



Canada Revenue Agency Agence du revenu du Canada

NOV 19 2012

REGISTERED MAIL

International Fellowship Mission Inc.
23 Churchill Court
Saskatoon, SK S7K 3W9

BN: 89418 3367RR0001

Attention: Les Mandler

File #: 1059005

**Subject: Notice of Intention to Revoke
International Fellowship Mission Inc.**

Dear Sir:

I am writing further to our letter dated February 23, 2012 (copy enclosed), in which you were invited to submit representations as to why the registration of International Fellowship Mission Inc. (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:

It is our position that the Organization is not complying with the requirements set out in the *Income Tax Act*. In particular, it was found that the Organization failed to devote its resources to charitable activities, issued receipts not in accordance with the Act, and failed to maintain or provide adequate books and records.

The Canada Revenue Agency's (CRA) audit revealed that the Organization failed to devote its resources exclusively to its own charitable activities by participating in the Universal Barter Group, a registered tax shelter. Our audit indicated that, for the period from January 1, 2007 to December 31, 2008, the Organization issued \$1.1 million in donation receipts for transactions that do not qualify as gifts and did so at the direction of the tax shelter promoter. Our audit also revealed that the Organization failed to maintain or provide adequate books and records as required by section 230 of the Act to demonstrate that the pharmaceuticals it purportedly acquired were distributed under the direction of the Organization. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements necessary for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Canada

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

Consequently, for each of the reasons mentioned in our letter dated February 23, 2012, I wish to advise you that, pursuant to subsection 168(1) 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)(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	Name
894183367RR0001	International Fellowship Mission Inc. Saskatoon SK

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.

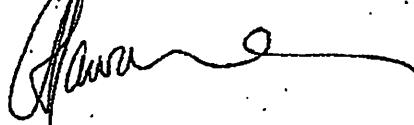
Consequences of Revocation

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. (rest of Canada).

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

Yours sincerely,



Cathy Hawara
Director General
Charities Directorate

Attachments:

- CRA letter dated February 23, 2012
- Appendix "A", Relevant provisions of the Act

c.c.: 



REGISTERED MAIL

International Fellowship Mission Inc.
23 Churchill Court
Saskatoon, SK S7K 3W9

BN: 89418 3367RR0001

Attention: Les Mandtler

File: 1059005

February 23, 2012

Subject: Audit of International Fellowship Mission Inc.

Dear Sir:

This letter is further to the audit of the books and records of International Fellowship Mission Inc. (the Organization) by the Canada Revenue Agency (the CRA). The audit related to the operations of the registered charity for the period January 1, 2007 to December 31, 2008.

At our meeting on October 22, 2009, you were advised that the CRA has identified a specific area of non-compliance with the provisions of the *Income Tax Act* or its *Regulations* in the following area:

AREAS OF NON-COMPLIANCE:	
Issue	Reference
1. Failure to Devote Resources to Charitable Activities	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)

The purpose of this letter is to describe the area of non-compliance identified by the CRA as it relates 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 area of non-compliance in further detail.

Identified Area of Non-Compliance:

1. Tax Shelter Participation – Objects & Activities and Issuance of Official Donation Receipts

The Organization is registered as a charitable organization. In order to satisfy the definition of 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 the law regarding charities. 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.

The Organization was registered effective July 2, 1995 to "Spread further the gospel of the Lord Jesus Christ by preaching, teaching, music, song and by using all other communicative and technological means available to achieve such purpose and to promote and further mission projects in various parts of the world in furtherance of the gospel." In 2008, the Organization amended its programs to include "provide third world countries, through an established religious organization, the following: medicine; water purification tablets; establish a medical clinic in Africa; and provide medical equipment and drill water wells".

Based on our audit findings, the Organization has demonstrated that it does not operate for purely charitable purposes. In fact, the evidence on the file, as outlined below, demonstrates that the preponderance of the effort and resources of the Organization are devoted to participating in a tax planning donation arrangement. Operating for the purpose of promoting a tax planning donation arrangement is not a charitable purpose at law.

a) Non-Charitable Purpose

Donation Arrangement:

The audit revealed the Organization was involved in the Universal Barter Group (UBG), a tax shelter gifting arrangement. The Organization entered into an agreement with UBG in 2008. The UBG tax shelter is a leveraged donation arrangement wherein participants receive TradeBUX on credit and can donate these TradeBUX to a participating registered charity.

TradeBUX were currency units that could be used to purchase and/or sell products and/or services on a trade exchange to be operated by Bartenworld; however, participants were encouraged to donate their TradeBUX to a charity recommended by Universal Barter Group, or to a charity of the participant's choice. The participating registered charity will then issue a donation receipt for the purported value of the TradeBUX received. A participant would typically pre-pay interest of \$1,000 for every 5,000 to 6,500 in TradeBUX received¹. The participant would then donate the TradeBUX to a registered charity and receive an official donation receipt equivalent to \$0.85/TradeBUX (5,000 to 6,500) donated.

Per our understanding of the tax shelter, participating charities were led to believe that they could purchase a variety of goods and services from participating businesses; however, participating charities were highly encouraged to purchase pharmaceuticals meant for international distribution regardless if this activity was or was not consistent with the charity's objects. As it pertains to the Organization, it was registered to "further the gospel of the Lord Jesus Christ by preaching, teaching, music, song and by using all other communicative and technological means available to achieve such purpose and to promote and further mission projects in various parts of the world in furtherance of the gospel" and was in fact dormant for three years prior to its involvement with the tax shelter.

During the audit period, the Organization entered into an agreement with UBG and as a result was advised approximately 1.1 million in TradeBUX was raised for them. UBG also supplied the Organization with a list of donors to whom official donation receipts were to be issued. Based on this limited information provided, the Organization then issued these receipts to the list of donors provided by UBG.

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.

¹ The amount of TradeBUX received depending on when a participant would join the tax shelter program.

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 pharmaceuticals to Ghana for the period under audit. The audit revealed that the majority of the pharmaceuticals were transferred to intermediaries where there were no agency agreements and/or where agency agreements existed, the terms thereof were not fully complied with. 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 pharmaceuticals 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.

Additionally, the Organization reports that it gifted amounts, equal to the amount of TradeBUX received to another Canadian registered charity; however, our review of the other charity's publicly available information return fails to report it received a gift from the Organization. We fail to understand how the Organization can represent itself as both distributing the pharmaceuticals itself and gifting them to a qualified donee at the same time.

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, the tax shelter promoter directed the entire process from the purchase of the pharmaceuticals to their delivery, as well as restricting the types of medicines available to the Organization, and drafting the agency agreements. 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 pharmaceuticals 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.

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 pharmaceuticals 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.

2. Issuing Receipts not in accordance with the Act

It is our position that the 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 outlay, 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 outlay is required of the participant in order to acquire TradeBUX on credit with the Universal Barter Group. The promotional materials also indicate that participants can extinguish their loans without using out of pocket funds.

The participants' involvement is limited to completing and signing the documents and submitting the funds as required. Minimal information is provided to the prospective participants as to how the TradeBUX will benefit the Organization², what the Organization will do with the TradeBUX 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 cash outlay 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

² Per our understanding of the tax shelter, participants and charities were led to believe that charities could purchase a variety of goods and services from participating businesses; however, charities could only acquire pharmaceuticals meant for international distribution.

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 Universal Barter Group that there was a clear expectation of financial return with respect to the donation made to the Organization. The participants acquire TradeBUX on 100% credit and Universal Barter Group will assist the client retire their debt. This appears to represent a material and significant benefit to the participant if the original debt does not have to be settled using out of pocket funds.

The fact that the benefit was received as a result of the financing arrangements with Universal Barter Group 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 TradeBUX 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. In our findings the Organization has issued in excess of \$1.1 million in donation receipts for transactions that did not qualify as gifts. It is clear from our audit and the promotional materials of Universal Barter Group, which the Organization engaged as fundraisers that 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 Universal Barter Group loan, results in an advantage received in consideration³ for the gift made to the Organization or is otherwise

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

related to this gift⁴. As per above, the financing arrangement enabled the participant to finance 100% of the purchase price of the TradeBUX. The promotional materials also state that the participant has the option to repay part of the debt by engaging in trade activities and the other part of the debt using the future value of the purported "loan repayment deposit". As a result, a participant would not be required to make any additional cash outlay to settle their debt. Therefore, a participant's cash outlay in respect of the cost of the TradeBUX would be in the initial "interest" expense and the terms of repayment of the financing arrangement are such that participants would not be 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.

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) 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 that is not considered to have been a gift and has operated as a conduit for the tax shelter program.

f) Issuing Receipts Not in Accordance with the Act

The Act stipulates various requirements pertaining to official donation receipts issued by registered charities. These requirements are contained in Regulations 3500 and 3501 of the Act and are also described in some detail in Interpretation Bulletin IT-110R3 entitled "Gifts and Official Donation Receipts". This publication is available on our website at www.cra.gc.ca/charities.

When a registered charity issues a receipt to acknowledge a gift of non-cash property the charity is responsible to ensure that the value on the receipt is accurate. Generally, a

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

member of a charity, or another individual, can attest to the value of the property if the value of the property is less than \$1,000 as long as the member or individual has sufficient knowledge of the property.

In those circumstances where the value of the property exceeds \$1,000, we strongly recommend that the property be appraised by an independent third party; an independent party is one who is not affiliated with the charity or the donor. This person should be knowledgeable about the principles, theories, and procedures of the applicable valuation discipline and follow the uniform *Standards of Professional Appraisal Practice* or the standards of the profession. In each scenario, the person determining the fair market value of the item should be competent and qualified to evaluate the particular property being donated. Also, he should be knowledgeable about and active in the marketplace for the specific property.

We recognize that appraisals are not required under the Act or its Regulations. However, it is our view that the onus remains with the Organization to ascertain that the value assigned to non-cash gifts received is reflective of the fair market value of the goods being donated.

The Organization has not shown that it sought, nor has it provided, independent appraisals of the non-cash property received (TradeBUX). It has issued receipts to acknowledge non-cash gifts that were not issued in accordance with Regulation 3501.

The process involving the preparation and issuance of official donation receipts of the Organization was explained to the CRA as follows:

The Universal Barter Group Donation Program would send a listing of the donors for whom the Organization was to provide an official donation receipt. The amount of the receipts was specified by the Tax Shelter (Universal Barter Group Donation Program). The Organization simply completed an official donation receipt and mailed it to the donor. When asked by the auditor how many Canadian dollars were actually donated, Mr. Mandtler answered "I don't know."

In 2008, the Organization had received TradeBUX in the amount of 1,128,280 for which official donation receipts were issued. The TradeBUX received for year 2008 along with additional 690,437 of TradeBUX received in 2009 were used to purchase pharmaceuticals which were shipped to Ghana. The auditor was informed by the Organization in the fall of 2011 the Organization was in the process of shipping an additional order of pharmaceuticals to Ghana.

We would add that where a charity issues receipts with incorrect or false information, subsection 188.1(7) provides for a possible alternative to a revocation action. This provision provides for a penalty equal to 5% of the eligible amount stated on the receipt. This penalty increases to 10% for a repeat offence within five years. A charity that issues an official donation receipt that includes deliberately false information may be liable to a penalty equal to 125% of the eligible amount stated on the receipt and if the penalty is in excess of \$25,000.

the charity is also liable to one Year's suspension of its charitable status. We do not believe that this is an appropriate alternative, given the serious nature of the matter of non-compliance.

In conclusion, it is our view that the Organization has not complied with the requirements of the Act in that it has issued receipts for gifts or donations otherwise than in accordance with the Act and the Regulations, or that contains false information. It therefore appears there are grounds for the revocation 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. As noted above, the Organization distributed pharmaceuticals to Ghana for the period under audit yet failed to maintain and/or failed to provide documentation to substantiate the distribution of the pharmaceuticals either by itself or by agents employed on the Organization's behalf. Our audit revealed that the majority of the pharmaceuticals were transferred to intermediaries where there were no agency agreements and/or where agency agreements existed, the terms thereof were not fully complied with. As such, the CRA cannot ascertain that the pharmaceuticals were distributed as part of the Organization's own programs.

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The Organization did provide three documents to substantiate a shipment of pharmaceuticals with a purported value of \$1.8 million in 2010. Our reviews of the documents indicate that there were two types of pharmaceuticals purportedly shipped, yet the pharmaceuticals do not appear on the packing list or air waybill. And, as per above, there were no further documents provided to confirm the receipt of the pharmaceuticals or the distribution of the pharmaceuticals upon their arrival in Ghana.

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.

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 Charity by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

b) Response

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

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

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

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

- 12 -

Yours sincerely,

AB
Feb 23/2012

[REDACTED]
Verification & Enforcement Division
Edmonton TSO

Telephone: [REDACTED]
Toll Free: [REDACTED]
Facsimile: [REDACTED]
Address: 9700 Jasper Avenue
Edmonton AB T5J 4C8

cc: [REDACTED]

ITR APPENDIX "A"

Section 149.1: [Charities]

149.1(2) Revocation of registration of charitable organization

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

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

149.1(3) Revocation of registration of public foundation

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

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

149.1(4) Revocation of registration of private foundation

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

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

149.1(4.1) Revocation of registration of registered charity

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

- (a) of a registered charity, if the registered charity has made a gift to another registered charity and it can reasonably be considered that one of the main purposes of making the gift was to unduly delay the expenditure of amounts on charitable activities;
- (b) of the other charity referred to in paragraph (a), if it can reasonably be considered that, by accepting the gift, it acted in concert with the registered charity to which paragraph (a) applies; and
- (c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity.

Section 168: Notice of intention to revoke registration

168(1) Where a registered charity or a registered Canadian amateur athletic association

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

168(2) Revocation of Registration

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

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

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

168(4) Objection to proposal or designation

A person that is or was registered as a registered charity or is an applicant for registration as a registered charity that objects to a notice under subsection (1) or any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) may, on or before the day that is 90 days after the day on which the notice was mailed, serve on the Minister a written notice of objection in the manner authorized by the Minister, setting out the reasons for the objection and all the relevant facts, and the provisions of subsections 165(1), (1.1) and (3) to (7) and sections 166, 166.1 and 166.2 apply, with any modifications that the circumstances require, as if the notice were a notice of assessment made under section 152.

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

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

Where the Minister

- (a) refuses to register an applicant for registration as a Canadian amateur athletic association,
- (a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,
- (b) refuses to accept for registration for the purposes of this Act any retirement savings plan,
- (c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,
- (d) refuses to issue a certificate of exemption under subsection 212(14),
- (e) refuses to accept for registration for the purposes of this Act an education savings plan,
- (e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,
- (f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,
- (f.1) refuses to accept an amendment to a registered pension plan, or
- (g) refuses to accept for registration for the purposes of this Act any retirement income fund, the applicant or the organization, foundation, association or registered charity, as the case may be, in a case described in paragraph (a) or (a.1), the applicant in a case described in paragraph (b), (d), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), the promoter in a case described in paragraph (e.1), or the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

Section 180: Appeals to Federal Court of Appeal

180(1) Appeals to Federal Court of Appeal

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

- (a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),
- (b) the mailing of notice to a registered Canadian amateur athletic association under subsection 168(1),
- (c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),
- (c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 148.1(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.