



CANADA REVENUE
AGENCY

AGENCE DU REVENU
DU CANADA

REGISTERED MAIL

Jesus El Buen Pastor Spanish Pentecostal Church of Toronto
1885 Wilson Avenue, Suite 206
Toronto ON M9M 1A2

BN: 888662269 RR0001

Attention: Mr. Peter Gonzalez

File #:0859348

August 10, 2009

Subject: Revocation of Registration
Jesus El Buen Pastor Spanish Pentecostal Church of Toronto

Dear Mr. Gonzalez:

The purpose of this letter is to inform you that a notice revoking the registration of Jesus El Buen Pastor Spanish Pentecostal Church of Toronto (the Organization) was published in the *Canada Gazette* on August 8, 2009. Effective on that date, the Organization ceased to be a registered charity.

Consequences of Revocation:

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

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 prescribed form, containing prescribed information, for each taxation year. The *Return of Income* must be filed without notice or demand.

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

Yours sincerely,



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

Enclosures

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

Cc: Indiana Taub



REGISTERED MAIL

Jesus El Buen Pastor Spanish Pentecostal Church of Toronto
1885 Wilson Ave, Suite 206
Toronto ON M9M 1A2

JUN 29 2009

BN: 88866 2269 RR0001
File: 0859348

Attention: Mr. Peter Gonzalez

Subject: Notice of Intention to Revoke
Jesus El Buen Pastor Spanish Pentecostal Church of Toronto

Dear Mr. Gonzalez:

I am writing further to our letter dated March 19, 2009 (copy enclosed), in which you were invited to submit representations as to why the Minister of National Revenue (the Minister) should not revoke the registration of Jesus El Buen Pastor Spanish Pentecostal Church of Toronto (the Charity) in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

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

Conclusion:

Our audit revealed that the Charity has devoted a significant portion of its resources to the promotion of the Insured Giving Donation Program tax shelter gifting arrangement. Our audit has concluded that from January 1, 2006 to December 31, 2007, Jesus El Buen Pastor Spanish Pentecostal Church of Toronto issued in excess of \$18.5 million in receipts for cash and non-cash gifts received through this tax shelter arrangement. Of this amount, \$15.8 million consisted of non-cash gifts that the Charity reports to have distributed as part of its own activities. However, the Charity's records fail to substantiate that the property actually existed, that the property was in the Charity's possession, that the values recorded on the receipts were accurate or that the property was distributed for charitable purposes.

The remaining \$2.7 million was received as tax-receipted cash donations. Of this amount, the Charity directed \$2.1 million to fundraising expenses and earned a meagre \$56,000 for use in its own charitable activities. The Charity's earnings represent 2% of the gross cash donations received or 0.3% of the gross tax-receipted donations reported.

It is our position that the Charity has operated for the non-charitable purpose of promoting a tax shelter arrangement and for the private benefit of the tax shelter promoters. The Charity 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; and has failed to maintain sufficient books and records. For all of these reasons, and for each of these reasons alone, it is the position of the Canada Revenue Agency's (CRA) that the Charity's registration should be revoked.

Consequently, for each of the reasons mentioned in our letter dated March 19, 2009, I wish to advise you that, pursuant to the authority granted to the Minister in subsections 149.1(2) and 168(1) of the Act, which has been delegated to me, I propose to revoke the registration of the Charity. 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) and 168(1)(d) of the Income Tax Act, that I propose to revoke the registration of the organization listed below under subsection 149.1(2), of the Income Tax Act and that the revocation of registration is effective on the date of publication of this notice.

Business Number	Name
88866 2269 RR 0001	Jesus El Buen Pastor Spanish Pentecostal Church of Toronto Toronto ON

Should you wish to object to this Notice of Intention to Revoke the Charity'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 Charity's registration will be revoked on the date of publication, unless the Canada Revenue Agency 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 Charity must obtain a stay to suspend the revocation process, notwithstanding the fact that it may have filed a Notice of Objection.

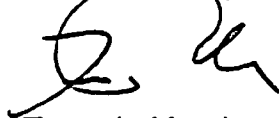
Consequences of Revocation:

As of the effective date of revocation:

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

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

Yours sincerely,

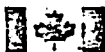


Terry de March
Director General
Charities Directorate

Attachments:

- CRA letter dated March 19, 2009;
- Appendix "A", Relevant provisions of the Act

cc: Indiana Taub;

**REGISTERED MAIL**

Jesus El Buen Pastor Spanish Pentecostal Church of Toronto
1885 Wilson Ave, Suite 206
Toronto, Ontario M9M 1A2

BN: 88866 2269 RR0001
File: 0859348

Attention: Mr. Peter Gonzalez

March 19, 2009

Subject: Audit of Jesus El Buen Pastor Spanish Pentecostal Church of Toronto

Dear Mr. Gonzalez:

This letter is further to the audit of the books and records of Jesus El Buen Pastor Spanish Pentecostal Church of Toronto (the Charity) by the Canada Revenue Agency (the CRA). The audit related to the operations of the Charity for period from January 1, 2006 to December 31, 2007.

At our meeting of December 9, 2008, you were advised that the CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* (the ITA) and/or its *Regulations*. The specific areas of non-compliance identified are:

AREAS OF NON-COMPLIANCE:		
	Issue	ITA References
1.	Failure to Devote Resources to Charitable Activities	149.1(2), 168(1)(b)
2.	Failure to Accept Valid Gifts in Accordance with the ITA	118.1
3.	Issuing Receipts Not in Accordance with the ITA	118.1, 149.1(2), 168(1)(d)
4.	Failure to Maintain Adequate Books and Records	149.1(2), 168(1)(e), 230(2)
5.	Failure to Maintain Disbursement Quota	149.1(2)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Charity with the opportunity to make additional representations or present additional information. In order for a registered charity to retain its registration, legislative and common law compliance is mandatory, absent which the Minister of National Revenue (the Minister) may revoke the Charity's registration in the manner described in section 168 of the Act.

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

Canada

10P # 111-1

Identified Areas of Non-Compliance:

1. Failure to Devote Resources to Charitable Activities:

The Charity is registered as a charitable organization. In order to satisfy the definition of a "charitable organization" pursuant to subsection 149.1(1) of the ITA, "charitable organization" means an organization "...All the resources of which are devoted to charitable activities".

To qualify for registration as a charity under the ITA, 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 ITA 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.

It is our view, based on our review that the Charity does not operate entirely for charitable purposes. In fact, the evidence on the file, as outlined below, demonstrates that a preponderance of the Charity's effort and resources 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

It is our view, based on our audit, that the Charity is pursuing a non-charitable purpose and non-charitable activities in furtherance of this purpose. In our view, the Charity is primarily operating for the purpose of supporting, promoting and participating in an abusive tax shelter arrangement. As outlined below, by engaging in a tax shelter arrangement whereby the Charity receipted over 18.5 million dollars in donations in 2007¹, the Charity actually received and devoted a comparatively insignificant amount of those resources to its own actual charitable activities. To our knowledge, the Charity continues to participate in the tax shelter arrangement. By comparison, during this year of participation in the tax shelter program, the Charity reports receiving only \$64,414 in offerings and tithes as part of the Charity's church activities. We acknowledge the Charity has contracted with third parties to undertake the promotion and record keeping associated with its participation in the tax shelter arrangement, however, from a primarily financial analysis, the Charity's main activity is the promotion of and participating in a tax shelter donation arrangement.

The Charity was registered effective October 26, 1987, and its purpose at the time of registration was "*to save souls for Gods Kingdom by preaching the word of God, providing Bible Studies, prayer meetings and weekly services to the public*". On March 15, 2007, the Charity entered into an agreement with ICC Initiatives Corporation (Fundraiser) for the purpose of "*rais[ing] funds and Gifts in Kind for the Charity by encouraging individuals to donate as part of the Insured Giving Donation Program (Program)*". The terms of the agreement also stated the Charity allowed "*said name to be used by the fundraiser to promote the Program*".

¹ Preliminary third party data indicates the Charity issued receipts for another \$9.185 million in donations in 2008 to participants in this tax shelter donation arrangement.

Generally, the Program involves Canadian individual participants applying to become a capital beneficiary of The Giving Trust(s) (Trust) and pledging to make a cash contribution to the Charity. On the application forms, the participant indicates the fair market value of the distribution they wish to receive from the Trust, acknowledges that distribution is subject to a limited recourse lien, pledges a cash donation to the Charity² and agrees to donate the properties received from the Trust to the Charity. Upon acceptance as a capital beneficiary, the participant receives capital distributions from the Trust in satisfaction of his capital interest in the Trust and the distribution is in the form of an Essential Merchandise Certificate (EMC). The property listed on the EMC is comprised of office supplies (pens, pencils, liquid paper, etc). Per the forms completed upon application, the donor "donates" the property listed on the EMC to the Charity. The participant receives two official donation receipts from the Charity for the "gifts" made to the Charity: one receipt for the cash contribution and one receipt for the purported fair market value of the properties listed on the EMC less the lien amount. In 2007, the Charity issued donation receipts for cash contributions of \$2,693,825 and in-kind donations of \$15,886,029 made by participants in the Program.

As noted above, the Charity's role in this tax shelter program is to accept and issue receipts for the participant's donations and is represented to be the distributor of the in-kind donations to needy individuals in third world countries. As discussed below, the Charity has not sufficiently demonstrated to the CRA that it, in fact, distributed the in-kind donations to needy individuals in third world countries.

The Charity has not demonstrated the activities undertaken or resources it consulted as part of its due diligence undertaken to evaluate the authenticity of the Program in which it participates or how participation in the Program furthers its charitable activities aside from the relatively small portion of cash "earned". The Charity has stated it did not conduct any research prior to participating in the Program and was provided with legal opinions prepared in 2005 for and issued to ICC Worldwide Missions Limited.³ The Charity stated it did not seek an independent review of these legal opinions, sought its own professional advice or even review the professional opinions presented by ICC Worldwide Missions Limited in any of the years in which it has participated. The Charity's primary interest was receiving its 2% share of gross cash contributions made by participants.

For its role in the Program, the Charity earns and retains only 2% of cash contributions or 0.3% of gross cash and in-kind donations received, for use of its tax-receipting ability and registered charity status. Of the cash contributions received, the Charity agrees to pay 80% to the Fundraiser and 16% to Abstecedora Logistica, S.L. for shipping, handling, storage and logistics. The remaining 2% is to be used to pay for appraisal fees, escrow agent fees and any balance remaining after such fees are paid, to be paid the Charity. In 2007, the \$2,693,825 received in cash contributions was disbursed as follows:

Fundraiser Fees	\$2,160,531
Warehouse Fees	429,951
Payable to Charity	55,980
Escrow Agent Fees	21,537
Appraisal Fees	14,840
Other	10,986

² Per the Insured Giving Donation Program 2008 materials, the cash contribution is 20% of the fair market value of the distribution in July and increases incrementally to 21.5% of the fair market value of the distribution.

³ ICC Worldwide Missions Limited is the promoter of the Program in 2007 and appointed ICC Initiatives Corporation as the Charity's authorized fundraiser to "seek out individuals who wish to make donations of cash and/or gifts" to the Charity.

From the Charity's participation in the Program, it is our position the Charity is merely operating as a conduit for the identified tax shelter program. In the Program, the Charity enables itself to accept the donations being promoted and to sign official donation receipts as instructed by the tax shelter promoter. The Charity was not involved in the actual receipt of the cash contributions or in-kind donations made to the Charity as all transactions were handled by Mr. Ronald Klayman, operating as the Charity's escrow agent. The Charity prepares its official donation receipts for participants in the Program based on lists provided by the Fundraiser and has not stated nor demonstrated that it undertook to confirm the accuracy of the information recorded on the list or verified that it in fact, received the cash and in-kind contributions.

It is our view the Charity enthusiastically lent its registered charity status and tax receipting privileges to support this tax shelter arrangement, with little regard for the legitimacy of the arrangement and interests of the Charity itself. As above, an overwhelming majority of the property received by the Charity was received through such arrangements – property the Charity neither saw, or distributed itself, but rather was paid to issue tax receipts for 2% of the gross cash amount receipted. In our view, the collateral purpose, if not primary purpose of the organization was, in fact, to support and promote a tax shelter arrangement. It is clear that the Charity had little to no actual involvement in controlling and operating these programs. Operating for the purpose of promoting a tax shelter arrangement is not a charitable purpose at law.

It is our view, therefore, that by pursuing this non-charitable purpose, the Charity has failed to demonstrate that it meets the test for continued registration under 149.1(1) as a charitable organization "all the resources of which are devoted to charitable activities". For this reason, it appears to us that there are grounds for revocation of the charitable status of Jesus El Buen Pastor Spanish Pentecostal Church of Toronto.

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 ITA.

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 Charity.

As above, apart from its role issuing receipts on behalf of a tax shelter, the Charity represents that it has distributed the property listed in the EMC's⁴. The Charity has been unable to substantiate that it in fact received the property listed on the EMC and that it distributed this property as part of its own programs. The Charity has merely reported the purported fair market value of the in-kind property, as provided by the tax shelter promoter, as distributions on its annual returns filed. The Charity states it relied upon the Fundraiser to ascertain the property existed; to arrange appraisals; to arrange storage and shipping of the property from the warehouse where it was allegedly stored in Spain to its final destination; and to arrange for the distribution to needy persons. The Charity was unable to, or failed to provide documentation showing that any of these actions were performed by the Fundraiser or others acting on the Charity's behalf. Our review of the records made available by and inquiry of the Charity revealed the Charity does not request or receive copies of reports, invoices and other supporting documentation from the Fundraiser or the recipients of the Charity's generous in-kind gifts of office supplies. The Charity was able to supply a bill of lading showing a shipment of goods from Spain to Mexico in June 2007 however without complete documentation, we are unable to verify if these were goods belonging to the Charity and to whom the goods were allegedly distributed. The Charity has not shown that this activity is charitable and that it continually supervises, directs and controls this program.

It is our view that by failing to demonstrate the Charity's on-going direction and control of the in-kind goods it allegedly distributes as part of its own programs outside Canada, the Charity has failed to demonstrate that it meets the test for continued registration under 149.1(1) as a charitable organization "...All the resources of which are devoted to charitable activities". For this reason, it appears to us that there are grounds for revocation of the charitable status of Jesus El Buen Pastor Spanish Pentecostal Church of Toronto.

2. Failure to Accept Valid Gifts in Accordance with the ITA:

The Charity has contravened the *Income Tax Act* by accepting and issuing receipts for transactions far in excess of amounts that would be considered not reflective of the goods actual fair market value and not reflective of the donor's eligible amount of the gift. We offer the following explanations to support our position.

a) No *Animus Donandi*

At law, a gift is a voluntary transfer of property without consideration. In most cases, a gift is a voluntary transfer of property without valuable consideration to the donor. An essential element of a gift is that there be intent to give. It must be clear that the donor intends to enrich the donee, by giving

⁴ We recognize that the Charity has reported the distributions as entirely fundraising costs on its 2007 Registered Charity Information Return.

away property, and to generally grow poorer as a result of making the gift. It is our view that the vast majority of the transactions involving the Charity fail to meet this latter element. The common theme, found throughout these transactions, is that through a series of transactions and a minimal monetary investment, participants profit from the tax credits obtained when claiming the official donation receipts as "gifts" made to a charitable organization. It is clear that the primary motivation of the donors is intent to profit, and, as such, these transactions fail to qualify as gifts at law.

In support of this position, we note the promotion materials primarily focus on the substantial positive return on actual cash outlay: 162% in Ontario (BC has the lowest at 147% and AB has the highest at 183%) as a result of participation in the Program. Minimal investment is required by participants. Participants pledge a cash "gift" to a participating charity and in return receive a distribution, in the form of property listed on an EMC, with a stated fair market value from a trust. The property listed on the EMC is "gifted" to the participating charity within 48 hours of receipt and without the participants using or seeing the property. Minimal information is provided to the prospective participants as to how the "donations" will benefit the charity, the activities of the charity they are supporting or the property to be distributed from the trust or. Transactions are pre-arranged and handled entirely by promoters or other pre-arranged third parties. Participants in these arrangements are 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 118.1 of the ITA. Participants in the donation arrangement are primarily motivated by the desire to profit from the artificial manipulation of the tax incentives available from donations 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 received some form of consideration or benefit that was directly linked to their cash contribution. It is clear, based upon our audit and the promotional materials of the Fundraiser and ICC Worldwide Missions Limited that there was a clear expectation of return with respect to the "cash donation" made to the Charity. Participants receive the benefit of becoming owners of property listed on an EMC, without cost, from the Trust and are able to distribute this property. The participant's entitlement to receive the property listed on the EMC is clearly linked to and proportionate to the amount of cash contribution pledged.

In our view, it is clear that the cash contributions made to the Charity are not gifts in the sense understood at law. The Charity was not entitled to issue official donation receipts for the amounts that it received. In our findings, the Charity has issued official donation receipts in excess of \$18.5 million for transactions that did not qualify as gifts. It is clear from our audit and the promotional materials of ICC Initiatives Corporation and ICC Worldwide Missions Limited, which the Charity engaged as fundraisers, that the Charity knew or ought to have known that there was a clear link between what was "donated" to it and the distribution of property to the participants from the Trust. The Charity knew, or ought to have known, that it was not entitled to issue donation receipt for these transactions.

It is clear that the amount contributed by the participants is, in effect, not a donation but both the price of participation levied by the tax shelter program and a payment to receive a distribution from the trust. While the cash contribution was essentially paid to the Charity, in trust by way of Mr.

Klayman, this amount was not a voluntary transfer of property, without expectation of return, within the sense contemplated by the term "gift" at law as all participants expected to receive an EMC in return. Indeed, and as above, it is all the more disturbing that the Charity freely lent its tax receipting privileges not only for transactions that do not qualify as gifts, but for monies it was not even entitled to retain, beyond its 2% commission of cash contributions only, substantially all of which flowed into the hands of the promoters. In our view, the Charity is responsible for the issuance of \$18.5 million in improper tax receipts and this represents an extremely serious abuse of the Charity's tax receipting privileges.

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 ITA applies to these transactions as well. Once passed into law, it applies to all transactions covered by the audit period under review. In our view, the distribution from the trust is an advantage which is in consideration for the gift⁵ or is otherwise related to the gift.⁶ The Charity was therefore required by the ITA to reduce the value reflected on the receipt by that of the advantage. There is no indication the Charity took these provisions into account when issuing receipts on behalf of the tax shelter arrangement or that it consulted with its Fundraisers prior to accepting and receipting for the "gifts" made by participants in the Program.

Additionally, it appears that the Charity 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 main purposes of which is to avoid the application of subsection 248(35) the eligible amount of the property so gifted is nil. It is our view that the purpose of the cash "gift" to the Charity is to avoid the application of 248(35) by characterizing what is, in fact, a payment to receive property listed on an EMC, instead of a "gift" to the Charity. As it is clear, in our view, that one of the purposes of this transaction is to avoid the application of 248(35) to a gift of property, that proposed subsection 248(38) also applies. As such, it is our view that even if the property received by the Charity is a "gift", which, as described above, given the motivation of the donors, is unlikely, the property so received by the Charity was not eligible for tax receipts reflecting a value greater than zero.

d) Fair Market Value

When a registered charity receives a gift-in kind donation, whether tax receipted or not, by way of transfer of legal title or receipt of beneficial ownership, the value of the gift would be its fair market value. It is the responsibility of the charity to ensure independent appraisals are obtained, and the charity may not simply rely on valuations provided by the donor or another third party. An independent qualified appraiser should determine the fair value, especially for gifts of more than \$1,000.

"Fair market value" is not defined by the ITA, however, a standard definition generally accepted is, the highest price obtainable in an open and unrestricted market between informed, prudent parties dealing at arm's length and under no compulsion to buy or sell⁷.

As found in another court case⁸, factors such as the item and whether it is sold as an individual item or in bulk, and the relevant market where goods are acquired and distributed, could affect the

⁵ See proposed sub-paragraph 248(32)(a)(i)

⁶ See proposed sub-paragraph 248(32)(a)(iii)

⁷ *Henderson Estate & Bank of New York v M.N.R.* 73 D.T.C. 5471 et 5476.

valuation of the goods. For example, medicines acquired outside of Canada, and distributed as humanitarian aid internationally, could have different values in comparison to medicines sold in a retail pharmacy in Canada.

It is our position the conclusion made by Rothstein, J.A. also applies to all donations of in-kind property to the Charity. 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 fair market value of a group of items is necessarily the aggregate of the price that could be obtained for the individual items in the group.

Based on our findings, the fair market value recorded on the donation receipts issued for in-kind property received by participants in the Program are not indicative of the factual fair market value of the goods donated. In the case of the office supplies, the fair market value was determined by the Charity's appraiser Canam Appraiz Inc. and appears to be based on established prices for items of the office supplies purchased by individual consumers in Canada. These are not the relevant assets to be valued. The relevant asset in this case would be the bulk office supplies. The market used in the Canam Appraiz Inc. appraisal is the retail Canadian market. This is not the relevant market for determining the fair market value of the office supplies acquired in bulk for a market where the end use was to help "the under privileged" and not for the use of retail consumers.

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."

The audit found that the Charity consistently used the values provided by Canam Appraiz Inc. The appraisal provided by Canam Appraiz Inc. stated that it did not physically inspect the goods but relied upon the information supplied by Abstecedora Logistica SL and it appears this information is based on a Canadian price list. In each instance where the Charity was provided with a value for the goods, the Charity has not shown the due diligence undertaken by the Charity to certify the goods belonged to the Charity, in the quantities reported, and that the values recorded were the factual fair market value of the goods.

e) Property Transferred

We are also greatly concerned that the property for which the Charity issued receipts to acknowledge was at no time beneficially owned by the Charity. In our view, the Charity at no time had the discretion to retain or use the cash and in-kind donations beyond the 2% of cash donations it was permitted to retain. The cash contributions were earmarked to be paid to the Fundraiser and various other entities for facilitating the Program. In fact, the cash contributions were at no time under the control and direction of the Charity as these were controlled and paid out by a trust accountant, Mr. Ronald Klayman and the in-kind donations appear to have remained under the control of the Fundraiser or others associated with the Program. The Charity was merely a recipient of the disbursements permitted from the trust account maintained in their name and it was only these funds the Charity had unfettered discretion to use.

* *AG (Canada) v Tolley et al* 2005 FCA 386

Based on this, we are unconvinced that "gifts" have actually been made to the Charity, but rather it appears the Charity is paid a 2% fee of gross cash donations to issue receipts for donations it neither sees, has access to or is entitled to exhibit control over. For this reason, it appears to us that there are grounds for revocation of the charitable status of Jesus El Buen Pastor Spanish Pentecostal Church of Toronto under paragraph 168(1)(d) of the ITA.

3. Issuing Receipts not in Accordance with the ITA:

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 ITA and are described in some detail in Interpretation Bulletin IT-110R3 *Gifts and Official Donation Receipts*.

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

- Receipts issued to acknowledge "gifts" received from participants in the Program were not valid gifts under section 118.1 of the ITA. 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 position is fully discussed above.
- Receipts issued for in-kind property were issued in excess of the property's factual fair market value of the items donated [IT-10R3 Paragraph 15(e)]. Our position is fully discussed above.
- Official donation receipts are missing the name of the Charity as recorded with CRA [Regulation 3501(1)(a)]. The Charity's registered name is Jesus El Buen Pastor Spanish Pentecostal Church of Toronto.
- Receipts were issued without identifying the total amount of the gift, value of the advantage received and the eligible amount of the gift. Per above, CRA deems the donors participating in the tax shelter program to have received an advantage in the form of essential merchandise.

It is our position the Charity has failed to exercise any control over or demonstrate its on-going due diligence to ensure receipts issued complied with the ITA and as such, were issued for valid gifts. The fact that Charity was unaware of the transactions as they occurred, and only informed post-fact of what had been "donated" to it by its Fundraiser, only adds to the seriousness of this non-compliance.

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

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

Under paragraphs 168(1)(d) of the ITA, 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 ITA and the Regulations. It is our position the Charity issued receipts for transactions that do not qualify as gifts at law. For this reason alone there are grounds for revocation of the charitable status of Jesus El Buen Pastor Spanish Pentecostal Church of Toronto under paragraph 168(1)(d) of the ITA.

4. Failure to Maintain Adequate Books and Records:

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

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

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”.

Pursuant to subsection 149.1(14) of the ITA, every registered charity must, within six months from the end of the charity’s fiscal period (taxation year), without notice or demand, file a T3010 with the applicable schedules. It is the responsibility of the Charity to ensure the information its records on the 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 audit indicated the books and records kept by the Charity were inadequate for the purposes of the ITA. In the course of the audit, the following deficiencies were noted:

- The Charity did not implement, provide, or failed to maintain, written agreements with the persons or organizations allegedly receiving and distributing the donated goods on behalf of the Charity nor did the Charity maintain or provide reports obtained from organizations allegedly receiving and distributing donated goods on behalf of the Charity.

The Charity reported, as fundraising expenses, receiving and distributing 100% of total donations received as a result of its participation in the tax shelter projects in the year of receipt yet the Charity was unable to provide documentary support this or the warehousing, shipping, importation and distribution of the goods.

As filed, the Charity has not shown that the gross "donations" received were used for charitable purposes; however, based on a lack of documentation, it would be difficult for it to further demonstrate that the in-kind property may have been used for charitable purposes. We are able to confirm that all but \$55,980 of the nearly \$2.7 million in cash contributions was used for fundraising and administrative fees related to the Charity's participation and promotion of the Insured Giving Donation Program; expenditures which we do not consider expenditures on charitable programming.

- The Charity did not maintain detailed records of the non-cash goods received and distributed either by itself or by organizations operating on the Charity's behalf.

Due to the lack of records maintained and deficiencies in the records provided, serious concerns remain over the completeness and accuracy of total cash and property received and purported distribution of the property by the Charity.

- Copies of source documents for all expenditures incurred by or on behalf of the Charity were not maintained. The Charity was unable to provide copies of all expenditures paid themselves, on their behalf from the trust account maintained by Mr. Klayman or on their behalf by the Charity's director Mr. Peter Gonzalez. The Charity was unable to provide copies of directions provided to Mr. Klayman to distribute funds from the trust account identifying to whom funds were being remitted, the amount and in consideration for or documentation supporting Mr. Gonzalez's statements that he paid for certain expenses on the Charity's behalf. It appears Mr. Gonzalez was reimbursed for these expenditures by the issuance of official donation receipts in lieu of cash reimbursement. Additionally, it was unable to provide copies of all cheques issued from the trust accounts maintained on its behalf.
- Duplicate copies of all official donation receipts issued were not maintained. Copies of receipts numbered 2007-009 to 2007-125 were missing.

The Charity improperly completed its annual Registered Charity Information Returns for the fiscal periods ending December 31, 2007 in that many items reported were incorrectly identified or omitted. Specifically the following items were incorrectly identified or omitted:

- B1 – the addresses and birth dates of all directors was not recorded.
- C3 – the Charity did not indicate were in Canada it conducted activities.
- C8 – the Charity did not indicate the fundraising methods it used.
- C9, line 2700 – Charity reports it did not use incentive-based compensation for fundraisers. The Charity retained third party fundraisers to solicit contributions of cash and gifts in kind for the Insured Giving Donation Program. The third party was compensated based on a percentage (11%) of total tax-receipts prepared by the Charity for the contributions made by participants.
- C12 – Charity does not report receiving non-cash gifts. The Charity allegedly received office supplies as per the property listed on the EMCs.
- F4 – Charity fails to report total eligible amount of tax-receipted non-cash gifts. Charity receipted \$15.8 million in non-cash gifts.

Under paragraph 168(1)(e) of the ITA, 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 ITA dealing with books and records. It is our position Jesus El Buen Pastor Spanish Pentecostal Church of Toronto has failed to comply with and has contravened section

230 of the ITA. For this reason, it appears to us there may be grounds for revocation of the charitable status of Jesus El Buen Pastor Spanish Pentecostal Church of Toronto.

5. Failure to Meet its Disbursement Quota:

In order to maintain its status as a charitable organization within the meaning of paragraph 149.1(4)(b) of the ITA, a registered charity must, in any taxation year, expend amounts that are equal to at least 80% of the aggregate amounts for which it issued donation receipts in its immediately preceding taxation year. A charity is allowed by virtue of 149.1(20) of the ITA to offset any shortfalls in its disbursement quota by applying any excesses in its disbursement quota from its immediately preceding taxation year and five or less of its immediately subsequent taxation years.

In considering the application of expenditures used to meet the disbursement quota a charity must ensure that it is expended directly on charitable activities and/or programs. This would include such payments as salaries to persons performing duties directly related to a charitable program, but would not include amounts paid for purely administrative expenses such as fund-raising costs, legal or accounting fees and the like.

Audit evidence indicates that the Charity is not spending sufficient funds towards its disbursement quota. As discussed above, within the Charity's first year of participation in the Program, the Charity was able to raise and issue official donation receipts for over \$18.5 million in "gifts". Accordingly, the Charity's disbursement quota for 2008 is equivalent to 80% of \$18.5 million or \$14.8 million. We are unconvinced the Charity will be able to maintain its status as a registered charity given that, in 2007, the Charity reports charitable expenditures of only \$39,942. Secondly, if the Charity considers the distribution of the office supplies as a charitable activity, the Charity has not provided sufficient evidence to prove the goods were actually distributed for charitable projects or for initiatives of the Charity's own selection and evaluation and in the values as stated. During our initial interview on September 15, 2008, the Charity stated "the Charity accepted everything in good faith from the [Fundraiser]. The Charity never saw any gifts in kind or appraisals and it is all done by the Fundraiser and the Charity always depended on the Fundraiser. The Charity does not know where the goods went and never saw any shipping documents. The Charity never made any attempt to verify the goods or shipments or recipients". The Charity added it "never made any solicitations for the donations for the *Insured Giving Donation Program*, never received any cheque from the donors, never received any gifts in kind, never shipped any items to the donees or knew the donees. Only thing the Charity done was to issue donation receipts for the lists of donors provided by the Fundraiser. The Charity never had any calls or any questions from the donors".

As such, the Charity has not expended amounts in satisfaction of its disbursement quota. Per subsection 149.1(2) of the ITA, the Minister, may by registered mail give notice to the charity that he proposes to revoke its registration because it ceases to comply with the requirements of the ITA related to its registration as such. For this reason, it appears to us that there may be grounds for revocation of the charitable status of the Jesus El Buen Pastor Spanish Pentecostal Church of Toronto.

The Charity's Options:

a) No Response

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

b) Response

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

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

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

Yours sincerely,

A handwritten signature in black ink, appearing to read "Tony P. Thomas", written over a horizontal line.

Tony P. Thomas
Verification and Enforcement Division
Kitchener Tax Services Office