



REGISTERED MAIL

Help Eliminate Disease and Addiction Canada (HEDAC)
17 Janesville Road
Thornhill ON L4J 6Z9

BN: 84394 0990

Attention: Mr. Stephen Mortfield

File #: 3036224

May 7, 2012

Subject: Revocation of Registration
Help Eliminate Disease and Addiction Canada (HEDAC)

Dear Sir:

The purpose of this letter is to inform you that a notice revoking the registration of Help Eliminate Disease and Addiction Canada (HEDAC) (the Organization) was published in the *Canada Gazette* on May 5, 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/lrc4424.

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



Canada Revenue Agency · Agence du revenu
du Canada

MAR 23 2012

REGISTERED MAIL

Help Eliminate Disease and Addiction Canada
17 Janesville Road
Thornhill ON L4J 6Z9

BN:84394 0990RR0001

Attention: Mr. Stephen Mortfield

File #:3036224

**Subject: Notice of Intention to Revoke
 Help Eliminate Disease and Addiction Canada**

Dear Mr. Mortfield:

I am writing further to our letter dated November 17, 2011 (copy enclosed), in which you were invited to submit representations as to why the registration of Help Eliminate Disease and Addiction Canada (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act*.

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

Conclusion:

The Canada Revenue Agency's (CRA) audit has revealed that the Organization is not complying with the requirements set out in the *Income Tax Act*. In particular, it was found that from January 1, 2008 to December 31, 2009, the Organization issued in excess of \$113 million in receipts for medicine units received through the Relief Lending Group Program tax shelter gifting arrangement. However, it is our position that receipts were issued for amounts far in excess of the actual value of the property. The Organization's records fail to substantiate that the values recorded on the receipts were accurate, or that the property was actually received, used or distributed in the quantities reported by it.

For its participation and tax receipting abilities, the Organization received approximately \$3.5 million in cash. Of this amount, the majority was paid to the tax shelter promoters as fundraising fees, to related third party companies as administrative fees and used for the personal benefit of the directors. The Organization devoted a mere \$138,000 on its own charitable purposes.

Canada

Place de Ville, Tower A
320 Queen Street, 13th Floor R350 E (08)
Ottawa ON K1A 0L5

Our audit has also revealed insufficient separation between the Organization's operations and the personal business and financial interests of those responsible for its operation. In particular, the Organization has entered into collusive arrangements with directors and related parties as well as the tax shelter program promoters. Those arrangements have resulted in substantially all of the actual cash received being diverted into the hands of the promoters and related companies rather than used for charitable purposes.

It is our position that the Organization has operated for the non-charitable purpose of promoting tax shelter arrangements and for the private benefit of its directors and tax shelter promoters. The Organization has issued receipts for transactions that do not qualify as gifts; issued receipts otherwise than in accordance with the *Income Tax Act* and its Regulations; failed to maintain adequate books and records; and failed to file an accurate *Registered Charity Information Return*. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements necessary for charitable registration and should be revoked in the manner described in section 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letter dated November 17, 2011, I wish to advise you that, pursuant to subsection 168(1) and 149.1(2) of the Act, I propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d) 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
843940990RR0001

Name
Help Eliminate Disease and
Addiction Canada
Toronto ON

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

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

A copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of 30 days from the date this letter was mailed. The Organization's registration will be revoked on the date of publication, unless the Canada Revenue Agency (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.

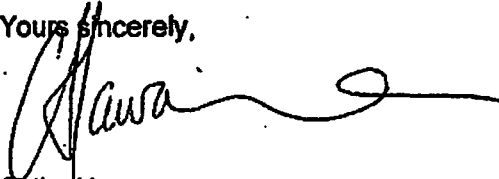
Consequences of Revocation

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 "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;
- 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 1-800-959-8287.

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,

A handwritten signature in black ink, appearing to read 'Hawara', with a long horizontal flourish extending to the right.

Cathy Hawara
Director General
Charities Directorate

Attachments:

- CRA letter dated November 17, 2011
- Appendix "A", Relevant provisions of the Act

c.c.: Evelyn Schusheim, Cummings, Cooper, Schusheim, Berliner LLP
4100 Yonge St. Suite 408
Toronto ON M2P 2B5

REGISTERED MAIL

Help Eliminate Disease and Addiction Canada (HEDAC)
4580 Dufferin St. Suite 400
Toronto, ON
M3H 5Y2

BN: 84394 0990RR0001

Attention: Mr. Stephen Mortfield

File #:3036224

November 17, 2011

Subject: Audit of Help Eliminate Disease and Addiction Canada (HEDAC)

Dear Mr. Mortfield:

This letter is further to the audit of the books and records of Help Eliminate Disease and Addiction Canada (HEDAC) (the Organization) conducted by the Canada Revenue Agency (the CRA). The audit related to the operations of the Organization for the period from January 1, 2008 to December 31, 2009.

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

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Failure to Devote Resources to Charitable Activities Providing Personal Benefits to a Member of the Organization	149.1(1), 168(1)(b)
2.	Failure to Accept Valid Gifts in Accordance with the Act, Failure to Issue Receipts in Accordance with the Act	118.1, 168(1)(b), 149.1(2), 168(1)(d)
3.	Failure to Maintain or Provide Adequate Books and Records	149.1(2), 168(1)(b), 230(2)
4.	Failure to File an Accurate T3010 Return	149.1(2), 168(1)(c)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Organization with the opportunity to make additional representations or present additional information. Registered charities must comply with the law, failing which the Organization's registered status may be revoked in the manner described in section 168 of the Act.

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

Identified Areas of Non-Compliance:

1. Failure to Devote Resources to Charitable Activities:

The Organization is registered as a charitable organization. Pursuant to subsection 149.1(1) of the Act, "charitable organization" means an organization... "all the resources of which are devoted to charitable activities".

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

a) Tax Shelter Involvement:

It is our view, based on our review, that the Organization does not operate for wholly charitable purposes and the activities it undertakes on a day-to-day basis do not support its charitable purposes in a manner consistent with charitable law. In fact, the evidence on the file, as outlined below, demonstrates a preponderance of effort and resources devoted to non-charitable activities. The Organization has devoted a substantial portion of its efforts and resources to participating in a registered tax shelter donation arrangement with a small portion of its net fundraising profits devoted to the charitable sector.

The Organization was registered effective June 19, 2007 under the legal name Canadian Organization for Addiction Free Society to conduct the following activities:

- To educate the public about the causes and effects of, and treatment for substance abuse by offering courses, seminars, conferences and meetings and by collecting and disseminating information on that topic;
- To coordinate health care and social support services for persons affected by substance abuse;
- To assist persons in coping with the effects of substance abuse by offering education and counselling and by establishing support groups.

The Organization was mostly dormant in its first year of registration. The Organization changed its name to Help Eliminate Disease and Addiction Canada effective March 18, 2008. In 2008, it began participating in the Relief Lending Group Program (RLG), a registered tax shelter. The program is a leveraged donation arrangement in which participants purportedly donated to the Organization pharmaceuticals for which favourable financing was provided by

RLG. As a result of its participation, the Organization receipted over \$60 million in that year. The Organization continued to participate in the program and receipted over \$53 million in 2009.

Based on the Relief Lending Group Program promotional material, the donation program purportedly operates as follows:

- The participant borrows a Coupon from RLG having a face value equal to the purchase price of the pharmaceuticals in exchange for an eight year promissory note;
- The participant is required to pay RLG interest for the first four years in advance. The interest rate on the promissory note varies depending on the month of participation;
- The participant uses the Coupon to purchase Ciprofloxacin (250 mg), the medicine units, for \$1 per pill from Agkuran, the participating vendor, therefore the pharmaceuticals are purchased 100% on credit;
- The participant pledges to "gift" the medicine units to the Organization;
- As a condition of participating in the program, the participant must make a cash donation to the Organization equal to 3% of the value of the pharmaceuticals pledged;
- The participant receives two charitable donation receipts from the Organization - one for the cash value of the medicine units and a second for the 3% cash donation stated above;
- The cash receipt indicates an advantage received by the participant equal to 80% of the cash donation;
- The participant is entitled, within eight years of purchasing the medicine units, to deliver to Agkuran pharmaceuticals which are of a pharmacologically identical type, quantity and quality of the purchased medicine units and in return Agkuran agrees to return the Coupon to the participant;
- To achieve this, the participant grants RLG, pursuant to schedule A of the loan agreement, a limited power of attorney under which terms the participant is entitled at any time prior to the end of the loan term to direct RLG to transfer any unapplied prepaid interest, less an amount equal to the amount that accrues during a period of one month, to any authorized agent in connection with the tax shelter. The authorized agent would use the transferred amount from the unapplied balance of the prepaid interest to purchase the identical pharmaceuticals on behalf of the participant, which would be used to reacquire the Coupon from Agkuran; and
- The participant has the option of paying the principle amount of the loan within eight years either in cash or by returning the Coupon to RLG.

The participant's actual involvement in the above transactions is limited to completing and signing the required documents and issuing the cheques mentioned above. All of the transactions were conducted by RLG and Agkuran on behalf of the participant pursuant to limited power of attorney granted to them.

The cost to a participant to take part in the RLG program varies from month to month throughout the year based on interest rates in effect at the time of participation. As an

example, a participant wishing to participate in November 2008 would purchase 6,500 medicine units valued at \$6,500 from Agkuran and uses the coupon, issued by RLG in exchange for an eight year promissory note bearing interest at 3.84%, to pay for the units. The participant pays 3% of the value of the medicine units or \$195 to the Organization as a condition of participating in the program and contributes \$1,000 in prepaid interest for 4 years to RLG for a total cash outlay of \$1,195. The participant pledges to "gift" all the medicine units to the Organization and is issued two charitable donations receipts: one for the \$6,500 gift in-kind and another for the \$195 cash gift. The cash gift receipt indicates the participant's eligible amount of gift for tax purposes is \$39. The participant is left with an eight year loan payable in cash or by returning the Coupon to RLG (medicine units).

It is our opinion, viewed as a whole that the primary purpose of this arrangement is to allow participants to profit from making a "donation" through the claiming of a donation credit. Based on the above, participants are actually out of pocket no more than 18% of the total receipted value. The participant's eligible amount of gift according to the receipts is \$6,539. Using the Ontario tax credit rate of 46.41%, the participant's tax credit is \$3,034 and net return on cash outlay is \$1,839 or 154%. The return on cash for residents of other provinces varies based on the tax credit rates applicable to each province. Based on the promotional material, the cash return can be increased in increments with the same cash on cash return to have virtually 100% of a participant's income taxes refunded.

The Organization began participating in this program in 2008 by accepting participant "gifts" equivalent to 3% of the purported value of the medicine units pledged. Of this 3% "gift" received the Organization paid RLG an average of 75% in fundraising fees. Our audit has revealed, of the balance the Organization was able to retain for its own charitable programs, it distributed over 35% of its net fundraising proceeds in 2008 and 114% of its net fundraising proceeds in 2009 to the directors of the Organization and/or related parties. Refer to our discussion below on compensation of directors. The Organization has stated it does not have agreements between itself and RLG or its directors; however our audit revealed the Organization consistently pays the amounts due upon receipt of the 3% "gifts" received from participants.

In 2008 the Organization began receipting for the participants' "gifts" of medicine units. The Organization receipted over \$59 million for medicine units in that year. The Organization also received cash "gifts" from participants in the tax shelter. Of the \$1,977,171 received as cash "gifts", the Organization reports spending \$1,348,565 in fundraising fees to RLG and \$217,137 in management and administration fees to companies held by the Organization's directors and/or related parties for services. The Organization's records indicate that outside the tax shelter, it spent \$89,876 on its own charitable purposes. However, the audit revealed of that amount, the sum of \$21,193 was transferred to non-qualified donees.

In 2009, the Organization receipted over \$53 million for medicine units; it also received cash "gifts" from the tax shelter participants. Of the \$1,586,832 received as cash "gifts", the Organization reports spending \$1,173,412 in fundraising fees to RLG and \$471,016 in management and administration fees to companies held by the Organization's directors and/or related parties for services. The Organization's records indicate that outside the tax

shelter, it spent \$113,656 on its own charitable purposes; however, the audit revealed of that amount, the sum of \$43,637 was transferred to non-qualified donees.

In conclusion, during the two years under audit, the Organization spent approximately \$138,702 on charitable activities by transferring funds to qualified donees compared to over \$3,210,130 on fundraising and administrative payments.

b) Failure to Devote all of its Resources to its own Charitable Activities:

As stated above, in order for an organization to be recognized as a charity, it must be constituted and operated exclusively for charitable purposes, and it must devote all of its resources to charitable activities carried on by the organization itself.

Focusing on "devotion of resources", a registered charity may only 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.

CRA acknowledges that it is not always practical for a registered charity to become directly involved in charitable activities because of limited financial resources, the size of the project or because the charity lacks the necessary expertise to operate effectively in a particular area of interest. Accordingly, CRA will consider that a registered charity is involved in its own charitable activities if the charity demonstrates that it maintains the same degree of control and responsibility over the use of its resources by another entity as it would if its activities were conducted by the charity itself.

Where a registered charity chooses to operate through an appointed agent or representative (intermediary), it must be able to substantiate, generally through documentary evidence, that it has arranged for the conduct of certain specific activities on its behalf, and has not simply made a transfer of resources to a non-qualified donee. A charitable organization 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 Organization.

The Organization has distributed medicine units to various African countries for the period under audit. The audit revealed that the majority of the medicine units were transferred to intermediaries where there were no agency agreements and/or where agency agreements existed, the terms thereof were not fully complied with. In particular, the Organization has transferred 10,980,000 medicine units to "Ministere de la sante de l'hygiene publique" in Guinea, 10,580,000 medicine units to "Prime Health Services" in Ghana and 1,920,000

medicine units to "Ministere de la sante" in Burkina Faso. The audit revealed there were no agency agreements between the Organization and those organizations in respect of the transfers.

In addition, the Organization has transferred 4,950,000 medicine units to "The Government Central Medical Store" in Benin, 4,900,000 medicine units to "Mission catholique" in Madagascar, 10,120,000 medicine units to "CAMED SA" in Mali and 6,560,000 medicine units to Diocese of Kakamega in Kenya. Although agency agreements were drawn between the Organization and those intermediaries, the terms of the agreements were not fully complied with. Specifically, item 5 of the agency agreement stipulates, among other things, that "[the Organization] shall designate, at its sole discretion, a list of qualified health care organizations, institutions, or professionals that provide services worthy of its support". As per the Organization's representations, it did not provide instructions to the organizations; rather it relied on the recipient organizations to apply the pharmaceuticals to the areas that they determined to be in greatest need. Item 10 of the agency agreement states that "the agent shall maintain detailed records of distributed products and provide [the Organization] with written receipts specifying the use of these pharmaceuticals". With the exception of the Diocese of Kakamega, Kenya, no evidence was presented to show that the agents had maintained detailed records or provided the Organization with receipts specifying the use of the pharmaceuticals. Item 12 requires the agent to provide the Organization with quarterly and yearly statements and reports illustrating the distribution of the Organization's assets. None of the agents complied with this requirement except for the Diocese of Kakamega. Item 13 of the agency agreements requires the agent to maintain adequate books and records to substantiate compliance with its obligations. The audit revealed that the agents did not provide the Organization with evidence that adequate books and records were maintained. Item 15 of the agency agreement states that "each part agrees that [the Organization] shall maintain direction and control of the products". This item has not been complied with since the vast majority of the medicine units were transferred to intermediaries where no agency agreements exist or if agreements existed the terms thereof have not been satisfied. The Organization has failed to demonstrate to the CRA's satisfaction that it maintained control over, and was fully accountable for, the use of resources provided to the intermediaries. Therefore, it is CRA's position that the Organization has relinquished control and gifted the medicine units to non-qualified donees. It is further our position the Organization has failed to satisfy subsection 149.1(1) of the Act with regard to devoting resources to its own charitable activities.

According to its representations, the Organization became aware of the above organizations through Beta Management, the company that provides logistics for the RLG tax shelter program. The Organization did not present evidence that it conducted due diligence with regard to the organizations; their expertise and ability to deliver the services required. As part of the tax shelter program, Beta Management located the recipients, made recommendations, drafted the agency agreements and delivered the pharmaceuticals. It is the position of the CRA that the Organization was simply working as a conduit for the tax shelter program as the Organization has not demonstrated its control by failing to select intermediaries that were capable of distributing the medical goods and to confirm that the medicine units were in fact used for charitable purposes. Rather, it is our opinion that the Organization chose to abide by the pre-determined transactions established by the tax shelter

in order to participate in this arrangement and did not seek to inquire or operate outside of its agreement with the parties involved.

According to the Organization's minutes of board meetings, the Organization amended its objects on January 28, 2008, and the following object was added: "to assist persons worldwide who have contracted diseases as a result of substance abuse, or by other means, through the provision of treatment and medication", and began participating in the tax shelter shortly after that. The Organization amended its objects without the written authorization of the Charities Directorate despite being advised in its Notification of Registration letter that written authorization was required. Written authorization is necessary in order to ensure a charity will function within the limitations imposed by the Act and in compliance with applicable common law requirements. Although the amended object is considered charitable, as explained above, the audit revealed that the Organization failed to demonstrate that it maintained direction and control over the use of its resources to meet the own activities test. The Organization failed to show it is in fact the body that makes decisions and sets parameters on significant issues related to its activities. It would appear that the Organization changed its objects in order to accommodate the tax shelter since the original stated and approved objects focused on education, counselling and social support services for persons affected by substance abuse rather than the provision of treatment and distribution of medication to persons worldwide who have contacted diseases.

We find the Organization's participation in this tax shelter arrangement to be problematic, as, in our view, the Organization appears to be facilitating an arrangement designed to avoid the application of the provisions of the *Income Tax Act* and may be designed to create improper tax results. In our view, the Organization is operating primarily for the purpose of promoting a tax shelter program as the Organization has not shown or otherwise indicated it is conducting any other activities aside from the small portion of gifts made to qualified donees. The Organization is an integral part of the arrangement being paid to issue tax receipts and circulate funds (as directed) in an artificial manner to facilitate and lend legitimacy to the overall arrangement.

Given the manner in which the Organization allegedly structured and conducted its activities to accommodate the tax shelter, and the proportional levels of involvement in the arrangement, it is our view that a collateral purpose, if not primary purpose of the organization is, in fact, to support and promote a tax shelter arrangement. In this regard, it appears that the Organization enthusiastically lent its physical, financial and human resources (not to mention tax receipting privileges and registered charity status) to support the tax shelter arrangement, with little regard for the mandate and best interests of the Organization itself. Operating for the purpose of promoting tax shelters is not a charitable purpose at law. It is our view, therefore, that by pursuing this non-charitable purpose, the Organization has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) of the Act as a charitable organization "all the resources of which are devoted to charitable activities".

It is further our view that by failing to demonstrate the Organization's on-going direction and control of its distribution of medicine units and permitting other organizations to use the Organization's registered status to flow donations through it, the Organization has failed to

demonstrate that it meets the test for continued registration under subsection 149.1(1) of the Act as a charitable organization "...all the resources of which are devoted to charitable activities". For this reason, it appears to us that there may be grounds for revocation of the charitable status of the Organization.

Furthermore, the audit revealed that the Organization made cash gifts to non-qualified donees as follows:

As per the Qualified Donees Worksheets (form T1236) filed for the years under audit, the Organization gifted \$21,193 in 2008 and \$12,137 in 2009 to Healing and Assistance not Dependence (HAND) Canada, an organization whose registered status was revoked in May 2007. Additionally, the Organization made a number of payments in 2009 totalling \$31,500 to The Recovery Place. As per our records, this organization is not a qualified donee. The Organization's records include the explanation "to reallocate donations to U.S. charity" in respect of those payments. The amounts transferred to the various organizations are considered gifts to non-qualified donees. Pursuant to subsection 149.1(1) of the Act, a "qualified donee" means a donee described in any of paragraphs 110.1(1)(a) and (b) and the definition "total charitable gifts" and "total Crown gifts" in subsection 118.1(1). The beneficiaries noted above do not meet the definition of qualified donees.

We would like to inform you that certain amendments to the Act were introduced as part of Bill C-33 tabled in Parliament on March 23, 2004, that came into force on May 13, 2005. As a result of the amendments, subsections 188.1(4) and (5) of the Act were added. Pursuant to subsection 188.1(4), a registered charity that confers on a person an undue benefit is liable to a penalty equal to 105% of the amount of the benefit. This penalty increases to 110% of the amount of the benefit for a repeat infraction within 5 years. By making gifts of medicine units and cash to non-qualified donees, the Organization has conferred undue benefits on the beneficiaries. We do not consider that these sanctions are an appropriate alternative to revocation, given the serious nature of the matter of non-compliance.

It is our view that by making gifts to non-qualified donees, the Organization has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) of the Act as a charitable organization "...all the resources of which are devoted to charitable activities". For this reason, it appears to us that there may be grounds for revocation of the charitable status of the Organization.

c) Personal Benefit

Paragraph 149.1(1)(b) of the Act stipulates that no part of a charity's income is payable or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof. The CRA considers the meaning of the term "trustee", for registered charity purposes, to include those persons who stand in a fiduciary relationship to the charity, having general control and management of the administration of a charity, including directors of corporations established for charitable purposes. This is, essentially, a rule against self-dealing, reflecting the general rule of equity that a trustee must not profit out of his position of trust, nor must he place himself in a position where his duties as a trustee conflict with his own

interests. It is also a statutory embodiment of the common law test that individuals with ties to a charity should not profit from their association with the charity.

The CRA's position regarding the remuneration of directors is that *bona fide* payments for actual services rendered do not constitute a "personal benefit" of the type prohibited by the Act for the directors of registered charities. Accordingly, a registered charity may remunerate its directors or entities controlled by its directors for other services actually performed on behalf of the charity, as long as those payments are reasonable under the circumstances, and in the normal course of operations. The Organization has made payments to various corporations and individuals who share common ownership with the directors and ex-directors of the Organization whereby the corporations and individuals are remunerated for management, consulting and services rendered.

At the time of registration of the Organization, the board of directors consisted of Mr. Stephen Mortfield, Mr. Stephen Bloom and Mr. Raymond Adelson. Based on our records, Mr. Zalman Goldman was added to the board of directors in 2007 and Mr. Raymond Adelson was removed in 2008.

The audit has revealed that the following individuals, personally or through corporations held by the Organization's directors, received the following payments in the following years:

Director/Related person	Related Corporation	2008	2009	Description of fees
Stephen Mortfield	Sharjay Investments Corp.	\$110,603	\$214,599	Management fees
Raymond Adelson	Global Ray Inc.	\$55,302	\$91,777	Consulting fees
Stephen Bloom	Bloom Corp Ltd.	\$12,493	\$23,703	Consulting fees
Naomi Goldman ¹	2124251 Ontario Inc.	\$38,738	\$140,936	Administration fees
Total		\$217,136	\$471,015	

The Organization claims to have paid each of the directors' corporations for services rendered to it. Per the Organization's representations, Sharjay Investments' fees were based on the rate of \$130 to \$250 per hour plus additional "catch up" payments. Global Ray's fees were based on the rate of \$110 to \$200 per hour. Mrs. Goldman's fees were based on 5% of cash donations raised.

Our review of the information provided indicates there has not been sufficient separation between the directors' affairs and the financial and business interests of individuals responsible for administration and management of the Organization's programs and that the Organization's programs have been operated in such a way as to benefit those interests. The Organization exists as little more than a shell with the capacity to issue receipts for income tax purposes, and

¹ Mrs. Goldman is the wife of Zalman Goldman, a director of the Organization.

that this capacity has been exploited as a means by which cash contributions received are paid out as fees to corporations owned by the Organization's directors and/or related parties.

We do not consider the payments to be *bona fide* payments for services rendered or reasonable. The amounts paid to the above noted persons are such that, of the actual cash contributions received, substantially all is siphoned off as fundraising and administrative expenses. Per above, of the cash donations received by the Organization in 2008, 11% was paid to corporations owned by the directors and to related persons and 68% was paid to RLG in fundraising fees. The Organization retained at maximum 21% of the cash contributions to devote to its own charitable activities. The situation became even more problematic in 2009 when 29% of the cash donation received was disbursed to corporations owned by the directors and to related persons. Combined with 74% paid in fundraising fees, the Organization was left with a deficit even before spending any funds on its own charitable activities.

We are further of the opinion that the remuneration received is not reasonable based on the services provided. The Organization was largely dormant until its participation in the tax shelter arrangement and had very few activities outside the tax shelter for the years audited. We note that management fees for all directors and/or related parties have almost doubled from 2008 to 2009 (in the case of Mrs. Goldman, the administration fees have more than tripled) yet cash donations have decreased. For example, Mr. Mortfield's management fees increased from \$110,603 in 2008 to \$214,599 in 2009 and Mr. Adelson's consulting fees increased from \$55,302 in 2008 to \$91,777 in 2009 while there was no evidence of any change in their roles and responsibilities. Mrs. Goldman's fees increased from \$38,738 in 2008 to \$140,936 in 2009 yet the funds raised by the Organization decreased over the same period. These findings contradict the Organization's representation that her fees were based on 5% of the cash donations. It appears the directors and/or their corporations were remunerated in such a manner as to ensure the majority of the funds actually received by the Organization were paid to themselves after the requisite fundraising fees have been paid.

We would like to inform you that the amendments to the Act introduced as part of Bill C-33 mentioned earlier in this letter also apply. A registered charity that makes a disbursement or otherwise makes available any part of its income, rights, property or resources for the personal benefit of any person who is a proprietor, member, shareholder, trustee or who deals not at arm's length with such a person is liable to a penalty under subsection 188.1(4) equal to 105% of the amount of the benefit. This penalty increases to 110% of the amount of the benefit for a repeat infraction within 5 years. By making disbursements to the above individuals and/or corporations, the Organization has conferred undue benefits on the beneficiaries. We do not consider that these sanctions are an appropriate alternative to revocation, given the serious nature of non-compliance.

It is our view, that by transferring charitable assets for the private gain of a director or a related person, the Organization has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) as a charitable organization that "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 settlor thereof". For this reason, it appears to us that there are grounds for revocation of the charitable status of the Organization.

2. Failure to Accept Valid Gifts in Accordance with the Act

It is our position that both the cash and in-kind donations received by the Organization from participants are not valid gifts under section 118.1 of the Act. We offer the following explanations to support our position.

a) No *Animus Donandi* -

Under the common law, a gift is a voluntary transfer of property without consideration. However, an additional essential element of a gift is *animus donandi* - that the donor must be motivated by an intention to give. As stated in *Grant McPherson v. HMQ (2007 DTC 326)*:

"[20] There is an element of impoverishment which must be present for a transaction to be characterized as a gift. Whether this is expressed as an *animus donandi*, a charitable intent or an absence of consideration the core element remains the same."

Justice J. Bowie further clarifies in 2004 UDT 148, *Dwight Webb (Appellant) v. Her Majesty the Queen (Respondent)*:

"These cases make it clear that in order for an amount to be a gift to charity, the amount must be paid without benefit or consideration flowing back to the donor, either directly or indirectly, or anticipation of that. The intent of the donor must, in other words, be entirely donative." [Emphasis added]

It must be clear that a 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, based on the transactions described above, that the primary motivation of the participant was not to enrich the Organization, but through a series of transactions and a minimal monetary investment, to make a profit through the tax credits so obtained. We recognize that the charitable tax credits available with respect to donations are not usually an advantage or benefit that would affect whether a gift is made. However, it is our position that mass-marketed donation arrangements promising participants that they will be able to claim tax credits for charitable donations far in excess of the expenditures actually made (i.e. the actual cash outlay and subsequent reduction in the donor's net worth), lack the requisite *animus donandi* for the transactions to be considered gifts. It is further our position, that the series of events allegedly entered into by the participant, were done in a manner to create the illusion that no benefit or advantage was received by the participant.

In support of this position, we note the promotional materials primarily focus on the participant's substantial "cash on cash return" as a result of participation. Minimal investment is required of the participant in order to acquire medicine units from the authorized vendor, Agkuran and the participant is not required under the arrangement to incur any additional cash outlay to repay the loan. The terms of repayment of the promissory note stated that the loan was repayable by cash or by Coupon. The participant has the option to repay the promissory note by delivering to RLG a Coupon, which can be obtained from Agkuran by

delivering to the latter identical pharmaceuticals. Under the loan agreement the participant granted RLG a limited power of attorney to transfer any unapplied prepaid interest, less the amount accrued in one month, to any authorized agent in connection with the tax shelter. The authorized agent acquires the identical pharmaceuticals on behalf of the participant from the world market for significantly lower prices than the alleged fair market value of the medicine units bought on credit. Therefore, if a participant exercises his/her option to repay the promissory note by Coupon through the acquisition of identical pharmaceuticals, the participant would have no further obligations to RLG beyond the original cash outlay. No prudent person would select the option to repay by cash, requiring a cash outlay from personal resources equal to the face value of the promissory note, knowing that the option to repay by Coupon would not require any additional cash outlay from personal resources.

The participants rely upon RLG and Agkuran to acquire the medicine units and transfer title of the medicine units to the Organization without using or seeing the property. The participants' involvement is limited to completing and signing the documents and issuing the required cheques described above. All of the transactions were conducted on behalf of the participants by RLG and Agkuran pursuant to limited power of attorney granted to each. Minimal information is provided to the prospective participants as to how the medicine units will benefit the Organization, what the Organization will do with the medicine units or the activities of the Organization aside from its participation in the tax shelter arrangement. Transactions are pre-arranged and handled entirely by promoters or other pre-arranged third parties. A participant in the arrangements is merely expected to put forward a minimal investment to receive generous tax receipts in return.

As such, it is our position that there is no intention to make a "gift" within the meaning assigned at section 118.1 of the Act. Participants in this donation arrangement are primarily motivated by the artificial manipulation of the tax incentives available rather than a desire to enrich the participating charity. In our view, these transactions, given the combination of the tax credits and other benefits received, lack the requisite *animus donandi* to be considered gifts.

b) Transfers not gifts – Benefit Received

Additionally, we are of the opinion that the transactions themselves lack the necessary elements to be considered gifts at law. The participants receive some form of advantage or benefit that is linked to their participation in the tax shelter program. It is clear, based upon our audit and the promotional materials of Relief Lending Group that there was a clear expectation of financial return with respect to the donation made to the Organization. The participants acquire medicine units on 100% credit and have the option to repay their promissory note in medicine units not dollars. The benefit stems from the terms of repayment of the promissory note. Participants are able to repay the promissory note by delivering to RLG a Coupon obtained from Agkuran by delivering to the latter identical medicine units. The medicine units may be acquired on the international market, at amounts significantly less than the alleged fair market value of the medicine units bought on credit. The fact that the promissory note was payable by Coupon through the purchase of identical pharmaceutical at a significantly lower price represents a material and significant benefit to the participant. The tax shelter promoters were aware that the medicine units could be purchased from the Indian

manufacturer for the price of 2.8 cents per unit² whereas the medicine units "donated" to the Organization are reported to have a value of \$1 per unit.

The fact that the benefit was received as a result of the financing arrangements with RLG and not directly from the Organization does not render the transfer a valid gift since the financing was not provided separately from the donation and the two are intricately linked. It is our opinion that since the financing forms an integral part of the donation any benefit that flows to the participant through the series of predetermined transactions would invalidate the gift. In *Marechaux v. The Queen* 2010 FCA 287, Evans, J.A. stated:

"We are not persuaded that the Judge got the law wrong. Counsel cited no authority for the proposition that only a benefit provided to an alleged donor by the donee can prevent a payment to a charity from being a gift for the purpose of section 118.1. Nor do we see any principled reason in the present context for disregarding a benefit simply because it was provided by a third party, particularly where, as the Judge found in this case, the "donation" was conditional on the provision of the benefit." [Emphasis added]

In our view, it is clear that the medicine units transferred to the Organization were not gifts in the sense understood at law and that the Organization was not entitled to issue official donation receipts for the overstated value of the medicine units. In our findings, for the two years audited, the Organization has issued in excess of \$112 million in donation receipts for transactions that did not qualify as gifts and for amounts clearly in excess of the medicine units' factual fair market value. It is clear from our audit and the promotional materials of RLG, which the Organization engaged as fundraisers that the Organization knew, or ought to have known that there was discrepancy in value of the units "donated" to it. The Organization knew, or ought to have known, that it was not entitled to issue donation receipt for these transactions.

c) : Application of the Proposed Legislation

Even without reference to the common law definition of a gift, it is clear that proposed section 248(32) of the Act applies to these transactions as well. While this legislation is still proposed, once passed into law, it applies to all transactions covered by the audit period under review. In our view, the financing of the RLG loan, results in an advantage received in consideration³ for the gift made to the Organization or is otherwise related to this gift⁴. As per above, the financing arrangement enabled the participant to finance 100% of the purchase price of the medicine units. The terms of the promissory note provide the option to repay the promissory note by delivering a Coupon to RLG, which the participant could obtain from Agkuran by delivering to the latter identical pharmaceuticals. As a result, a participant who exercises this option would not be required to make any additional cash outlay to acquire the identical pharmaceuticals. Therefore, a participant's cash outlay in respect of the cost of the pharmaceutical is zero since the medicine units were purchased on 100% credit and the terms of repayment of the financing arrangement are such that participants would not be

² See discussion below under Fair Market Value.

³ See proposed sub-paragraph 248(32)(a)(i)

⁴ See proposed sub-paragraph 248(32)(a)(iii)

required to incur any future cash outlay to settle their obligation. The Organization was therefore required by the Act to reduce the value reflected on the receipts issued by the value of the advantage.

The Organization obtained an opinion from Corporate Valuation Services Limited (the Valuator) on whether the participants would receive an advantage under the proposed subsections 248(31) and 248(32) of the Act. The Valuator provided the opinion that a cash gift of 3% of the pledged pharmaceuticals made to the Organization as a precondition to participate in the program would give rise to a small advantage to the participant. Based on this opinion, the Organization issued donation receipts for 20% of the cash gifts. The remaining 80% of the cash gift or 2.4% of the pharmaceutical donation was reported as an advantage on the cash donation receipts.

It is our opinion that the advantage reported on the receipt is grossly understated given that the participants' cash outlay to acquire the medicine units was zero and that they were not required under the financing arrangement to incur any additional cash outlays from their own resources to settle their debt obligation as stated above.

Paragraph 248(35)(a) deems the fair market value of property acquired by a taxpayer under a gifting arrangement that is a tax shelter as defined by subsection 237.1(1) to be the lesser of the fair market value (FMV) otherwise determined or the cost of the property. It is our view the fair market value otherwise determined is approximately 2.8 cents/medicine unit⁵ and the participant's actual cost of the medicine units is nil. As such, the FMV of the medicine units is deemed, by virtue of proposed subsection 248(35), to be no more than zero. Consequently the amount that the Organization was required under the *Income Tax Act* to record on its official donation receipts as the deemed FMV of the gift is significantly lower than what was actually recorded by the Organization.

Additionally, it appears that the Organization participated in an arrangement designed to avoid the application of proposed subsection 248(35). We would note that proposed subsection 248(38) states that where it can be reasonably concluded that the particular gift relates to a transaction or series of transactions one of the purposes of which is to avoid the application of subsection 248(35), the eligible amount of the property so gifted is nil. As such, it is our view that even if the property received by the Organization is a "gift", which, as described above, given the motivation of the donors, is unlikely, the property so received by the Organization was not eligible for tax receipts reflecting a value greater than zero.

d) Fair Market Value

"Fair market value" is not defined by the Act; however, a standard definition generally accepted is, the highest price, expressed in dollars, obtainable in an open and unrestricted market between informed, prudent parties dealing at arm's length and under no compulsion to buy or sell⁶.

⁵ As per the invoices issued by Hetero Labs, the Indian manufacturer.

⁶ *Henderson Estate & Bank of New York v M.N.R.* 73 D.T.C. 5471 et 5476.

As outlined by Rothstein, J.A. in *AG (Canada) v Tolley et al* 2005 FCA 386, in applying the Henderson definition of FMV, the first step is to accurately define the asset whose FMV is to be ascertained. Rothstein, J.A. discusses the relevance of donating a group of items versus an individual item and states that because the items were only acquired and donated in groups, the relevant asset was the group of items, and not the individual items in the group.

It is our position the conclusion made by Rothstein, J.A. also applies to the donation of medical units. Based on the quantities donated, the relevant asset is considered to be the group of goods donated, not the individual items within each group. Rothstein, J.A. continues by stating it is wrong to assume that the FMV of a group of items is necessarily the aggregate of the price that could be obtained for the individual items in the group.

The second step in applying the Henderson definition is to identify the market in which the merchandise was traded. Rothstein, J. A. identifies this group of items might not be sold in the same market as individual items, and highlights this distinction through a comparison of the wholesale versus retail markets.

In *Klotz v The Queen* 2004 TCC 147, Bowman, A.C.J. stated "It is an interesting question that I need to consider here whether the price paid for something is truly indicative of fmV [sic-fair market value] where the predominant component in the price paid is the tax advantage that the purchaser expects to receive from acquiring the object."

Based on our findings, the FMV on the donation receipts issued is not indicative of the factual FMV of the goods donated. The FMV recorded on the official donation receipts is based upon the Canadian retail market and based upon the individual pills included in one medicine unit⁷. The valuation method used by the appraiser commissioned by RLG claimed that the Ontario Drug Benefit Plan Formulary (ODBF) was an appropriate standard for establishing the price of the medicine units. The ODBF⁸ generally establishes prices for individual pills bought by individual Ontario consumers for individual consumption. We are of the opinion the retail market is not the relevant market as the medicine units are manufactured, sold and distributed outside of Canada, acquired in bulk and were never intended to be used for personal consumption in Canada. Based on the ODBF prices the valuator concluded that the fair market value of one pill of Ciprofloxacin was \$1.11.

Agkuran agreed pursuant to a Referral Agreement between itself and RLG to sell the medicine unit at a price of \$1 per unit when presented with an RLG Inc. Coupon by the participant. This price represented an approximate 10% discount from the cash price. In exchange RLG Inc. agreed to pay Agkuran a referral fee equal to 4% of the coupon. It is our opinion the FMV and the discounted value recorded on the official donations receipts remain overstated for the reasons above.

Additionally, our review of invoices issued by Hetero Labs, the Indian manufacturer, which show the Organization as the consignee of the pharmaceuticals, revealed that the

⁷ One medicine unit is comprised of 1-250mg tablet of Ciprofloxacin hydrochloride.

⁸ The ODBF permits a 10% mark-up.

purchase price is no more than 2.8 cents⁹ per medicine unit. The Organization knew or ought to have known the actual purchase price of the pharmaceuticals.

We note with interest that RLG Inc. and the Organization relied on Corporate Valuation Services Limited (CVS) to determine the FMV of the drugs used in the program. Per our audits, RLG purchased the drugs in bulk from the manufacturer in India through a series of predetermined and interconnected transactions, yet chose to obtain a valuation to support the alleged FMV of the drugs when purchased by a participant in the tax shelter program. A report on verification of inventories of the pharmaceuticals indicates that RLG placed the purchase orders. The CRA questions why RLG would not simply record the purchase price of the drugs to be the actual FMV of the drugs allegedly transferred to the Organization.

Under paragraphs 168(1)(d) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its Regulations. It is our position that the Organization has issued receipts otherwise than in accordance with the Act and the Regulations. For each reason identified above, there may be grounds for revocation of the charitable status of the Organization.

e) Due Diligence

We note with concern, with respect to this particular issue, that it appears that the Organization's directors have demonstrated a lack of due diligence with respect to receipting practices. In fact, and as above, we are of the opinion that the duty of the directors to operate in the best interests of the Organization has been sidetracked by its collusion with the tax shelter arrangement.

As above, we note a failure by the Organization to demonstrate its due diligence in verifying the authenticity of the tax shelter. By failing to do so the Organization has allowed official donations receipts to be prepared for transactions that are not valid gifts which has resulted in the Organization issuing receipts for property it did not receive and has operated as a conduit for the tax shelter program.

f) Issuing Receipts Not in Accordance with the Act

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

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

⁹ Invoices from Hetero Labs Limited, the manufacturer of the drugs show a price of \$11.50 U.S. per pack of 500, i.e. 2.3 cents U.S. per medicine unit. When converted using the prevailing exchange rate at the time of purchase, the price is 2.8 cents CDN per medicine unit.

- Receipts issued to acknowledge goods received as a result of the Organization's participation in the tax shelter were not valid gifts under section 118.1 of the Act. Under the *Income Tax Act*, a registered charity can issue official donation receipts for income tax purposes for donations that legally qualify as gifts. Our findings are explained above.
- Receipts issued to acknowledge goods received as a result of the Organization's participation in the tax shelter were not independently appraised by the Organization. The Organization used the same valuation report commissioned by the tax shelter promoter as support for the values recorded on the official donation receipts issued. The Organization did not seek to obtain an independent valuation report. As above, we are of the view that the amounts recorded on the tax receipts are not reflective of the FMV of the property donated.
- Receipts issued to acknowledge gifts in kind failed to give a brief description of the property as well as the name and address of the appraiser of the property as required by Regulations.

Additionally, we would like to inform you that the amendments to the Act, which were introduced as part of Bill C-33 and discussed earlier in this letter also apply to official donation receipts. As a result of the amendments, a registered charity that issues an official donation receipt that includes incorrect information is liable pursuant to subsection 188.1(7) of the Act to a penalty equal to 5% of the eligible amount stated on the receipt. This penalty increases to 10% for a repeat infraction within 5 years.

Pursuant to subsection 188.1(9) of the Act, a registered charity that issues an official donation receipt that includes false information is liable to a penalty equal to 125% of the eligible amount stated on the receipt, where the total does not exceed \$25,000. Where the total exceeds \$25,000, the charity is liable to a penalty equal to 125% and the suspension of tax-receipting privileges as per paragraph 188.2(1)(c). We do not believe that either of these sanctions are an appropriate alternative, given the serious nature of the matter of non-compliance.

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 otherwise than in accordance with the Act and its *Regulations*. It is our position that the Organization has issued receipts otherwise than in accordance with the Act and the *Regulations*. For each reason identified above, it appears to us that there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

3. Failure to Maintain or Provide Adequate Books and Records:

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

- Information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under the Act;

- A duplicate of each receipt containing prescribed information for a donation received by it; and
- Other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under the Act.

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

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

Our audit revealed the books and records kept by the Organization were inadequate for the purposes of the Act. In the course of the audit, the following deficiencies were noted concerning the Organization's records:

The total cash donations received for 2009 as per the donors' list do not agree with the bank deposits for the same period. The donors' list shows a total of \$1,232,851. However, the cash deposits as per the Organization's bank statements total \$1,586,832.

The Organization did not keep/provide minutes of meetings relative to important board decisions. In particular, discussions that stipulated the basis for fees paid to the corporations noted under "Personal Benefit" above for alleged services rendered. Per above, it is our opinion the amounts paid were designed to benefit the directors of the corporations from the net cash proceeds the Organization received as a result of participating in the tax shelter program.

The Organization did not keep/provide documentation to substantiate the basis for the millions of dollars in fundraising fees paid to RLG Inc. The Organization claimed it did not have an agreement between itself and RLG and that the fees were agreed to verbally. We find this behavior inconsistent with normal business practice.

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

4. Failure to File an Accurate Registered Charity Information Return

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file a Registered Charity Information Return (T3010) with the applicable schedules.

It is the responsibility of the Organization to ensure that the information that is provided in its T3010, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirement to file an Information Return if it fails to exercise due care with respect to ensuring the accuracy thereof.

The Organization improperly completed the T3010 for the fiscal period ending December 31, 2009 in that items reported were omitted or inaccurate. Specifically:

- The Organization reports receiving revenue from the sale of goods and services at line 4640 in the amount of \$991,838. This amount represents the alleged value of the advantage received by the participants in the tax shelter program. It forms part of the cash donation a participant is required to make to the Organization as a precondition to participate in the program. The amount does not constitute revenue from sale.
- The Organization included on the Qualified Donees Worksheet (T1236) "Healing and Assistance not Dependence Canada", an organization that is a non-qualified donee.
- The Organization failed to complete section C4 of the T3010 regarding activities and projects carried on outside Canada.
- Failed to complete section C14 on whether it issued any of its tax receipts for donations on behalf of another organization.
- Failed to indicate in section D1 whether the information was reported on an accrual or cash basis.
- Incorrectly reported on section 2 of Schedule 2 of T3010 that it transferred \$36,215,251 to Ministère de la Santé and identified the country code as QS. Also failed to identify the specific countries, as required by section 3 of that schedule, where the Organization provided any of its resources, and simply entered the word Africa. In addition, the Organization failed to answer questions 5, 6 and 7 of schedule 2.

The Organization improperly completed the T3010 for the fiscal period ending December 31, 2008 in that items reported were omitted or inaccurate. Specifically:

- The Organization included on the Qualified Donees Worksheet (T1236) "Healing and Assistance not Dependence Canada", an organization that is a non-qualified donee.

Under paragraph 168(1)(c) 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 fails to file a charity information return as when required under the Act. It is our position the Organization has failed to comply with the Act by failing to file an accurate T3010. For this reason there may be grounds to revoke the registered status of the Organization.

The Organization's Options

a) No Response

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

b) Response

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

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, do not hesitate to contact the undersigned at the numbers indicated below.

Yours sincerely,


Charities Directorate
320 Queen Street
Ottawa ON K1A 0L5

Telephone: 
Facsimile: 613-946-7646

cc: Evelyn Schusheim, Cummings, Cooper, Schusheim, Berliner LLP
4100 Yonge St. Suite 408
Toronto, ON
M2P 2B5

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.