraising policy that, "In some instances...charities may be allowed to allocate a portion of the [fundraising] costs other than to fundraising expenditures, where the activity also demonstrably furthers one of the charity's purposes." We concur this is an exception to the policy; however, as it applies to the Organization, "The CRA generally does not consider raising awareness of a charity's mandate or work, when it is carried on in conjunction with fundraising through non-charitable third-parties...to qualify for the exception. So, charities must allocate costs for such activities to fundraising expenditures."<sup>2</sup> We have not been provided with any evidence to suggest that a portion of the fundraising activities undertaken further the Organization's purposes. Even without allocating a portion of its third-party fundraising expenditures to charitable activities, the Organization was devoting only 44% of its total revenues to charitable activities<sup>3</sup>.

<sup>1</sup> Referencing the 2007 and 2008 figures, as reported on the annual information returns filed by the Organization, total revenues of \$4.2 million have been received. The Organization incurred \$2.7 million in fundraising expenses, \$340,000 in management and administrative costs with \$990,000 devoted to the Organization's own programs including gifts to qualified donees.

<sup>2</sup> CPS – 028 Fundraising by Registered Charities, effective July 11, 2009.

<sup>3</sup> This cumulative calculation is greatly impacted by the amounts reported by the Organization in 2004, in which it reports devoting \$898,000 to charitable activities yet reports \$270,000 and \$180,000 in 2005 and

In our letters of May 15, 2008, and November 6, 2008, we discussed our concerns regarding the Organization's relationship with Davica Enterprises (Davica) and Jodi Henderson – the President of Davica and the Executive Director of the Organization. The inter-connection between Davica and the Organization, by virtue of their relationship to Ms. Henderson, provides an opportunity, real or perceived, for an individual and/or a for-profit entity to receive a private benefit. Any benefit obtained by a for-profit entity by virtue of its relationship with a registered charity is considered to be a private benefit, the presence of which may undermine the otherwise charitable character of a charity. The fact that a for-profit entity may generate regular income for the charity does not sufficiently offset the private benefit, namely a potential to enhance the commercial and financial prospects of Davica and Ms. Henderson, and reinstate the charitable character of the Organization.

Our letter of May 15, 2008, also expressed our concerns that the service agreement between the Organization and Davica Enterprises allowed for Davica to provide an Executive Director at its "sole discretion" to the Organization. Specifically, the service agreement allowed for the President of Davica to assume this senior position in the Charity. We further expressed our concerns that such an arrangement might suggest that the Organization has abdicated control of the operations of the Organization over to Davica. As such, it is our position that the Organization has failed to show that it is not operating in part for the benefit of Davica.

While your representations of June 27, 2008, provided an updated service agreement, it still allows for this arrangement to exist, and as such, has not alleviated our previously expressed concerns.

We would also point out that the Organization has failed to alleviate concerns regarding the private benefit of Davica and Ms. Henderson. The Organization has not demonstrated that, in selecting Davica and Ms. Henderson through what appears to be a "sole-sourced" contract process, it has paid no more than market value for the services rendered. When one engages in a process of public tendering for services, one assumes that the Organization would obtain the best market value for services. Where one engages in a "sole-sourced" contract process, this is less certain. The Organization has not shown that it engaged in a process which supports the conclusion that it pays no more than market value for the respective services provided by Davica and Ms. Henderson. As a result, it is our position that the Organization has not shown that it devotes all of its resources to charitable activities.

Moreover, we are unable to conclude that the Organization has devoted all of its resources to charitable activities given that the vast majority of the amounts received

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2006 respectively. Utilizing the 2005 and 2006 figures, the Organization devoted, on average, 25% of its gross revenues to charitable activities. The 2005 and 2006 figures are also in line with those reported in 2007 and 2008.

are devoted to fundraising and administration. For this reason, we continue to be of the position that the Organization is not devoting all of its resources to charitable activities and therefore failed to satisfy its disbursement quota as required during the period under review. Under paragraph 168(1)(b) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration because it ceases to comply with the requirements of the Act related to its registration as such. It is our position that the Organization has not devoted all of its resources to charitable activities carried on by the organization itself. For this reason alone there are grounds to revoke the charitable status of the Organization.

### **Conclusion**

The Canada Revenue Agency's (CRA) audit has revealed that the Childhood Asthma Foundation (the Organization) is not complying with the requirements as set out in the *Income Tax Act* (the Act). The Organization has failed to satisfy the disbursement quota requirement and it has not devoted all of its resources to charitable activities. For each of these reasons it is the CRA's position that the Organization no longer meets the requirements necessary for charitable registration.

Consequently, I wish to advise you that pursuant to the authority granted to the Minister in subsections 168(1) and 149.1(2) 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 149.1(2)(b) of the Income Tax Act, that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.*

**Business Number**  
869102897RR0001

**Name**  
Childhood Asthma Foundation  
Niagara Falls 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

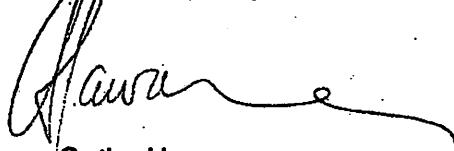
### Consequences of Revocation

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 "A", 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,



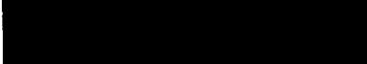
Cathy Hawara  
A/Director General  
Charities Directorate

Attachments:

- CRA letters dated September 7, 2007, January 8, 2008, May 15, 2008 and November 6, 2008;
- Your letter dated January 12, 2009; and
- Appendix "A", Relevant provisions of the Act

c.c.: Adam Aptowitzer, Drache LLP  
222 Somerset Street West, 2nd Floor  
Ottawa ON K2P 2G3

Mark Scappatcci





Childhood Asthma Foundation  
P.O. Box 22033, Town & Country Plaza  
Niagara Falls, Ontario  
L2J 4J3

Attention: Jodi Giamarco, Chief Executive Officer

BN: 86910 2897 RR0001  
File #: 3003748

September 7, 2007

**Subject: Childhood Asthma Foundation (CAF)**

Dear Ms Giamarco:

This letter is further to the audit of the books and records of the Childhood Asthma Foundation, (hereinafter, the "Charity"), by the Canada Revenue Agency (hereinafter, the "CRA"). We are writing to report on the status of the audit and the result of our audit findings. We apologize for the delay.

In 2005, Wendy Stewart audited the Charity's books and records for the fiscal period ending December 31, 2003. At that time, an Administrative Fairness Letter (AFL) letter dated May 3, 2005 was issued, proposing to revoke the organization's charitable status because of its disbursement quota shortfall. The charity did not concur with the proposal and argued that there were other charities that use the same third party fundraiser, but their charitable status has not been affected. At the time, the previous auditor agreed to suspend any audit action pending further investigation. Please note that your concerns were considered and addressed and because of confidentiality, we cannot comment on the other charities. The details and circumstances of this particular file are unique and thus need to be assessed based on its own merits.

In 2006, we met with the Charity to negotiate a Compliance Agreement. At the meeting, the disbursement shortfall calculated per audit review was a major concern for the Charity. The Charity requested a reduction of the disbursement quota shortfalls to zero. The Charity also inquired about being allowed to allocate expenses paid to the third party fundraiser as "charitable" if the Charity negotiated and changed both the contract and script content to focus more on "education". We agreed to investigate the matter.

It should also be noted that in 2006 and 2007, the Charity's books and records for fiscal periods ending December 2004, 2005, and 2006 were reviewed.

The balance of this letter summarizes the results of our findings and specifically elaborates on how the Charity appears to be in contravention of certain provisions of the *Income Tax Act* (hereinafter, the "ITA") or its Regulations.

In summary, it is our view that the Charity should not have reported costs associated with its third party fundraising campaign as charitable expenditures in its December 31, 2003, 2004, 2005 and 2006 fiscal periods. Were the Charity to have reported these costs as fundraising expenditures (rather than charitable expenditures), we suggest that the Charity would not have met its disbursement quota requirement as defined at subsection 149.1(1) of the ITA, as of December 31, 2006. A charity that does not meet its disbursement quota requirement is subject to possible revocation of its charitable status.

### Fundraising Costs and Disbursement Quota

During our audit, the Charity submitted its analysis of the amounts paid to its third party fundraisers, wherein it allocated amounts by means of a word-count of the scripts used by its professional fundraisers. Our understanding of the Charity's allocation logic is that the scripts used to solicit funds contain information that pertains not only to raising funds, but also to what it believed were the performance of charitable activities. The Charity identified these additional activities as "Public Education".

We wish to review the Charity's reporting of amounts as charitable expenditures in context with our publication "Completing the Registered Charity Information Return - T4033A (2006)" (copy enclosed). While the date of this publication is 2006, the contents noted below are relevant to the 2003, 2004, and 2005 fiscal periods as well.

At section "E3 – Revenue and expenditures", the publication provides for the following in context with the reporting of fundraising costs:

*Line 4800 – Advertising and promotion. Enter the total amount paid or incurred for advertising and promotion. Include on this line all amounts spent to draw attention to the registered charity and its programs, including advertising and promotion costs related to fundraising activities. Specific examples include meals and entertainment, seminars, presentation booths, publications, and postage related specifically to fundraising. Report professional and consulting fees on line 4860.*

*Line 4860 – Professional and consulting fees. Enter the total amount paid or incurred for professional and consulting services (e.g., legal, accounting, fundraising).*

*Line 5000 – Total charitable programs expenditures. Enter the part of the amount of line 4950 that represents expenditures for charitable programs. This includes all expenditures essential for the registered charity to carry out its charitable programs. Do not include any current expenditures that came from amounts that were accumulated in previous years and used to reduce the registered charity's disbursement quota. Report these amounts on line 5040. Do not include any amounts reported on lines 5010, 5020, 5030, or 5040 on this line.*

*Line 5020 – Total fundraising expenditures. Enter the part of the amount on line 4950 that represents fundraising expenditures. Enter the total expenses the registered charity paid out for fundraising activities whether carried out by the registered charity or by contracted fundraisers. Examples of fundraising expenditures are:*

- *expenditures for conducting fundraising activities, including salaries and overhead costs, promotional materials, campaign supplies, electronic data processing, and year-round office expenses directly related to fundraising;*
- *expenditures for promoting the registered charity and its activities to the community primarily for fundraising purposes;*
- *fees the registered charity paid to outside fundraising consultants or agencies (or amounts retained by them); and*
- *postage costs for direct mail canvassing."*

This guidance provides our views as to how a charity must allocate its expenditures for the purposes of the disbursement quota.

Inherently, the disbursement quota requires a registered charity to distinguish between expenditures on charitable activities, as opposed to expenditures on "other" activities such as administration or fundraising. In making this characterization, the Directorate considers the purpose behind an expenditure to determine whether it was a qualifying expenditure for the purposes of the disbursement quota. It is our position that the third party fundraiser was engaged to solicit funds, rather than to undertake a charitable objective. Accordingly, the reporting of these costs should be as fundraising expenditures only.

To illustrate the impact of the Charity having allocated some of the third party fundraising costs as charitable expenditures compared to reporting all of the costs as fundraising expenditures, we have taken the liberty to prepare a revised account of the Charity's disbursement quota calculation (see attached WP#8000). This revised disbursement quota calculation covers each of the December 31, 2004, 2005, and 2006 fiscal periods. If the costs were reported as fundraising expenditures, the Charity's disbursement quota would not be in excess as originally calculated by the Charity.

### Conclusion

We believe that the Charity should not have allocated any costs associated with its third party fundraisers as charitable expenditures. If these costs were recorded as fundraising expenditures only, the Charity would be operating in a position of failing to meet the disbursement quota requirement. Based on your current operations, it would seem that this trend might continue. Accordingly, as the Charity has not complied with the requirements for registration in terms of meeting its disbursement quota, and given that this trend would continue under the present arrangement, continued registration could only be considered if the Charity rectified the situation.

We would add that, given the Charity's present fundraising practices, we believe that Childhood Asthma Foundation will have to incorporate the following proposals:

1. Childhood Asthma Foundation must refrain from the practice of allocating costs associated with payments made to the third party fundraisers as charitable expenditures. Effective

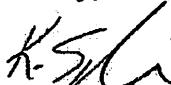
immediately, it must cease reporting amounts paid to its professional fundraisers, as charitable expenditures.

2. Amend its annual T3010A returns for fiscal 2004, 2005 and 2006, to report the correct allocation of fundraising expenses. Please refer to the attached working paper (WP#7000) for our detailed analysis and calculation.
3. Further, if the Charity maintains its professional fundraising contracts, we would ask that you explain how the Charity intends to satisfy the requirements for registration with respect to meeting its disbursement quota. In other words, given that payments to the fundraisers could never be seen as charitable, we question whether the Charity could continue with the contracts and satisfy the disbursement requirement. The Charity must establish that, should it continue to engage professional fundraisers, it will be able to satisfy the disbursement quota requirements while correctly allocating all associated costs as fundraising expenses; and
4. It must identify how it will "over-expend" on its charitable activities in the future. Using the CRA's basis for establishing the disbursement quota shortfall as of December 31, 2006, we have calculated the shortfall to total \$1,578,680 (per WP#8000). While the CRA is prepared to be somewhat lenient towards CAF meeting its full disbursement quota requirement, our expectation is that it will compensate for this shortfall with additional funds expended toward its charitable activities in the future. In other words, for continued registration, the CRA expects the Charity to demonstrate a good faith effort to make up for past shortfalls as much as possible by disbursing its accumulated surplus and by spending in excess of its disbursement quota requirement in the future.

We are prepared to receive the Charity's representations in this respect within 30 days from the date of this letter, before considering any further actions.

If you have any questions or require further information or clarification, please contact me at the numbers below.

Yours truly,



Katie Spoelstra  
Audit Division  
Charities Directorate

Telephone: [REDACTED]  
Fax: [REDACTED]  
Address: 166 Frederick St  
Kitchener, ON N2G 4N1

Toll free: 1-800-959-8281 (Individual)  
1-800-959-5525 (Business)  
Internet: [www.cra-arc.gc.ca/tax/charities](http://www.cra-arc.gc.ca/tax/charities)



January 8, 2008

Childhood Asthma Foundation  
P.O. Box 22033, Riall Heights  
Niagara Falls, Ontario  
L2J 9Z9

Attention: Jodi Henderson, Executive Officer

BN: 86910 2897 RR0001  
File #: 3003748

Dear Ms Henderson:

**Re: Childhood Asthma Foundation (CAF)**

This letter is in response to your letter of October 30, 2007, concerning the actions proposed in our letter of September 7, 2007.

As you are aware, it is our view that the Charity is not in compliance with the provisions of the ITA applicable to registered charities. More specifically, paragraph 149.1(2)(b) of the ITA specifies that:

*"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 ... (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."*

Paragraph 168(1)(b) of the ITA specifies that:

*"Where a registered charity or ... (b) ceases to comply with the requirements of this Act for its registration as such, ... the Minister may, by registered mail, give notice to the registered charity or ... that the Minister proposes to revoke its registration."*

As was discussed in our letter of September 7, the Charity has not satisfied the disbursement quota requirements (149.1(2)(b) of the ITA) as of December 31, 2006. Accordingly, this is grounds for revocation of the Charity's registered status.

Our letter did, however, provide for the possibility of the Charity retaining its status provided that:

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1. It refrains from the practice of allocating costs associated with payments made to third party fundraisers as charitable expenditures.
2. It amends its annual returns for 2004, 2005 and 2006 to report the correct allocation of fundraising expenses.
3. If it were to maintain its professional fundraising contracts, it would be able to show that it could otherwise satisfy its disbursement quota requirements.
4. It "over-expends" on its charitable activities in the future, while also drawing down on its accumulated surpluses.

### Charity's Request

In your letter you request that we:

- A. Reconsider our position that the Charity should not have allocated any costs associated with its third party fundraisers as charitable expenditures. It is your belief that Education and Awareness Campaign expenses incurred via telemarketing (in whole or in part) are charitable expenditures.

The CRA position that the Charity should not have allocated costs associated with third party fundraisers, as charitable activities, remains firm.

- B. Pursuant to subsection 149.1(5) of the Income Tax Act (hereinafter the "ITA"), deem amounts identified to be "shortfalls" as amounts expended by the charity in the year on charitable activities carried on by it.

The CRA is not prepared to deem, under subsection 149.1(5) of the ITA, the amounts established as a "shortfall" as expenditures by the charity in the year on charitable activities carried on by it.

- C. Acknowledge that the Charity will need time to implement the necessary changes to its operations, including the retention of its third party fundraisers.

The CRA is prepared to consider any reasonable timeframe for the Charity to establish and commit to implementing the changes necessary for it to retain its charitable status, as part of any potential compliance agreement. See the following for a further discussion on this issue.

### Charity's Proposal for Continued Registration

In context with our offer to consider continued registration, the Charity has offered the following:

1. The Charity has committed to cease reporting costs associated with its third party fundraisers as charitable expenditures (effective September 7).
2. The Charity seems to have interpreted our expectations for not reporting costs associated with third party fundraisers (item 1), as to possibly waive the need to make amendments to its 2004, 2005 and 2006 annual returns.

The requirement to make amendments to the 2004 through 2006 annual returns remains firm. In effect, the Charity will have to complete a "*Registered Charity Adjustment Request (T1240)*" for each of the three years under consideration (copies enclosed). The CRA will then capture this information to amend the data in the annual filings. Also, any future filings of returns (2007 and forward) will have to show the proper allocation of fundraising costs.

The Charity seems to disagree with our identification of some of the Charity's expenses via Working Paper #7000, which might affect the data to be captured on its returns for the 2004 through 2006 fiscal periods. Several telephone calls were made on December 11 and 20, 2007, in an attempt to discuss the classification of the expenses in question. However, to date, we have not received a reply from the Charity.

3. The Charity indicates that it has ceased conducting acquisition campaigns with RMG. It has requested that we allow it to recognize its ongoing commitment to provide funds to asthma researchers and program providers, and that in order to do so, it must retain the services of RMG, potentially on a declining basis, for a number of years.

To consider this further, we would ask that you provide copies of materials in regard to the Charity's obligations for providing support funding to others. This information must show the terms of all commitments and any consequences of not satisfying those commitments.

It will also be necessary to provide us with copies of the contractual agreements with RMG, showing the terms of the agreement, the obligations of the Charity and any potential consequences of not satisfying those commitments.

As for any plans to reduce the services of RMG, it will be necessary that the Charity provide us with a comprehensive business plan for such. This plan must clearly show how the Charity would reduce its reliance on RMG over a reasonable time period.

In respect to this "business plan", the Charity will have to set out its plans for satisfying our concerns from January 1, 2008 through December 31, 2010 (we believe that a three-year plan should be a reasonable basis upon which to consider whether the Charity would be able to show that it would become compliant). This plan should include budgets for the periods, and clearly show anticipated revenues and expenditures for each third party fundraiser function, as well as expenditures to charitable activities. This plan should incorporate the issues you discuss in your letter (i.e. you briefly mention that the Charity has raised the amount at which it automatically issues receipts; has expanded its monthly donor program; will be conducting more in-house direct mail campaigns; has obtained a subscription to access a number of data bases (for

potential donors); plans to develop an in-house bequest program; is educating itself on low-cost fundraising initiatives that are being developed).

4. In terms of "over-expending" and drawing down on any surpluses, we do appreciate that the Charity has limited surpluses. The surplus identified in the 2006 annual return (as cash) was \$32,198. We believe it fair to expect the Charity to "over-expend" on its disbursement quota requirement to the extent that it not create surpluses beyond those established as of the end of the 2006 fiscal period, during any period that is subject to a compliance agreement. In other words, given the shortfall as of December 31, 2006, we believe it reasonable to expect the Charity to incorporate in its business plan a proposal for "over-expending" (identifying proposed amounts) on its disbursement quota requirement, yet not creating additional surpluses. This information should be included in the "business plan".

### Conclusion

We are prepared to consider the Charity's proposal for addressing the issue of non-compliance via a compliance agreement for future actions, provided that it supplies us with the necessary responses requested above. Should it fail to provide us with these responses within 30 days of this letter, the Minister may proceed with subsequent action.

If you have any questions or require further information or clarification, please contact me at the numbers below.

Yours truly,



Katie Spoelstra  
Audit Division

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CANADA REVENUE  
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May 15, 2008

Childhood Asthma Foundation  
P.O. Box 22033, Riall Heights  
Niagara Falls, Ontario  
L2J 9Z9

Attention: Jodi Henderson, Executive Officer

BN: 86910 2897 RR0001  
File #: 3003748

Dear Ms Henderson:

**Re: Childhood Asthma Foundation (CAF)**

This letter is in response to your letter of March 14, 2008, concerning issues of non-compliance and the possibility of continued registration.

In terms of continued registration, we indicated that we were prepared to consider such provided that the Charity:

1. Refrains from the practice of allocating costs associated with payments made to third party fundraisers as charitable expenditures.
2. Provides adjustments to its annual returns for 2004 through 2006.
3. Could identify how it would maintain its fundraising contracts, otherwise satisfying its disbursement quota requirements.
4. "Over-expends" on its charitable activities in the future, while also drawing down on its accumulated surpluses.

In context with your letter, item 1 has been addressed, and the resolution of item 2 has been completed. However, we wish to discuss items 3 and 4.

It is understood that the Charity has ceased its acquisition program with RMG, and that it retains this company for both the retention and the monthly donor programs. Based on your budget proposals for 2008 through 2010, it would seem that the Charity expects to retain its monthly donor program at a rate of approximately \$60 K revenue and \$20 K expenses. The proposal for the retention program shows declining amounts for revenue and expenses, starting at \$390 K revenue and \$240 K expenses (2008), declining to \$326 K revenue and \$200 K expenses (2010). The Charity otherwise intends to produce increased revenues through internal means. We acknowledge these actions to be a showing of good faith in context with a commitment to address fundraising issues. However, we would ask that you

Canada

provide copies of any scripts used by the Charity's telemarketers for the retention and monthly donor programs.

In respect to satisfying its disbursement quota, we would ask that you further explain the Charity's decision to issue donation receipts beginning at \$50 and its projection for donated revenue to be receipted at approximately 30%. How does the Charity inform a potential donor that there is a threshold test for receiving an "official donation receipt"? Please provide your basis for the "80% of Receipted Donations" projection in the "Disbursement Quota Projections". What revenue sources are built into this calculation, and at what rate do you expect to issue receipts for each source?

Further, please explain the Charity's basis for allocating 1/3 of the "Management Services" costs as "Program" expenses. How has it been established that this portion of the costs represent charitable expenditures?

Turning to the Charity's disbursement quota shortfall, given its "Disbursement Quota Projections", it would seem that there is a commitment to draw down on the shortfall that has been created by expending in excess of the disbursement quota requirement in context with the "80% of receipted donations from the previous year" component.

Given the contents of the Charity's letter, we believe that additional issues need to be addressed in context with the Charity "devoting its resources to its own charitable activities".

#### Recent and Future Activities

In regard to the Charity's contract with PENSIVO Inc., please explain the decision making process that resulted in the hiring of this company. More specifically, explain any tendering process that resulted in PENSIVO being successful in any bid for such. We believe that it is reasonable to expect that the Charity, in showing due diligence in regard to obtaining, retaining and paying for services, it considered such things as value for services, etc.

Please also explain the Charity's proposed Patient Support Program and any plans it may have for distributing asthma medication and medical supplies to medical facilities in countries facing extreme hardship.

#### Davica Enterprises

The Charity engaged Davica Enterprises ("Davica") to provide it with services in 1998. It is our view that the Charity, in engaging in this contract, has not shown that it devotes its resources to charitable activities. Rather, the sum of the contract could suggest that the Charity, at least in large part, provided for the interests of Davica and its President (Jodi Giammarco).

In your letter you indicate the following:

*"The management of the Childhood Asthma Foundation is provided by Davica Enterprises.*

*Davica Enterprises provides CAF with an Executive Director to manage the organization. CAF is also provided with office and storage space, facilities for meetings, and most business equipment required to run the organization. The charity is responsible for its own direct business expenses such as telephone and internet. ... This arrangement significantly reduces the administrative costs to the Childhood Asthma Foundation."*

Similar to our concern about the Charity showing "due diligence" above, we believe it is reasonable to expect that the Charity would be able to show that it has shown due diligence in its decision to obtain, retain and pay Davica to support it.

To begin, we have reviewed the Charity's agreement with Davica dated September 1, 1998. Please provide us with a copy of the supporting documentation that shows the basis for hiring Davica. Essentially, this should include material surrounding solicitation for services, the receipt of competitive bids, and the basis for awarding Davica with the contract. Typically, in a situation where a charity determines that it needs to engage someone to support it with its services, we would expect that it clearly establish and identify its needs, solicit service providers, and assess the qualifications of bidders in awarding such a contract.

Given that this contract remains, and that it may be in effect for the foreseeable future, please also provide us with documentation that shows that the Charity is applying due diligence in retaining Davica as its supplier. Overall, we would expect that the Charity should be able to show that it continuously reviews the services being provided in context with its needs, considering costs for services, contingencies in the event of termination of the services, etc. in making such a decision.

Article 3.2 provides for the management services to be provided to the Charity. Article 3.2.1 provides, in part, that Davica will provide the Chief Executive Officer ("Executive Director") and that it has the sole discretion to select such a person; that if the Charity is of the view, "*acting reasonably*", that any person so selected is not qualified, it may notify Davica as such – in which case Davica would select a new person; and that the parties agree that the President of Davica "*shall be deemed at all times to have the requisite ... to serve as Chief Executive Officer*".

We are uncertain of the decisions made by the Charity to engage Davica in such a manner and of the Charity's capacity to change and choose the Executive Director position. More particularly, the terms of this article might suggest that the Charity is not the "employer" or "contractor", with Davica being the "agent", "employee" or "contractee". Rather, the article could suggest that it is ultimately Davica that dictates to the Charity the terms for providing for the "Executive Director" position.

Article 7.0 provides for payment for services. Herein, the provisions provide that Davica will not be paid for the provision of office and related space (7.1); payment for management services at the rate of \$250/day plus GST (7.2); and payments toward a pension plan for the Executive Director (7.6). Please explain and provide the basis upon which the Charity agreed to the terms of compensation. In other words, we believe it reasonable to expect that the Charity should have determined the market value for services, which would include management services plus office and related space. More specifically, there is a presumption that the payment (\$250/day) would be no more than that which would be paid to cover both the market value for management services, and the use of similar office and related space.

As was noted above, the Charity qualified its services with Davica as "This arrangement significantly reduces the administrative costs to the Childhood Asthma Foundation."

Further, article 13.0 provides for termination of the contract. Article 13.1.2 provides for termination of the contract by the Charity. This article reads: "*In the sole opinion of the Board of CAF, acting reasonably, DE is considered to be unable to perform the duties required by this contract.*" Article 13.1.3 states "*In the event of termination by CAF over the objections of DE, CAF shall pay to DE a settlement equal to one month of the DE monthly fee, as given in Section 7.0, for each complete year of service provided to CAF by DE and pro-rated for any partial year of service. In any case the minimum amount shall not be less than two months of the DE fee.*" And article 13.2 states "*DE may terminate this contract upon two months written notice to CAF. In the event of such action by DE, CAF may elect to provide two months payment for services and to cease immediately to require the services of DE.*"

We believe that the terms for termination of the contract might again suggest that at least in large part, Davica's interests are being served. Article 13.1.2 provides no certainty of the conditions under which the Charity might consider Davica to be unable to perform the duties of the contract. Article 13.1.3 provides significant penalty terms in the form of payment to Davica (should it object to termination). Given that the contract has now been in place for 10 years, and given the Charity's present financial state, the ten-month penalty at today's rate of \$300/day could virtually leave the Charity in a state of insolvency. In that case, it would not be prudent to even terminate the contract, notwithstanding any consideration that Davica might not be unable to perform the duties (13.1.2). And exercising article 13.2 (i.e. electing to provide two months termination upon Davica terminating the contract) again would seem inconsistent with the application of "due diligence".

#### Conclusion

Please address our concerns in writing and submit all applicable supporting documentation. Should the Charity fail to provide us with these responses within 30 days of this letter, the Minister may proceed with subsequent action.

If you have any questions or require further information or clarification, please contact me at the numbers below.

Yours truly,



Katie Spoelstra  
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CANADA REVENUE  
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DU CANADA

November 6, 2008

Childhood Asthma Foundation  
P.O. Box 22033, Riall Heights  
Niagara Falls, Ontario  
L2J 9Z9

Attention: Jodi Henderson, Executive Officer

BN: 86910 2897 RR0001  
File #: 3003748

Dear Ms Henderson:

**Re: Childhood Asthma Foundation (CAF)**

We have now concluded our review of the organization's submission of June 27, 2008, and must advise that in our view, the organization is subject to revocation of its charitable status under the *Income Tax Act* (the "ITA").

The specific areas of non-compliance with the provisions of the ITA and/or its *Regulations* are listed as follows:

AREAS OF NON-COMPLIANCE:	
Issue	Reference
1. Failure to satisfy the disbursement quota requirement.	149.1(1); 149.1(2)(b); 168(1)(b)
2. Income is payable to or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof/Failure to devote all of its resources to charitable activities.	149.1(1); 149.1(2); 168(1)(b)

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 Charity with the opportunity to address our concerns. In order for a registered charity to retain its registration, legislative and common law compliance is mandatory, absent which the Minister of National Revenue

Canada

(the "Minister") may revoke the Charity's registration in the manner described in section 168 of the *ITA*.

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

### **Disbursement Quota**

Paragraph 149.1(2)(b) of the *ITA* specifies that:

*"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 ... (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."*

Paragraph 168(1)(b) of the *ITA* specifies that:

*"Where a registered charity or ... (b) ceases to comply with the requirements of this Act for its registration as such, ... the Minister may, by registered mail, give notice to the registered charity or ... that the Minister proposes to revoke its registration."*

The Charity failed to satisfy its disbursement quota requirement for the fiscal periods ended December 31, 2004 through December 31, 2006.

We acknowledge that discussions on this topic included the possibility of the Charity continuing with its registration, provided that it complied with certain provisions. However, it is our view that the Charity has not shown that it would be able to satisfy all of the requirements that were being considered for continued registration. The Charity committed to refraining from the practice of allocating costs associated with payments made to third-party fundraisers as charitable expenditures, and it provided adjustments to its 2004 through 2006 returns. However, it has not shown that it would otherwise be able to address the disbursement quota shortfall accumulated for the noted periods by way of reducing the outstanding amount as necessary. The Charity has not shown that continued registration is warranted.

The Charity's proposal for addressing the disbursement quota shortfall and in meeting ongoing disbursement quota requirements included the discontinuation of its acquisition telemarketing campaign, retaining the third-party fundraiser for the retention and monthly donor programs; changes to other fundraising practices; and plans to expand upon its charitable programs. The Charity advised that in 2007 it increased the level at which it would automatically issue income tax receipts to \$50 – on that basis it projected that the amount of donated revenue receipted would be at approximately 30%.

In our letter of May 15, 2008, on the matter of the disbursement quota we asked the Charity to provide a further explanation of its decision to issue donation receipts beginning at

\$50 and of its projection for donated revenue to be receipted at approximately 30%. This request also asked the Charity how it informed a potential donor that there was a threshold test (\$50) for receiving an official donation receipt; and, asked the Charity to provide a more comprehensive account of its basis for the "80% of Received Donations" projection as part of its "Disbursement Quota Projections".

The Charity's response of June 27, 2008 did not address these issues as necessary. However, in context with fundraising campaigns by third-parties, it provided sample scripts. These scripts are silent on the Charity action to issue official donation receipts only when a minimum donation of \$50 is given.

In our noted letter we also asked the Charity to explain its basis for allocating 1/3 of the "Management Services" costs as "Program" costs (charitable expenditures). Your June 27 response was silent on this issue.

The Charity has not shown that its basis for allocating part of the "Management Services" costs represents a reporting of charitable expenditures. And to the contrary, we question whether a number of the "programs" are more so administrative and fundraising functions (for example, services such as *"data processing and creation of income tax receipts, oversee campaigns conducted by third party professionals and providing office space"*). The impact of associating this level of management services as charitable expenditures would result in an "over-reporting" of charitable expenditures in the Charity's annual returns, which would impact on any disbursement quota requirement calculations. Quite likely, this would also impact on the reporting for the 2004 through 2006 fiscal period as well.

In conclusion, the Charity has failed to satisfy its disbursement quota requirement. Failing to have met the disbursement quota requirement for the years identified is cause for revocation.

**Income is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof**  
**Failure to devote all of its resources to charitable activities**

Subsection 149.1(1) of the Act defines a charitable organization in part as:

*"(a) all the resources of which are devoted to charitable activities carried on by the organization itself"*

and

*"(b) no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof"*

Paragraph 168(1)(b) provides for issuing a notice of intention to revoke registration for failing to satisfy these requirements.

Our concerns about the Charity's engaging Jodi Henderson (Executive Director) and the company owned by her – Davica Enterprises ("Davica") were first discussed in our letter of May 15, 2008.

First, in context with devoting resources to charitable activities, we do not dispute that the Charity's programs to the public during the period under review were charitable. However, we believe that the Charity did not show due diligence in administering its affairs, which resulted in it providing for the benefit of its Executive Director and Davica. As such, it has not shown that it is created on a "non-profit basis" and inherently that it devotes all of its resources to its own charitable activities.

The Charity engaged Davica to provide it with services in 1998. It has not, however, shown "due diligence" in terms of showing that it initially engaged Davica following a process that should have included public appeals for the provision of services so identified by it. Generally, we believe that it is reasonable to suggest that the Charity should have engaged Davica only following a process that should have included it calling for tenders for a specified service, and a bidding process to include the credentials and abilities of the bidders to provide the requested service. We believe that it should have been incumbent upon the Charity to ensure that it was responsible for engaging the most qualified bidder through a public process and that payment for services should have been at market value. The Charity has not shown that this expectation has been met.

The Charity also says that this initial agreement was a "very cost-effective way for the new organization (to) address its occupancy and administrative needs". However, it has not provided any supporting documentation to show that any decision to engage Davica included a study of market costs for various options of providing such services. As such, it has not shown that it devotes its resources to charitable activities.

We acknowledge that the Charity has entered into a new agreement with Davica effective for 2005. The Charity believes that the terms of payment to Davica is appropriate given some comparison it made of the CRA's website showing ranges of salaries that many charities paid their Executive Director, and of occupancy costs. However, the Charity has failed to provide the specifics of its analysis to support such a conclusion.

We also note that the Charity has implemented some actions to monitor and potentially change any provisions of this agreement as part of what it believes is an act of "due diligence". While the specifics of this have not been provided, given the serious nature of the concerns surrounding the engagement of Davica, we do not believe that these intentions would warrant continued registration as a charity.

In conclusion, the Charity has not shown that it is established on a "non-profit basis" and that inherently, it devotes its resources to its own charitable activities.

**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 ITA.

**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 ITA.

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

If you have any questions or require further information or clarification, please contact the undersigned at the numbers indicated below.

Sincerely,



Katie Spoelstra  
Audit Division

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## APPENDIX "A"

### **Section 149.1: [Charities]**

#### **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) since June 1, 1950, acquired control of any corporation; or
- (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 the registered charity has made a gift to another registered charity and it can reasonably be considered that one of the main purposes of making the gift was to unduly delay the expenditure of amounts on charitable activities;
- (b) of the other charity referred to in paragraph (a), if it can reasonably be considered that, by accepting the gift, it acted in concert with the registered charity to which paragraph (a) applies; and
- (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.

#### **Section 168: Notice of intention to revoke registration**

168(1) 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 that is or was registered as a registered charity or is an applicant for registration as a registered charity that objects to a notice under subsection (1) or any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) 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.

**Section 172: Appeal from refusal to register, revocation of registration, etc.**

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

Where the Minister

- (a) refuses to register an applicant for registration as a Canadian amateur athletic association,
- (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,
- (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,
- (d) refuses to issue a certificate of exemption under subsection 212(14),
- (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 applicant or the organization, foundation, association or registered charity, as the case may be, in a case described in paragraph (a) or (a.1), the applicant in a case described in paragraph (b), (d), (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.

## **Section 180: Appeals to 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),
- (b) the mailing of notice to a registered Canadian amateur athletic association under subsection 168(1),
- (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
- (c) 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
- (d) 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) applies.

**188(4) Idem**

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”

“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”

“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.

**Section 189****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 mailed 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 registered charity in respect of the charity'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 charity after the day on which the Minister first assessed that liability and before the particular time 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 total of

- (a) the consideration given by the 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, 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.