



Canada Revenue
Agency

Agence du revenu
du Canada

REGISTERED MAIL

Essential Grace Foundation
Suite 1555 – 1500 West Georgia Street
Vancouver BC V6G 2Z6

Attention: Mr. Paul Mancuso, Director

BN: 863309977

File #:3028246

June 14, 2010

**Subject: Revocation of Registration
 Essential Grace Foundation**

Dear Mr. Mancuso:

The purpose of this letter is to inform you that a notice revoking the registration of Essential Grace Foundation (the Organization) was published in the *Canada Gazette* on June 12, 2010. Effective on that date, the Organization ceased to be a registered charity.

Consequences of Revocation:

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

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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,

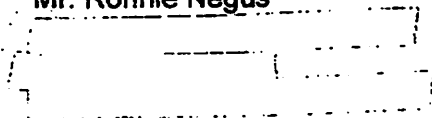


Danie Huppé-Cranford
Director
Compliance Division
Charities Directorate
Telephone: 613-957-8682
Toll free: 1-800-267-2384

Enclosures

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

Cc: Mr. Ronnie Negus





Canada Revenue
Agency

Agence du revenu
du Canada

REGISTERED MAIL

Essential Grace Foundation
Suite 1555 – 1500 West Georgia Street
Vancouver BC V6G 2Z6

APR 27 2010

BN: 86330 9977RR0001

File #: 3028246

Attention: Mr. Paul Mancuso, Director

**Subject: Notice of Intention to Revoke
 Essential Grace Foundation**

Dear Mr. Mancuso:

I am writing further to our letter dated January 21, 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 Essential Grace 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 February 18, 2009. However, notwithstanding your reply, our concerns with respect to the Organization's failure to devote all of its resources to its charitable purposes, failure to issue receipts in accordance with the Act and/or its Regulations, and failure to maintain adequate records as required by the Act, have not been alleviated. The basis for our concerns is explained below.

Failure to Operate for Charitable Purposes

As you are aware, the Organization was registered November 12, 2004, as a public foundation. The Organization's stated purposes, as contained in its governing document are:

- a) to receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee or agent, to hold, invest, develop, manage, accumulate and administer funds and property for the purpose of disbursing funds and property exclusively to registered charities and "qualified donees";
- b) to conduct any and all activities and exercise any and all such powers as are necessary for the achievement of the objects of the Corporation."

In your letter you argue that the Canada Revenue Agency's (CRA) analysis relates to a charitable organization rather than a charitable foundation. While you are correct that the definition of charitable foundation primarily speaks to charitable purposes, the law is clear that in being "established and operated for charitable purposes", a charitable foundation must also

Canada

Place de Ville, Tower A
320 Queen Street, 13th Floor
Ottawa ON K1A 0G5 (05)

restrict itself to either carrying on its own charitable activities or gifting its resources to qualified donees - and may not operate for some other non-charitable or private purpose. It was the view of the CRA, in the letter of January 21, 2009, that the Organization had failed to demonstrate that it devoted its resources towards its charitable purposes as it had, instead, operated for the private benefit of particular individuals and corporations.

In our view, the Organization participated in two private transactions that were designed to route property through registered charities under the guise of legitimate investments and gifts, to facilitate the avoidance of taxes payable on the disposition of these assets, rather than to genuinely enrich the charities involved. The Organization's role in these arrangements was to purchase the shares of the corporations. When the assets of the corporation were sold to another corporation or gifted to another participating charity, the shares of the corporation were written down to nil at year-end.

As described in our previous letter, the transactions in question are as follows¹:

1)

As outlined in our previous letter, in 2005 the Organization entered into a number of transactions, along with three other Canadian registered charities, to facilitate the sale of farm assets of a corporation, including its BC egg hatching quota. In our view, the transactions were designed to route the property through the participating registered charities under the guise of investments and gifts, to facilitate the avoidance of taxes otherwise payable on the disposition of these assets, rather than to genuinely enrich the charities involved. The Organization's role in the arrangement was to receive funds from another registered charity and to use those funds to purchase the shares of the corporation. The Organization did in fact purchase these shares in full knowledge that the assets of the corporation were to be gifted to another participating charity causing its investments to be de-valued to nil. For its part in the arrangement, the Organization received \$54,000.

The Organization's representations state that the Organization "acquir[ed] shares in a corporation which it in turn caused to donate assets to another qualified donee." While your characterization of the end result is interesting, we respectfully disagree. It was [redacted] that transferred its assets, not the Organization. With respect to the Organization itself, the end result appears to be that, rather than utilizing the \$670,250 received from other registered charities towards its charitable mandate, it instead disposed of this amount through the purchase of soon-to-be-valueless shares and was left with \$54,000 for its role. In our view, the purchase and pre-planned write-down of \$670,250 in shares is simply an unacceptable use of assets which should have been devoted to genuine charitable ends.

2)

Regarding the [redacted] transactions, as described in our previous letter, the Organization also entered into a number of transactions, along with three other Canadian

¹ Refer to Appendix "A" and "B" Revised, which outline the series of transactions entered into by the Organization, the actions taken by the Organization and the resulting profit earned for its role in the arrangements.

registered charities, to facilitate another sale of farm assets of a corporation, including its BC egg hatching quota. The transactions, as above, also involved the Organization's purchase of \$989,520 of shares from [] and the pre-planned write-down of the shares to nil.

In your letter you note that the transaction produced no net benefit for the Organization and thereafter the Organization ceased its involvement with such transactions. However, we note that the Organization purchased, on credit, 30% of the shares in [] in full knowledge that these shares, as a part of this scheme, would be de-valued to zero. These shares were in fact devalued to zero when 30% of the assets of [] were gifted to the Organization (and a tax receipt of \$989,520 was issued). After the pre-arranged sale of the properties and repayment of the loans, the Organization was left with no benefit fee for its participation, yet had issued a tax receipt of close to \$1 million. In our view, the Organization's participation in this transaction is clearly an abuse of its tax receipting privileges and one which is not remedied by its decision to refrain from such transactions in future.

Finally the organization argues that it is inappropriate for the CRA to conclude that the Organization has operated primarily or collaterally for tax planning purposes as these transactions occurred during the first six months of the operation of the Organization. We note, however, that in these two tax planning arrangements, the Organization acquired and disposed of shares and assets valued at \$2,649,290, yet received earnings of merely \$54,000² for its role and devoted zero resources to charitable purposes. By contrast, in the three subsequent fiscal years, the Organization devoted \$50,000 to gifts to qualified donees in 2006, no charitable disbursements in 2007, and \$22,400 in 2008.³ From a purely financial standpoint, it is clear that the Organization as a whole has operated for the benefit of private individuals and corporations, rather than exclusively charitable purposes.

Under paragraph 168(1)(b) of the Act, the Minister may revoke the registration of the registered charity because it has failed to comply with the requirements of the Act for its registration as such. For this reason, there are grounds for revocation of the charitable status of Essential Grace Foundation under paragraph 168(1)(b) of the Act.

Issuing Receipts Not in Accordance with the Act

Our position remains that the assets received by the Organization from [] was not a valid gift under section 118.1 of the Act. The assets received lack *animus donandi*; [] did not necessarily enrich, or intend to enrich the Organization. As noted earlier, the purpose of the transactions was to route pre-sold assets through a registered charity. The sellers of this property, the shareholders, were effectively compensated by the Organization's inappropriate purchase of soon-to-be-devalued shares. In the transactions the Organization purportedly received a gift but was left in no better financial position than before the transaction.

² The net amount earned was further reduced by the \$10,748 the Organization paid in legal services incurred by other individuals and/or organizations.

³ These amounts would not even be sufficient to cover the Organization's 80% disbursement quota obligation associated with the issuance of the \$989,520 donation of property that the Organization subsequently disposed of.

The Organization was, at no time, entitled to maintain or benefit from the property purportedly donated to it. In fact, it does not appear that the transfer of assets was legally effective - the purchase and sale agreements to sell the assets to third parties were signed in March 2005 yet the purported "gifting" occurred in May 2005; and the [] legal representative confirmed to the BC Chicken Marketing Board that the ownership of [] remained in the hands of [] "despite any change in ownership and control of the Company [] which may have taken place".

Under paragraph 168(1)(d) of the Act, the Minister may revoke the registration of the registered charity because it has failed to comply with the requirements of the Act for its registration as such. For this reason, there are grounds for revocation of the charitable status of Essential Grace Foundation under paragraph 168(1)(d) of the Act.

Failure to Maintain Adequate Records

Our position remains that the Organization failed to maintain and/or provide its books and records. A registered charity must maintain, and make available to the CRA at the time of the audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent to the audit. The Organization was provided sufficient time to prepare and provide its books and records prior to and during the course of our audit yet chose not to make all of its records available.

The representations contained certain records that were not provided during the course of our audit. It remains our position that there is no reason that these records should not have been available, particularly as they represented one of the few actual disbursements during 2005. Again, we note that the Organization's sole activity during that period was participation in two tax planning schemes and devoted no resources to its charitable purposes. Further, the invoice supplied contradicts information supplied during the course of the audit which indicates that the purpose of the amount related to the [] transactions.

In your letter you argue that the Act does not require board minutes or planning documents be created for individual transactions. The Act, however, requires a registered charity to maintain information in such a form as to determine whether there are grounds for the revocation of its registration under the Act. Again, we note that in 2005, substantially all of the Organization's activity revolved around the purchase of shares in private companies and the subsequent sale of these assets. As above, these transactions involved the purchase, once on credit, of millions of dollars in shares. In our view, the Organization would therefore be required to document the board's discussion and approval of the purpose, review and analysis of the purchase of shares (particularly around how the expenditure was in furtherance with the Organization's stated mandate), the discussion and review of the offer of purchase and sale of the assets to third parties, discussion around the risk of purchase of shares on credit, the benefits of entering into each transaction and related issues.

In short, we remain of the position that the Organization has not maintained adequate books and records and has not provided proper access to its records during the course of an audit.

Under paragraph 168(1)(e) of the Act, the Minister may revoke the registration of the registered charity because it has failed to comply with or contravenes any of sections 230 to 231.5 of the Act. It is our position the Organization has contravened section 230 of the Act for failing to maintain complete records to verify the information contained within its Registered Charity Information Returns and financial statements. For this reason, there are grounds for revocation of the charitable status of Essential Grace Foundation.

Registered Charity Information Return

We accept the Organization's representations that the errors and omissions occurred on the Registered Charity Information Returns (T3010); however, our position remains that the Organization failed to file a complete and accurate T3010. Regarding the Other Revenue reported at line 4950 of the 2005 T3010, the Organization reported \$1,649,870 on the T3010 yet reported a loss on share value of the same amount on its financial statements. The transposition error was made by the Organization and not CRA as alleged in your submission.

While we accept that errors may inadvertently occur in the completion of a form, the filing of false statements with the CRA, which includes a statement that contains omissions, is in fact grounds for revocation of a registered charity's status. It is not sufficient to simply file an incomplete return with the CRA and we note that each return is signed by a director who certifies that the information is "correct, complete and current."

Conclusion:

The Canada Revenue Agency's (CRA) audit had revealed that the Essential Grace Foundation (the Organization) operated primarily for the personal benefit of two corporations and their shareholders seeking to dispose of their assets; failed to issue official donation receipts in accordance with the *Income Tax Act* (the Act); filed an inaccurate Registered Charity Information Return; and failed to maintain and/or provide adequate records. For all of these reasons, and for each of these reasons alone, it is the position of the Canada Revenue Agency (CRA) that the Organization's registration should be revoked.

Consequently, for each of the reasons mentioned in our letter dated January 21, 2009, I wish to advise you that, pursuant to the authority granted to the Minister in subsection 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), 168(1)(c), 168(1)(d) and 168(1)(e) 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
863309977RR0001

Name
Essential Grace Foundation
Vancouver BC

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.

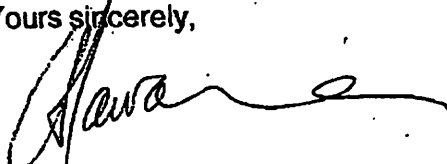
Consequences of Revocation

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 "C", 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;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (the 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:

- Our letter dated January 21, 2009;
- Your letter dated February 18, 2009;
- Appendix "A" - Revised Summary of ! Transactions;
- Appendix "B" - Revised Summary of ; and
- Appendix "C", Relevant provisions of the Act

cc: Mr. Ronnie Negus



CANADA REVENUE
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AGENCE DU REVENU
DU CANADA

Essential Grace Foundation
Suite 1555 – 1500 West Georgia Street
Vancouver, BC
V6M 2Z6

REGISTERED MAIL

Attention: Ronnie Negus

January 21, 2009

BN: 863309977 RR0001
File #: 3028246

Subject: Audit of Essential Grace Foundation

Dear Ms. Negus:

This letter is further to the audit of the books and records of Essential Grace Foundation ("Essential") conducted by the Canada Revenue Agency (the CRA). The audit related to the operations of Essential for the period from October 1, 2004 to September 30, 2007.

Although none of the directors made themselves available to attend the initial interview on May 6, 2008 or the exit interview on May 8, 2008, the auditor met with Leslie Brandlmayr to advise that the CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* (the Act) and/or its *Regulations* in the following areas:

AREAS OF NON-COMPLIANCE:		
		Reference
1.	Failure to Devote All of Its Resources to its Charitable Purposes – Gifts to Non-Qualified Donees	149.1(1) 168(1)(b)
2.	Issuing receipts not in accordance with the Act and/or its Regulations	168(1)(d) Reg. 3501
3.	Failure to maintain adequate books and records	168(1)(e) 230(2)
4.	Failure to file a T3010A Information Return as required by the Act.	149.1(14) 168(1)(c)

Vancouver Island Tax Services
1415 Vancouver Street
Victoria BC

Services fiscaux de l'Île de Vancouver
1415, rue Vancouver
Victoria, C-B

Mailing Address:
Vancouver Island Tax Services
c/o 9755 King George Hwy.
Surrey, BC V3T 5E1

L'adresse postale :
Services fiscaux de l'Île de Vancouver,
A/S 9755 Aut. King George
Surrey, C-B V3T 5E1

Canada

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 Essential 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 (the Minister) may revoke the charity's registration in the manner described in section 168 of the Act.

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

Identified Areas of Non-Compliance:

1) Failure to Devote all of its Resources to Charitable Purposes

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

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

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

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

With regard to the devotion of resources, in accordance with the provisions of the Act, a registered charity may only properly use its resources (funds, personnel and/or property) in two ways, both inside and outside Canada – for charitable activities undertaken by the charity itself, under its continued supervision, direction and control, and for gifting to "qualified donees" as defined in the Act.

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

A charity must be able to show through documented evidence and proper books and records that it undertook charitable activities in furtherance of its charitable purposes and not simply made a transfer of resources to a non-qualified donee. A charity is not at liberty to transfer funds or resources to other individuals or entities unless the recipient is an employee of the charity, an agent of the charity under contract, or a qualified donee. To this end, the charity must be able to demonstrate to the CRA's satisfaction that it maintains control over, and is fully accountable for, the use of resources provided to the intermediary, at all times.

The existence of an arrangement that demonstrates sufficient and continuing direction and control over, and full accountability for, all resources and related activities, is critical. The arrangement must establish that the activities in question are, in fact, those of the charity.

Based on our findings, and as illustrated below, Essential has not shown through its programs and arrangements for the undertaking of activities, it devotes all of its resources to its own charitable activities. In fact, Essential (A) was involved in a series of transactions unrelated to its charitable purpose and (B) made contributions to an individual/organization not considered to be a qualified donee.

(A) Non-Charitable Transactions

Essential was involved in a series of transactions unrelated to its charitable purpose as follows:

Fiscal Year 2005

- 1) 129 (amalgamated under the name of 129) on March 1, 2005
 - February 25, 2005 – specified gift from Theanon Charitable Foundation ("Theanon") \$665,000.
 - March 1, 2005 – specified gift from Theanon \$5,250.
 - March 1, 2005 – Purchase of 35% of the shares in the capital of 129 for \$670,250 (balance of shares purchased by Prescient Foundation ("Prescient") – 30% and The Gateway Benevolent Society ("Gateway") – 35%. Total purchase price was \$3,370,000 less outstanding loan.
 - March 1, 2005 – Assets were gifted by 129 to Theanon on the same date.
 - June 24, 2005 – Specified gift from Theanon of \$54,000. Handwritten notes on trust account printout indicate the amount was paid to Essential as a fee for participating in the 129 transaction.
 - November 30, 2005 – Year end adjustment to write down share value by \$670,250 to 0. The loss was recorded as an offset to revenue on the T3010A Charity Information Return.

- 2) _____
- May 26, 2005 - _____ (_____) purchases all of the outstanding shares of _____ for \$3,034,025 less liabilities – net proceeds \$1,743,280. _____ was originally owned by Glazema & Venema, two of the founding directors of Gateway.
 - May 26, 2005 - _____ sells all outstanding shares in the capital of _____ for \$3,275,300 to three charities: Essential Grace Foundation ("Essential") \$989,520 – 30%, The Gateway Benevolent Society ("Gateway") \$1,142,890 – 35%, and Theanon Charitable Foundation ("Theanon") \$1,142,890 – 35%. Transaction is recorded as accounts payable to _____ (promissory notes issued).
 - May 30, 2005 - _____ gifts assets valued at \$3,298,400 to Essential (30%), Gateway (35%), and Theanon (35%).
 - May 30, 2005 - Essential issues official donation receipt # P-001 to _____ for \$989,520.
 - May 31, 2005 - The quota is sold by the above three charities to three purchasers for \$2,573,400. Essential's share of the proceeds is \$772,020. The land, building and equipment are sold back to the original _____ shareholders for \$725,000. Essential's share of the proceeds is \$217,500.
 - May 31, 2005 – shares in the capital of _____ are sold back to the original _____ shareholders for \$1.
 - June 16, 2005 – Proceeds from sale of assets are used to repay loan from _____
 - September 30, 2005 – year end adjustment to write down the share value by \$989,520 to 0. The loss was recorded as an offset to revenue on the T3010A Charity Information Return.

The above examples represent circular transactions with no obvious charitable purpose. The audit disclosed that Essential likely did not receive any financial benefit from the transactions and retained no assets as a result.

See following comments related to tax receipting of amounts related to the transactions.

(B) Gifts to Non-Qualified Donees

Essential was registered as a public foundation effective November 12, 2004. As stated in its governing documents, the objects of the Corporation are

- a) "To receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee or agent, to hold, invest, develop, manage, accumulate and administer funds and property for the purpose of disbursing funds and property exclusively to registered charities and "qualified donees", and
- b) to conduct any and all activities and exercise any and all such powers as are necessary for the achievement and furtherance of the objects of the Corporation."

It appears from the review of books and records that, of the activities conducted by Essential, very few would fall within its charitable mandate. In fact, the evidence on the file demonstrates that the preponderance of the effort and resources of Essential were devoted to participating in a series of complex circular transactions unrelated to its charitable purpose.

A review of the invoices in the books and records indicate an expense amount was incurred by other individuals and/or organizations and paid by Essential. This expenditure is considered a gift to a non-qualified donee because it is unrelated to the charitable purpose of Essential.

Fiscal Year 2005

1) [] \$10,748.15

- Trust account indicates amount relates to 570129 transaction
- No invoice or documentation provided

Conclusion

The audit found that Essential failed to demonstrate that it used all of its resources (funds, personnel and/or property) for its own charitable purpose or to gift to qualified donees. As well, it made a disbursement to an individual and/or organization that does not represent a qualified donee.

Due Diligence of Directors

We note with concern, with respect to the activities of Essential and the safeguarding of assets, that the directors have demonstrated a lack of due diligence in this regard. In fact, it is our position that the duty of the directors to operate in the best interests of Essential has been sidetracked by its involvement in complex circular business transactions that have put the assets of the charity at risk.

For example

- The purchase of shares in 2005 was not a prudent investment because it resulted in a loss in the value of the shares as follows:
 1. [] - loss in the value of the shares of \$670,250 offsets gift from qualified donee of \$670,250.
 2. [] - loss in the value of shares of \$989,520 offsets donation income of \$989,520.

Apparently the depletion of value of the shares was as a result of the sale or gifting of the assets by the corporation.

We were advised by Blake Bromley that, in his capacity as director and representative, he was the controlling mind behind Essential's action to purchase the shares of [] and [] Essential anticipated that [] and [] would gift its assets to charities. This is evidenced by the fact that the

gifting of the assets took place on the same day or within a few days of the disposition of the shares.

The directors would have known that an agreement to sell or gift the assets was in place at the time the shares were purchased because of the close relationship between the parties involved.

- Blake Bromley advised that with respect to the) and transactions
 1. there are no minutes of directors or other meetings regarding the share purchases;
 2. there are no minutes of directors or other meetings where the gifting of these assets to the charities were discussed;
 3. the financial benefit to Essential in participating in the transaction was minimal; and
 4. he made the decision on behalf of Essential to purchase the shares.

The duties of the directors of a charity include decision making, investing charitable property, performing corporate governance and the active management and protection of charitable assets. The fiduciary duties of the directors go beyond furthering the charitable objects of the charity and the interests of the charity should be put ahead of the interests of the directors and their related corporations.

Conclusion

It is our position that the directors failed to demonstrate due diligence by

- using Essential to transact a series of complex transactions for the benefit of other organizations and individuals,
- allowing its receipting privileges to be used for the benefit of other individuals and organizations,
- authorizing expenditures unrelated to Essential to be paid by Essential, and
- simply accepting the decisions of one of the directors/representative with regard to a number of transactions without written documented evidence of full director acceptance and understanding.

2) Issuing Receipts Not in Accordance with the Act and/or its Regulations

It is our position that Essential has contravened the *Income Tax Act* by issuing receipts for transactions that do not qualify as gifts. We offer the following explanations to support our position.

No Animus Donandi

In order to qualify as a charitable donation, there must be a true gift at common law. A true gift is a voluntary transfer of real or personal property from a donor, who must freely dispose of the property, to a donee, who receives the property given. The transaction may not result directly or indirectly in a right, privilege, benefit or advantage to the donor or to the person designated by the donor. Any legal obligation on the payor would cause the transfer to lose its status as a gift.

An 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.

It is our view that the _____ share/asset purchase transaction involving Essential failed to meet this latter element. The common theme, found throughout the transaction, is that as a result of a series of transactions the "donors" profit as a result of the underlying tax planning. It is clear that the primary motivation of the donors is intent to profit, and, as such, these transactions fail to qualify as gifts at law.

In support of this position, we note that:

- Transactions are pre-arranged and handled entirely by third parties, i.e., legal and accounting representatives.
- Essential is simply expected to record the transactions according to the adjusting journal entries provided without fully understanding the transaction.
- Essential loans its tax receipting privileges for a fee.
- The amount received and receipted by Essential is not a true gift because the funds are allocated to complete the transaction. At the completion of the transaction, Essential's financial position has not increased by an amount at least equal to the receipted amount.

Donations

The CRA provides various requirements with respect to the issuing of official donation receipts by registered charities. These requirements are contained in Regulation 3501 of the Act.

The audit revealed that the donation receipt issued by Essential did not comply with the requirements of Regulation 3501 of the Act as follows:

- Receipt # P-001 (\$989,520) was issued to _____ in conjunction with a complex, circular business transaction involving the purchase and sale of shares/assets of _____. As a result, this transfer failed to qualify as a gift at law.

Planning related to this donation receipt provided for it to be erroneously treated as enduring property.

Conclusion

Under paragraph 168(1) (d) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt other than in accordance with the Act and its Regulations. It is our position that Essential issued a receipt for a transaction that does not qualify as a gift at law. For this reason, there are grounds for revocation of the charitable status of Essential under paragraph 168(1) (d) of the Act.

3) Failure to Maintain Adequate Books and Records

Subsection 230(2) of the Act requires that every registered charity maintain adequate books and records, and books of account, at an address in Canada recorded with the Minister. In addition to retaining copies of donation receipts, as explicitly required by subsection 230(2), subsection 230(4) provides that, "Every person required by this section to keep records and books of account shall retain

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

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

- it is the responsibility of the registered charity to prove that its charitable status should not be revoked²;
- a registered charity must maintain, and make available to the CRA at the time of an audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto³; and
- the failure to maintain proper books, records and records of account in accordance with the requirements of the *ITA* is itself sufficient reason to revoke an organization's charitable status⁴.

It is our view that Essential failed to provide access to all of its records at the time of the audit review or subsequent to the audit review. For example,

1. No board minutes or planning documents outlining the complex asset/share purchase arrangement being transacted with [] and [] in the books and records of Essential were available for review. It is not reasonable that Essential's directors were able to fully understand the business transactions presented by the representatives without being provided with detailed written documentation.

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

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

⁴ *(College Rabbinique de Montreal Oir Hachaim D'Tash v. Canada (Minister of the Customs and Revenue Agency)*, (2004) FCA 101; *ITA* section 168(1)

Of the records provided, we identified specific areas of concern as summarized below:

- Official donation receipts were not prepared and issued in accordance with the Act and/or its Regulations.
- The supporting records provided to substantiate Essential's activities indicated that the charity failed to devote all of its resources to its own charitable purpose.
- Payments for legal and consulting fees were not supported with adequate documentation to verify that they were incurred by Essential.

Conclusion

It is our view that Essential failed to maintain adequate books and records and to provide complete access to its records for our inspection.

4) Failure to File an Information Return as Required by the Act

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal year end, file a Registered Charity Information Return (T3010A) with the applicable schedules.

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

Essential has improperly completed T3010A returns for the October 1, 2004 to September 30, 2007 fiscal periods, as there were numerous errors and omissions as outlined below:

FPE 30/11/2005:

- D6 "Except for compensation, did the charity, directly or indirectly transfer any part of its income or assets to individuals or organizations, not at arm's length to the charity?" Line 3950 was erroneously marked no. Refer to B) Gifts to Non-Qualified Donees for an example of an amount transferred to an individual/organization not dealing at arm's length to the charity.
- E3 Line 4650 Other Revenue – loss of share value should have been (\$1,649,870), not \$1,649,870 as shown. As a result, line 4700 should be \$63,900, not \$3,363,640.
- The Directors/Trustees Worksheet, form T1235, was not completed in full as the dates of birth and the telephone numbers of all of its directors were incomplete.

FPE 30/11/2006:

- The Directors/Trustees Worksheet, form T1235, was not completed in full as the dates of birth and the telephone numbers of all of its directors were incomplete.

FPE 30/11/2007:

- C2 "Describe how the charity carried out its charitable purposes during the fiscal period." No description was provided.

The Charity's Options:

a) No Response

If you choose not to respond, please advise us in writing of your intent. In that case, the Director General of the Charities Directorate may give notice of its intention to revoke the registration of Essential 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 Essential, 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 be 'JEANNE EFFLER', written in a cursive style.

Jeanne Effler, CGA
Audit Division
Telephone (250) 363-0276
Facsimile (250) 363-3862

Cc: Blake Bromley

Appendix "A" – Revised

Summary of _____ Transactions

Summary of Entities

_____ was incorporated in British Columbia on January 14, 1988. Prior to February 2005, it was owned by _____. It owned various assets including bird quota, real estate and equipment. _____ and _____ were amalgamated under the name of _____ on March 1, 2005.

_____ was incorporated in British Columbia on August 13, 1998. Prior to February 2005, it was owned by _____ and _____.

Theanon Charitable Foundation (Theanon) was incorporated under the British Columbia Society Act on September 22, 1986. It is a registered charity.

Essential Grace Foundation (Essential) was incorporated under the BC Society Act. It is a registered charity.

Prescient Foundation (Prescient) was incorporated under the BC Society Act. It is also a registered charity.

Gateway Benevolent Society (Gateway) was incorporated under the BC Society Act. It is also a registered charity.

Philanthropy Without Frontiers (PWF) was incorporated under the BC Society Act. It is also a registered charity.

_____ is the spouse of _____. They are Canadian residents of British Columbia.

_____ is a real estate company in BC specializing in farm property. It is a Canadian corporation operated by _____.

_____ is a law firm that acted for various charities.

_____ is a law firm that acted for the _____.

Summary of Transactions

November 15, 2004

Listing agreement was signed between [redacted] and [redacted] whereby [redacted] agreed to sell property owned by [redacted] for a commission. The property included real estate, 30,050 BC egg hatching quota and equipment.

December 14, 2004

Contract of Purchase and Sale was signed whereby [redacted] offered to purchase property from [redacted] for \$3,460,000. A deposit of \$50,000 was to be paid once conditions were removed.

January 24, 2005

All conditions of the December 14th agreement were removed. This agreement was transferred from [redacted] to [redacted] and [redacted] (f [redacted] i).

January 25, 2005

A cheque from the [redacted] to [redacted] in Trust was written in the amount of \$50,000. (It is assumed that [redacted] is the name of [redacted] business).

February 8, 2005

A share purchase agreement was signed between Gateway and the [redacted], the shareholders of [redacted] whereby Gateway agreed to purchase all of the shares of [redacted] for \$3,460,000. The deal was to close February 9th, although there is no evidence that it did.

February 14, 2005

Theanon purportedly gifted \$1,100,000 to Philanthropy Without Frontiers (PWF).

February 25, 2005

Theanon purportedly gifted \$90,000 to PWF. PWF purportedly lent [redacted] \$1,440,000 for the purpose of paying off amounts owing to the Bank of Montreal (BMO). A cheque was written in this amount from [redacted] to [redacted], a law firm acting on behalf of the [redacted].

Theanon purportedly made the following "Specified Gifts"

- \$665,000 to Gateway
- \$665,000 to Essential
- \$570,000 to Prescient

These gifts were purportedly disbursed through [redacted] trust account. A total of \$3,332,000 was deposited into a trust account at [redacted]. The funds were purportedly from the charities and PWF.

February 28, 2005

A payment was made to Bank of Montreal in the amount of \$1,086,955.38 from the Trust account of [redacted].

The charities purportedly purchased all the outstanding shares of [redacted] from the [redacted].

or \$3,370,000 as per an Agreement for Sale (AFS). The purchase price was reduced by \$1,440,000 to account for the outstanding loan, resulting in a net purchase price of \$1,930,000. (According to the charities, this transaction actually happened on February 25, 2005).

A cheque was received by [redacted] from [redacted] in the amount of \$350,000. The letter accompanying this cheque states that it is a charitable gift from [redacted] to Theanon.

March 1, 2005

[redacted] and [redacted] amalgamated and continued as [redacted].

[redacted] purportedly gifted all its assets to Theanon. Assets transferred purportedly included a broiler breeder birds quota, land and improvements (at [redacted]), poultry, machinery and equipment and miscellaneous inventory in addition to livestock.

[redacted] received a donation receipt in the amount of \$2,020,000 from Theanon.

The amount due to PWF by [redacted] appears to have been assumed by Theanon in this transaction. It recorded a liability of \$1,440,000.

Theanon purportedly sold the former [redacted] assets to the [redacted] for proceeds of \$3,460,000. Theanon purportedly took back a mortgage in the amount of \$350,000 secured by the assets.

March 2, 2005

A document titled "Assignment Loan & Security" purportedly assigned the mortgage to the [redacted] in exchange for \$350,000. This document, however, was apparently not signed by any of the parties involved.

Payment of \$3,109,152.98 was received from the [redacted] lawyer representing the amount owing for the assets purchased.

March 3, 2005

The following cheques were written from the [redacted] trust account:

- o \$3,002,852.98 to [redacted] (in trust for Theanon)
- o \$96,300.00 to [redacted] (regarding commissions plus GST)
- o \$1,563,917.89 to the [redacted]

May 9, 2005

A mortgage transfer was registered with Land Titles. This document purportedly records the transfer of the [redacted] mortgage from Theanon to the [redacted]. Its Terms indicate that consideration paid for the mortgage was \$350,000.

June 24, 2005

Charity received a specified gift from Theanon of \$54,000. Handwritten notes on trust account printout indicate the amount was paid to Charity as a fee for participating in the transaction.

Summary of _____ ("I") Transactions

Parties Involved

_____. (_____) A CCPC incorporated January 28, 2005. All shares owned by

(_____) was incorporated January 4, 1999. Prior to May 25, 2005 the common shares were owned 50% by _____ and 50% by _____ (the _____). It owned land and buildings and some chickens. It held a permit and quota issued from the BC Chicken Marketing Board and permit and quota from the BC Egg Hatching Commission.

(_____) is a real estate company in B.C. specializing in farm property. It is a Canadian corporation operated by _____.

Theanon Charitable Foundation (Theanon) was incorporated under the BC Society Act on September 22, 1986. Blake Bromley, Robert Kruse and Kenneth Woods are directors. It is a registered charity.

Essential Grace Foundation (Essential) was incorporated under the BC Society Act on October 4, 2004. The directors are Jhordan Stevenson, Paul Mancuso and Ronnie Negus. It is a registered charity.

Gateway Benevolent Society (Gateway) was incorporated under the BC Society Act on July 3, 2000. The directors are John Glazema, Ivor Venema and Paul Mancuso. It is a registered charity.

(_____) a law firm in Abbotsford, BC acting for the _____
_____ are Canadian residents living in BC.

(_____) are Canadian residents living in BC.

(_____) is a Canadian corporation.

_____ is a Canadian corporation.

_____ is a Canadian resident living in BC.

(_____, _____ and the _____ are referred to as third party purchasers).

Facts and Assumptions

Feb 08, 2005

An exclusive listing contract was signed between [redacted] and [redacted] agreed to list property owned by [redacted]. The property mentioned is real estate, but we assume it includes other farm property owned by [redacted] as well. Listing price was \$3,300,000. [redacted] owned land and buildings, livestock and had license to work a BC Hatching Egg quota from the BC Broiler Hatching Egg Commission (the Commission) and a quota from the BC Chicken Marketing Board.

March 17, 2005

The [redacted] entered into a "Contract of Purchase and Sale of Shares" to sell their shares of [redacted] to Gateway. The purchase price was to be \$3,034,025 and on April 8th, 2005 a deposit of \$55,000 was made to [redacted] in trust. There is no evidence that this deal went through, although nothing in writing cancels it either.

It is assumed that there was a side agreement to this contract whereby if Gateway were to subsequently sell the quota for more than \$103 a bird, then 50% of the excess would be added to the sale price of the shares. The other 50% would go to commissions. This deal was referred to as the "quota lift."

March 30, 2005

A contract of Purchase and Sale was signed between the [redacted] and [redacted] in which the [redacted] agreed to purchase 15,000 BC Hatching Egg Quota from [redacted] for a total of \$1.65 million dollars. A deposit of \$60,000 was paid to [redacted]. The deal was to close May 30th, 2005. An application was made April 8th, 2005 to the Commission for transfer of quota.

March 31, 2005

A contract of Purchase and Sale was signed between [redacted] (([redacted])) and [redacted] in which [redacted] agreed to purchase 5,400 BC Egg Hatching Quota from [redacted] for a total of \$594,000. A deposit of \$27,000 was paid to [redacted], in trust. Deal was to close May 30th, 2005. An application was made April 8th, 2005 to the Commission for the transfer of quota.

A contract of Purchase and Sale was signed between [redacted] and [redacted] in which [redacted] agreed to purchase chickens. Total price was to be \$55,000. A \$5,000 deposit was paid to [redacted] in trust. The deal was to close April 15, 2005.

April 4, 2005

A contract of Purchase and Sale was signed between [redacted] and [redacted] in which [redacted] agreed to purchase 3,050 BC Hatching Egg Quota from [redacted] for a total of \$329,400. A deposit of \$15,000 was paid to [redacted], in trust. An application was made April 8, 2005 to the Commission re transfer of the quota. The deal was to close May 30th, 2005.

May 26, 2005

Agreement for Purchase and Sale purportedly signed between the [redacted] and [redacted] ([redacted]). [redacted] agreed to purchase the shares in the capital of [redacted]. Purchase price was to be \$2,979,025 less \$1,235,745 total liabilities (all owing to the Bank of Montreal). A deposit of \$55,000 was agreed to have been already paid. Closing date was May 26, 2005. The remainder of the purchase price was to be paid by way of a promissory note.

Promissory note purportedly issued to the [redacted] from [redacted] in the amount of \$725,000.

The L [redacted] purportedly resigned as directors of [redacted] r.

[redacted] purportedly agreed to be a new sole director of [redacted] r.

[redacted] purportedly subscribed to an additional 100 common shares of [redacted] in consideration of \$1,235,745. [redacted] signed a statement directed to [redacted] that it assumes the debt owing to the bank by [redacted] in the amount of \$1,235,745. Neither party informed the bank of this. [redacted] assets were security for this loan.

[redacted] purportedly sold all its purported [redacted] shares to Gateway (35%), Essential (30%) and Theanon (35%). (These entities are hereafter referred to collectively as 'the foundations'). Purchase price was to be \$3,275,300. Purchase price was to be paid by way of promissory note.

May 30, 2005

[redacted] purportedly gifted to the foundations all of its assets. Donation receipts totalling \$3,298,400 were received.

[redacted] purportedly declared that it was holding the land and buildings as a "bare trustee and mere nominee" for the benefit of the foundations.

"Bills of Sale" were purportedly drawn up and signed by [redacted] regarding the sales of quota to the [redacted] and [redacted].

Official donation receipts were issued to [redacted] by Essential, Gateway and Theanon.

May 31, 2005

A "General Conveyance" between the foundations as the sellers and the [redacted] as the buyers was purportedly drawn up. The [redacted] purportedly purchased land and building from the foundations for \$725,000.

An "Agreement of Purchase and Sale" between the foundations and the [redacted] was purportedly signed. The [redacted] purportedly purchased shares of [redacted] for \$1.00.

[redacted] declared that it held the land and building as bare trustee for the [redacted].

\$1,235,745 was paid to the Bank from the [redacted] trust account.

June 1, 2005

The [redacted] were paid \$971,552.63 from [redacted] trust account.

June 3, 2005

A cheque was issued to lawyer's trust account for \$250,350.

June 6, 2005

Two commission cheques totalling \$39,512 were issued from the [] trust account. Both cheques were identified as "quota lift".

June 16, 2005

Proceeds from the sale of assets were used to repay the loans from [] by Essential, Gateway and Theanon.

June 29, 2005

\$8,000 in legal fees was transferred from the [] account to another account.

September 2005

The [] applied to the BC Chicken Marketing Board to transfer their broiler breeder quota to another location. The board cancelled their license when it was learned that shares of [] had changed hands, no matter how briefly. [] wrote to the marketing board on behalf of the [], stating "We confirm that [] and [] are the sole shareholders of the Company and that despite any change in ownership and control of the Company which may have taken place, at all times the ownership and control of the quota permit has remained in their hands (either personally or corporately)"