



Canada Revenue
Agency

Agence du revenu
du Canada

REGISTERED MAIL

Malachi 3:10 Foundation
Suite 200, 2296 McCallum Road
Abbotsford BC V2S 3P4

Attention: Mr. Ian Worland

BN: 870658641

File #:3010864

June 14, 2010

Subject: Revocation of Registration
Malachi 3:10 Foundation

Dear Mr. Worland:

The purpose of this letter is to inform you that a notice revoking the registration of Malachi 3:10 Foundation (the Organization) was published in the *Canada Gazette* on June 12, 2010. Effective on that date, the Organization ceased to be a registered charity.

Consequences of Revocation:

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

Section 188(2) of the Act stipulates that a person (other than a qualified donee) who receives an amount from the Organization is jointly and severally liable with the Organization for the tax payable under section 188 of the Act by the Organization.

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

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

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

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

Yours sincerely,



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

Enclosures

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

Cc: Mr. John Glazema





Canada Revenue
Agency

Agence du revenu
du Canada

REGISTERED MAIL

Malachi 3:10 Foundation
Suite 200, 2296 McCallum Road
Abbotsford BC V2S 3P4

APR 27 2010

BN: 87065 8341RR0001

Attention: Mr. Ian Worland

File #: 3010864

**Subject: Notice of Intention to Revoke
 Malachi 3:10 Foundation**

Dear Mr. Worland:

I am writing further to our letter dated January 21, 2009 (copy enclosed), in which you were invited to submit representations as to why the Minister of National Revenue (the Minister) should not revoke the registration of Malachi 3:10 Foundation (the Organization) in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

We have now reviewed and considered your written response dated February 19, 2009. Notwithstanding your reply, our concerns with respect to the Organization's failure to devote all of its resources to its charitable purposes, failure to issue receipts in accordance with the Act and/or its Regulations and failure to maintain adequate records as required by the Act, have not been alleviated. The basis for our concerns is explained below.

Failure to Devote all of its Resources to Charitable Purposes

Based on the Canada Revenue Agency's (CRA) audit of the Organization, we discovered that the Organization has primarily operated for the private benefit of a corporation seeking to dispose of their farm assets. *Per* our previous letter, the Organization entered into a number of transactions, along with another Canadian registered charity, to facilitate the sale of the corporation's farm assets (land, improvements, machinery, equipment, inventories and milk quota). The Organization's role in the arrangement was to purchase the shares of the corporation; however, when the assets of the corporation were sold to another corporation, the shares of the corporation had little value. As a result, the Organization wrote-down the share value from over \$2.3 million to \$530 at year-end.¹

¹ Refer to Appendix "A" of our January 21, 2009 letter, outlining the series of transactions entered into by the Organization, the actions taken by the Organization and the resulting profit earned for its role in the arrangements.

Canada

Place de Ville, Tower A
320 Queen Street, 13th Floor R350 E (06)
Ottawa ON K1A 0L5

Your letter of February 19, 2009 states that "[a]lthough the transactions themselves were not charitable activities, it would be impossible for a registered charity to carry out charitable activities if it had no funds with which to do so."² While we agree with this statement generally, in order to maintain their registered status, charitable organizations are required to operate within the confines of the *Income Tax Act*. These restrictions require registered charities to operate for exclusively charitable purposes, rather than non-charitable or private purposes, and require registered charities to devote all of their resources to charitable activities carried on by the organization themselves or by way of gifts to qualified donees. This latter requirement specifically prohibits registered charities from gifting their funds to non-qualified donees such as private corporations.

In your submission you note that the Organization received a net benefit of \$375,000³ from these transactions and that the Organization "caused the company to gift its property to a registered charity in a tax efficient manner". We do not agree with your characterization of the transactions. With respect to the Organization itself, in our view, rather than devoting *all of its resources to charitable activities carried on by it*, the Organization inappropriately disposed of \$2.3 million to acquire shares it knew were valueless or about to become valueless.

In fact, even looking at the transactions as a whole, we do not see a net benefit near what is being represented, rather:

- The Organization disbursed \$2.3 million to purchase shares which were later written down to zero.
- \$1.8 million in assets were distributed from the corporation to another participating charity, a tax receipt of \$1,800,000 was issued; and these funds were gifted to the Organization by the other participating charity;
- After repaying loans associated with the purchase of the shares, property worth \$375,000 was retained by the participating charities while a tax receipt of \$1,800,000 had been issued and substantially all of the proceeds were retained by the sellers of the property.

² The representations further state that the Organization "expended almost \$700,000 on charitable activities, including over \$300,000 distributed to unrelated qualified donees." This indicates the Organization distributed 58% of its total charitable expenditures to related charities, i.e. charities participating in the same tax planning arrangement.

³ We further disagree that the Organization's net benefit received for participating in the tax planning arrangement was \$375,000 as per your reconciliation provided on April 14, 2009. The reconciliation is based on the amounts that remain outstanding as a result of the () transaction. Due to the interconnectedness and non-arm's length relationships between many of the parties owing monies to or from the Organization, there is a legitimate concern that the funds due to the Organization will not materialize. We also believe that any benefit the Organization would be entitled to receive would be reduced by all of the expenses incurred pertaining to the transaction such as legal, interest, consulting, and professional fees.

It is our continued position that the Organization's primary purpose during this period was to facilitate a private tax planning scheme – notably for the benefit of private individuals and corporations including [redacted] a company owned by Mr. John Glazema. Further, by inappropriately disbursing charitable funds to purchase shares which it knew were to be devalued to zero, it is our view that the Organization has conferred a private benefit on that corporation, effectively by gifting its assets away, and therefore has contravened the Act.

We also do not accept your submission that most of the expenditures incurred by the Organization were to further the charitable purposes of the Organization. It is our view that the primary purpose of the transactions was to facilitate the private tax planning of individuals and their corporations with an incidental benefit to the Organization (and, in our view, a net loss to the sector if one considers charitable funds lost through the deliberate write-down of investments). Per our previous letter, during the audit period, the Organization paid over \$38,000 for invoices incurred by and issued to other corporate entities or for non-charitable purposes. As you have concurred, the tax planning farm transaction was not a charitable activity; all the expenditures incurred for this activity are not considered charitable. It is therefore our conclusion that the expenditures reported by the Organization were not expended for charitable purposes.

By structuring its operations and utilising its assets for the private benefit of individuals and corporations, as described above, it is our view that the Organization has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) as a charitable organization, all the resources of which are devoted to charitable activities carried on by it. Under paragraph 168(1)(b) of the Act, the Minister may revoke the registration of the registered charity because it has failed to comply with the requirements of the Act for its registration as such. For this reason, there are grounds for revocation of the charitable status of Malachi 3:10 Foundation under paragraph 168(1)(b) of the Act.

Issuing Donation Receipts not in Accordance with the Act and/or its Regulations

Regarding the issuance of official donation receipts to qualified donees, official donation receipts bear a charity's registration number and other information required by the Act for tax deduction or credit purposes only. Therefore, official donation receipts should not be issued to a qualified donee; however, a charity may issue receipts to acknowledge gifts it has received from other registered charities as long as those receipts are distinct from the official donation receipts.

Under paragraph 168(1)(d) of the Act, the Minister may revoke the registration of the registered charity because it has issued a receipt for a gift or donation otherwise than in accordance with the Act and the regulations or that contains false information. For this reason, there are grounds for revocation of the charitable status of Malachi 3:10 Foundation under paragraph 168(1)(d) of the Act.

Failure to Maintain Adequate Books and Records

Per our previous letter, the Act requires registered charities to maintain books and records to determine whether there are grounds for the revocation of its status under the Act, and other information to enable the Minister to verify the donations made to it for which a deduction or tax credit is available under the Act.

It remains the view of the CRA that the Organization has not maintained sufficient books and records. As noted in our previous letter:

- payments for fees and legal expenses were not supported by documentation to demonstrate the nature and purpose of expenses;
- Documentation was not maintained to support the issuance of official donation receipts. During the course of the audit the Organization was unable to provide information regarding the issuance of a \$200,000 receipt. As you are aware, this donation related directly to a series of other transactions and, as such, the Act requires the Organization to maintain documentation regarding its relation to those transactions to enable the CRA to determine whether the gift is a valid one. This is especially so, given that the Organization incurred, but did not document, \$200,000 to acquire this gift;
- Board minutes were not maintained to demonstrate the consideration of the transactions in which the Organization was involved nor the expenditures incurred by the Organization.

Again, we note that in 2007, substantially all of the Organization's activity revolved around the \$2,200,000 purchase of a private company's shares and the sale of its assets. Further, the Organization engaged in a series of transactions with companies related to directors, incurred loans, and lent monies. The Organization incurred professional and consulting fees associated with these transactions totalling \$84,517. The Organization made gifts to qualified donees totalling \$142,105 and, according to your letter, authorized a number of charitable transactions. In our view, the Organization would therefore be required to document the board's discussion and approval of these transactions – particularly the major ones – and how the expenses and disbursements further the Organization's charitable purpose of providing support services to families and children in times of crisis. On the tax planning transactions, it is clear that the Organization should be able to show how it reviewed and analyzed the purchase of shares (particularly around the risk of acquiring the shares), the discussion and review of the engagement of counsel and accountants, discussion around potential for conflict of interest in transacting with non-arm's length corporations, discussion and approval of loans totalling in the millions of dollars and other similar issues.

In short, we remain of the position that the Organization has not maintained adequate books and records. While we agree that an organization cannot supply what it does not have, it does not exempt the Organization from the requirement that these be maintained.

We accept the Organization's representations that the errors and omissions which occurred on the Registered Charity Information Returns (T3010) are not grounds for revocation; however, our position remains that the Organization failed to file a complete and accurate T3010.

Under paragraph 168(1)(e) of the Act, the Minister may revoke the registration of the registered charity because it has failed to comply with or contravenes any of sections 230 to 231.5 of the Act. It is our position the Organization has contravened section 230 of the Act for failing to maintain complete records to support the issuance of tax receipts, to verify the information contained within its Registered Charity Information Returns and financial statements, and to demonstrate whether there were grounds for the revocation of its status under the Act. For this reason, there are grounds for revocation of the charitable status of Malachi 3:10 Foundation.

Appropriateness of Revocation

Finally, we note that your letter argues, "In our view, many of the allegations set out in your letter are unfounded." We disagree. As discussed above, the Organization has failed to demonstrate that it operates exclusively for charitable purposes. Instead, the Organization operates for the personal benefit of individuals and a corporation involved in abusive tax planning arrangements and has lent its resources and tax-receipting privileges to facilitate these personal benefits. The Organization has acquired over \$2.2 million in shares and \$1.8 million in "gifts" from another registered charity; yet, it has devoted only 4% or \$174,300 to charitable activities since 2004. The Organization has also breached numerous other requirements of the Act and therefore it is the CRA's position that these breaches are serious contraventions of the Act and warrant the revocation of the Organization's registered status.

Conclusion:

The Canada Revenue Agency's (CRA) audit had revealed that Malachi 3:10 Foundation (the Organization) operated primarily for the personal benefits of a corporation and its shareholders seeking to dispose of its assets. It has failed to issue official donation receipts in accordance with the *Income Tax Act* (the Act) and failed to maintain and/or provide adequate records. For all of these reasons, and for each of these reasons alone, it is the position of the CRA that the Organization's registration should be revoked.

Consequently, for each of the reasons mentioned in our letter dated January 21, 2009, I wish to advise you that, pursuant to the authority granted to the Minister in subsection 168(1) of the Act, which has been delegated to me, I propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d) and 168(1)(e) of the Income Tax Act, that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.

Business Number	Name
870658341RR0001	Malachi 3:10 Foundation Abbotsford BC

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

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

A copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of 30 days from the date this letter was mailed. The Organization's registration will be revoked on the date of publication, unless the CRA receives an order, **within the next 30 days**, from the Federal Court of Appeal issued under paragraph 168(2)(b) of the Act extending that period.

Please note that the Organization must obtain a stay to suspend the revocation process, notwithstanding the fact that it may have filed a Notice of Objection.

Consequences of Revocation

As of the effective date of revocation:

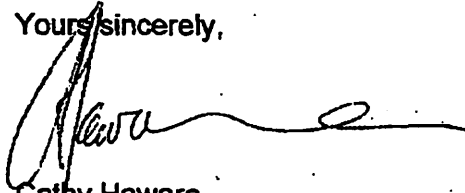
- a) the Organization will no longer be exempt from Part I Tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the

Notice of Intention to Revoke. A copy of the relevant provisions of the Act concerning revocation of registration, the tax applicable to revoked charities, and appeals against revocation can be found in Appendix "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 contact GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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

Yours sincerely,



Cathy Hawara
A/Director General
Charities Directorate

Attachments:

- Our letter dated January 21, 2009;
- Your letter dated February 19, 2009;
- Appendix "A", Relevant provisions of the Act

cc: Mr. John Glazema

Section 149.1: [Charities]

149.1(2) Revocation of registration of charitable organization

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

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

149.1(3) Revocation of registration of public foundation

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

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

149.1(4) Revocation of registration of private foundation

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

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

149.1(4.1) Revocation of registration of registered charity

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

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

Section 168: Notice of intention to revoke registration

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

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

168(2) Revocation of Registration

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

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

168(4) Objection to proposal or designation

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

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

Where the Minister

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

Section 180: Appeals to Federal Court of Appeal

180(1) Appeals to Federal Court of Appeal

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

- (a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),
- (b) the mailing of notice to a registered Canadian amateur athletic association under subsection 168(1),
- (c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),
- (c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1), or
- (c) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

as the case may be, or within such further time as the Court of Appeal or a Judge thereof may, either before or after the expiration of those 30 days, fix or allow.

Section 188: Revocation tax

188(1) Deemed year-end on notice of revocation

If on a particular day the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) or it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available,

- (a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;
- (b) a new taxation year of the charity is deemed to begin immediately after that day; and
- (c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

188(1.1) Revocation tax

A charity referred to in subsection (1) is liable to a tax, for its taxation year that is deemed to have ended, equal to the amount determined by the formula

$$A - B$$

where

A is the total of all amounts, each of which is

- (a) the fair market value of a property of the charity at the end of that taxation year,
- (b) the amount of an appropriation (within the meaning assigned by subsection (2) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or
- (d) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

B is the total of all amounts (other than the amount of an expenditure in respect of which a deduction has been made in computing income for the winding-up period under paragraph (c) of the description of A, each of which is

- (a) a debt of the charity that is outstanding at the end of that taxation year,
- (b) an expenditure made by the charity during the winding-up period on charitable activities carried on by it, or
- (c) an amount in respect of a property transferred by the charity during the winding-up period and not later than the latter of one year from the end of the taxation year and the day, if any, referred to in paragraph (1.2)(c) to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

188(1.2) Winding-up period

In this Part, the winding-up period of a charity is the period, that begins immediately after the day on which the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) (or, if earlier, immediately after the day on which it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available), and that ends on the day that is the latest of

- (a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,
- (b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and
- (c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

188(1.3) Eligible donee

In this Part, an eligible donee in respect of a particular charity is a registered charity

- (a) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;
- (b) that is not the subject of a suspension under subsection 188.2(1);
- (c) that has no unpaid liabilities under this Act or under the Excise Tax Act;
- (d) that has filed all information returns required by subsection 149.1(14); and
- (e) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable.

188(2) Shared liability — revocation tax

A person who, after the time that is 120 days before the end of the taxation year of a charity that is deemed by subsection (1) to have ended, receives property from the charity, is jointly and severally, or solidarily, liable with the charity for the tax payable under subsection (1.1) by the charity for that taxation year for an amount not exceeding the total of all appropriations, each of which is the amount by which the fair market value of such a property at the time it was so received by the person exceeds the consideration given by the person in respect of the property.

188(2.1) Non-application of revocation tax

Subsections (1) and (1.1) do not apply to a charity in respect of a notice of intention to revoke given under any of subsections 149.1(2) to (4.1) and 168(1) if the Minister abandons the intention and so notifies the charity or if

- (a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and
- (b) the charity has, before the time that the Minister has so registered the charity,
 - (i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the Excise Tax Act in respect of taxes, penalties and interest, and
 - (ii) filed all information returns required by or under this Act to be filed on or before that time.

188(3) Transfer of property tax

Where, as a result of a transaction or series of transactions, property owned by a registered charity that is a charitable foundation and having a net value greater than 50% of the net asset amount of the charitable foundation immediately before the transaction or series of transactions, as the case may be, is transferred before the end of a taxation year, directly or indirectly, to one or more charitable organizations and it may reasonably be considered that the main purpose of the transfer is to effect a reduction in the disbursement quota of the foundation, the foundation shall pay a tax under this Part for the year equal to the amount by which 25% of the net value of that property determined as of the day of its transfer exceeds the total of all amounts each of which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.

188(3.1) Non-application of subsection (3)

Subsection (3) does not apply to a transfer that is a gift to which subsection 188.1(11) applies.

188(4) Idem

Where property has been transferred to a charitable organization in circumstances described in subsection (3) and it may reasonably be considered that the organization acted in concert with a charitable foundation for the purpose of reducing the disbursement quota of the foundation, the organization is jointly and severally liable with the foundation for the tax imposed on the foundation by that subsection in an amount not exceeding the net value of the property.

188(5) Definitions

In this section,

"net asset amount"

"net asset amount" of a charitable foundation at any time means the amount determined by the formula

$A - B$

where

A is the fair market value at that time of all the property owned by the foundation at that time, and

B is the total of all amounts each of which is the amount of a debt owing by or any other obligation of the foundation at that time;

"net value"

"net value" of property owned by a charitable foundation, as of the day of its transfer, means the amount determined by the formula

$A - B$

where

A is the fair market value of the property on that day, and

B is the amount of any consideration given to the foundation for the transfer.

Section 189**189(6) Taxpayer to file return and pay tax**

Every taxpayer who is liable to pay tax under this Part (except a charity that is liable to pay tax under section 188(1)) for a taxation year shall, on or before the day on or before which the taxpayer is, or would be if tax were payable by the taxpayer under Part I for the year, required to file a return of income or an information return under Part I for the year,

- (a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;
- (b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

189(6.1) Revoked charity to file returns

Every taxpayer who is liable to pay tax under subsection 188(1.1) for a taxation year shall, on or before the day that is one year from the end of the taxation year, and without notice or demand,

(a) file with the Minister

(i) a return for the taxation year, in prescribed form and containing prescribed information, and

(ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and

(b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

189 (6.2) Reduction of revocation tax liability

If the Minister has, during the one-year period beginning immediately after the end of a taxation year of a person, assessed the person in respect of the person's liability for tax under subsection 188(1.1) for that taxation year, has not after that period reassessed the tax liability of the person, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of

(a) the amount, if any, by which

(i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was mailed and ends at the end of the one-year period

exceeds

(ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and

(b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

189(6.3) Reduction of liability for penalties

If the Minister has assessed a registered charity in respect of the charity's liability for penalties under section 188.1 for a taxation year, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of all amounts, each of which is an amount, in respect of a property transferred by the charity after the day on which the Minister first assessed that liability and before the particular time to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the total of

- (a) the consideration given by the person for the transfer, and
- (b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

189(7) Minister may assess

Without limiting the authority of the Minister to revoke the registration of a registered charity, the Minister may also at any time assess a taxpayer in respect of any amount that a taxpayer is liable to pay under this Part.



CANADA REVENUE
AGENCY

AGENCE DU REVENU
DU CANADA

REGISTERED MAIL

Malachi 3:10 Foundation
Suite 200, 2296 McCallum Road
Abbotsford, B.C.
V2S 3P4

BN: 870658341 RR0001
File #: 3010864

Attention: John Glazema

January 21, 2009

Subject: Audit of Malachi 3:10 Foundation

Dear Mr. Glazema:

This letter is further to the audit of the books and records of the Malachi 3:10 Foundation ("Malachi") conducted by the Canada Revenue Agency (the CRA). The audit related to the operations of Malachi for the period from January 1, 2006 to December 31, 2007.

At our meeting of August 15, 2008, you were advised that the CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* (the Act) and/or its *Regulations* in the following areas:

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

Vancouver Island Tax Services
1415 Vancouver Street
Victoria BC

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

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

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

Canada

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

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

Identified Areas of Non-Compliance:

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

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

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

(1) the purposes of the organization must be charitable, and must define the scope of the activities engaged in by the organization; and

(2) all of the organization's resources must be devoted to these activities."

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

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

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

A charity must be able to show through documented evidence and proper books and records that it undertook charitable activities in furtherance of its charitable purposes and not simply made a transfer of resources to a non-qualified donee. A 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.

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

(A) Non-Charitable Transactions

Malachi was involved in a series of transactions unrelated to its charitable purpose involving the disposition of shares and/or assets of a dairy farm as follows:

Malachi purchased 100% of the shares in the capital of _____ in August, 2007 for \$2,200,000. The assets of _____ were sold to _____, a related party, in August, 2007 resulting in the share value being written down to \$530.

- July 20, 2007 - borrowed \$700,000 from _____
- July 23, 2007 - borrowed \$1,500,000 from _____, a related party.
- August 8, 2007 - purchased 100% of the shares in the capital of _____ for \$2,200,000. Assets of _____ were sold to _____ in early August, 2007.
- August 23, 2007 - received dividend income from _____ of \$1,140,000 (\$500,000 loan receivable and \$640,000 cash).
- August 23, 2007 - received gift of enduring property of \$1,800,000 from Gateway Benevolent Society ("Gateway"), a related charity. (Gateway received a gift of \$1,800,000 from _____ on August 16, 2007 as a result of _____ selling its assets to _____)
- August 23, 2007 - repaid loan of \$700,000 to _____
- August 23, 2007 - loaned \$500,000 of cash received as enduring property to _____
Loan repaid August 29, 2007.

- August 24, 2007 – repaid \$375,000 (portion of loan) to _____ \$1,125,000 still outstanding.
- August 24, 2007 – loaned \$500,000 of cash received as enduring property to _____ - \$250,000 and _____ - \$250,000, related parties.
- August 30, 2007 – loaned \$1,140,000 of cash received as enduring property to _____ Still outstanding.
- December 7, 2007 – borrowed \$140,000 from _____ Still outstanding.
- December 31, 2007 – year end adjustment to increase share cost base value by \$177,256 as a result of realty fees \$103,000, legal fees \$28,160.62 and interest expense \$46,095.87. Value of shares = \$2,200,000 + 177,256 = \$2,377,256.
- December 31, 2007 – year end adjustment to write down share value from \$2,376,726 to \$530. The loss was recorded as an offset to revenue.

and

Although Malachi was not involved in the sale transactions for the above-mentioned corporations during the audit period, related expenses invoiced to either _____ or Malachi 3:10 Enterprises Ltd, corporations related to Malachi, were paid by Malachi. Refer to (B) Gifts to Non-Qualified Donees for details.

Although Malachi was not involved in the sale transaction for the above-mentioned corporation during the audit period, consulting fees were paid to _____ referencing these corporations and an official donation receipt (#7066) was issued to _____ in this regard. Refer to (B) Gifts to Non-Qualified Donees for details.

The above examples represent circular transactions with no obvious charitable purpose. See following comments related to tax receipting of an amount related to the Flier transaction.

(B) Gifts to Non-Qualified Donees

Malachi was registered as a charitable organization effective March 2, 1999 under the name of Alpha Family Services. As stated in its governing documents, the purpose for which the Charity was established is

- "a) to provide community and family centred child placement, integrated with services to heal and nurture families and faith;
- b) to promote the spiritual, physical, social, intellectual and emotion welfare of children and parents in times of stress or crisis;
- c) to promote the protection of children from abuse, neglect, harm or threat or harm as per the guiding principles of The Child, Family and Community Services Act of British Columbia;
- d) to provide supportive services to families and children whenever the family unit is at risk or an individual within the family is hurting;

- e) to provide supportive services, training and a supportive organizational structure to caregivers and others who serve families;
- f) to communicate with interested parties to promote a better understanding of the role of a family in society and the need to support families undergoing stress, and
- g) to acquire, hold, maintain, operate and disburse property in the furtherance of the purpose of the Society states in paragraphs 2(a) through (f) above."

It appears that Alpha Family Services operated according to its mandate until October 2005. At that time all of the directors resigned and a resolution was filed to change the name of the charity to Malachi 3:10 Foundation and to repeal and replace the existing bylaws. John Glazema, Ivor Venema and Blake Bromley became the directors and remained so throughout the audit period.

Malachi had no activity in 2005 and according to the T3010A filed; Malachi was in a planning stage. Beginning in the 2006 fiscal year, a number of tax planning scenarios were presented to Malachi by legal representatives with regard to the purchase and sale of shares/assets of farms listed for sale by [REDACTED], a company owned by one of the Malachi directors.

It appears from the review of documents and from discussions held with one of the directors that, of the activities conducted by Malachi, very few would fall within its charitable mandate. In fact, the evidence of the file demonstrates that the preponderance of the effort and resources of Malachi were devoted to participating or researching a number of complex farm transactions.

It is our view that Malachi has altered its proposed activities to accommodate the needs of the farm transactions, to the detriment of its actual formal purposes. This fact points to a pattern of active willingness to participate in a scheme designed to produce inappropriate tax benefits.

A review of the invoices recorded in the books and records indicate that amounts were incurred by other individuals and/or organizations in relation to these transactions and paid by Malachi. These expenditures are considered gifts to non-qualified donees because they are unrelated to the charitable purpose of Malachi. For example

1. \$5,830
Malachi paid for tickets to two Vancouver Canucks hockey games through Orca Bay (Suiteholder).
2. \$425.25
Corpus Capital Corporation employee reimbursed by Malachi for 4 Vancouver Canucks hockey tickets.
3. \$591.09
Assistance given to to pay off motor vehicle fines.

4. \$875.00
Tuition fees – University of British Columbia paid by Charity.
5. \$20,000
Consulting fees for transactions.
6. \$372.17
Disbursements re: transactions.
Paid by Malachi but disbursements invoiced to related corporation
7. \$901.00
Professional services rendered re: potential purchase of and
Paid by Malachi but invoiced to related corporation
8. \$2,151.80
Professional services rendered regarding deal transactions and taxes on sale of
assets versus shares in
Paid by Malachi but invoiced to related corporation
9. Chartered Accountants \$3,021.00
Professional services regarding transactions and other tax issues.
Paid by Malachi but invoiced to related corporation
10. Chartered Accountants \$1,696.00
Professional services regarding analysis of and transactions.
Paid by Malachi but invoiced to related corporation
11. Chartered Accountants \$2,332.00
Professional services for research regarding possible business structures.
Paid by Malachi but invoiced to related corporation

Summary

The audit found that Malachi failed to demonstrate that it used all of its resources (funds, personnel and/or property) for its own charitable purpose or to gift to qualified donees. In fact, it made disbursements to a number of individuals and/or organizations that do not represent qualified donees. Most of the amounts were paid to cover the costs associated with non-charitable business transactions of organizations associated with one of the directors of Malachi.

Due Diligence of Directors

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

For example,

- The purchase of 100% of the shares in the capital of _____ by Malachi for \$2,200,000 + \$177,256 during the audit year was not a prudent investment because it resulted in a loss in value of the shares from \$2,376,726 to \$530 in the same audit year. Apparently the depletion of value of the shares was as a result of the sale of assets by the corporation.
The directors would have known that an agreement to sell the assets was in place at the time the shares were purchased because the purchaser of the assets and at least one of the directors were related parties.
- Malachi still owes \$1,249,178.08 (\$140,000 to _____ and \$1,109,178.08 to _____) related to the purchase of 100% of the shares in the capital of _____.
- A General Security Agreement was signed granting _____, a related company, a security interest in the inventory, equipment, accounts receivable, intangibles and personal property of Malachi as collateral for the loans. By signing this agreement, Malachi put the \$1,800,000 received from Gateway at risk. The directors did not exercise due care in this regard.
- In 2007, the assets of Malachi included enduring property (10-year gift) from Gateway, a related charity, in the amount of \$1,800,000 and dividend income from _____ of \$1,140,000.

The assets appear to have been utilized as follows:

1. loan issued to _____ for \$1,140,000 (still outstanding)
2. loan issued to _____ for \$250,000 (still outstanding)
3. loan issued to _____ for \$250,000 (still outstanding)
4. loan issued to _____ \$500,000 (repaid)
5. repayment of loan to _____ \$700,000 (repaid)
6. pay down loan to _____ by \$375,000

All of these loans were issued to complete the disposition of shares of _____ involving parties related to one of the directors of Malachi. Loaning the funds of the 10-year gift and repaying debt to third parties may have put the asset at risk and eradicates the original intention of the donor's gift.

- The internal accountant and one of the director were unable to explain the details of the business transactions. They stated that journal entries were provided to them and they simply followed the advice provided by legal and accounting representatives.

The duties of the charity's directors include decision making, investing charitable property, performing corporate governance and the active management and protection of charitable assets. The fiduciary duties of the directors go beyond furthering the

charitable objects of the charity and the interests of the charity should be put ahead the interest of the directors and their related corporations.

Conclusion

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

- using Malachi to transact a series of complex transactions for the benefit of organizations and individuals related to one of the directors of Malachi,
- putting the assets of Malachi at risk by loaning funds to organizations and signing a Security Agreement giving collateral rights over the assets to a third party,
- eradicating the donor's intent associated with making a \$1,800,000 gift of enduring property,
- authorizing expenditures invoiced to related corporations operating out of the same office to be paid by Malachi and
- simply accepting the direction of their representatives without fully understanding the transactions.

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

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

The audit revealed that the donation receipts issued by Malachi do not comply with the requirements of Regulation 3501 of the Act as follows:

- The internal accountant and one of the directors were unable to provide details of why receipt # 7066 dated February 1, 2007 to [redacted] for \$200,000 was issued or how they identified the name of the donor. It is our understanding that this transaction was part of another complex circular asset/share purchase arrangement transacted, details of which have not been provided by Malachi.
- Donation receipts were issued to registered charities in error (# 6018 dated February 20, 2007 – Gateway Benevolent Society and # 7077 dated March 3, 2008 – Garden Ministries Society).

Conclusion

Under paragraph 168(1) (d) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt other than in accordance with the Act and its Regulations. It is our position that Malachi issued receipts for transactions that do not qualify as gifts at law. For this reason, there are grounds for revocation of the charitable status of Malachi 3:10 Foundation under paragraph 168(1) (d) of the Act.

3) Failure to Maintain Adequate Books and Records

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

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

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

It is our view that Malachi failed to provide CRA access to all of its records at the time of the audit. For example, no Board minutes, correspondence, or documentation providing an explanation of the complex asset/share purchase arrangements being transacted with [redacted] and [redacted] were maintained in the books and records of Malachi and made available for review. It is not reasonable that Malachi's directors were able to fully understand the business transactions presented by the representatives without being provided with written documentation.

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

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

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

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

- Official donation receipts were not prepared and issued in accordance with the Act and/or its Regulations.
- The supporting records provided to substantiate Malachi's activities indicated that Malachi failed to devote all of its resources to its own charitable activities.
- Payments for consulting fees and legal fees were not supported with adequate documentation to verify that the expenses were incurred by Malachi. In fact, expenses incurred by a number of non-qualified donees were paid by Malachi.

Conclusion

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

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

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

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

Malachi has improperly completed T3010A returns for the January 1, 2006 to December 31, 2007 fiscal periods, as there were numerous errors and omissions as outlined below.

FPE 31/12/2006

- The Directors/Trustees Worksheet, form T1235, was not completed in full as the dates of birth and the telephone numbers of all of its directors were incomplete.
- Question C11 - Did the charity make gifts to qualified donees? (Line 2900) was erroneously marked no. Line 5050 reports \$2,000 as gifts to qualified donees.
- Question D6 - Except for compensation, did the charity, directly or indirectly, transfer any part of its income or assets to individuals or organizations not at arm's length to the charity? Line 3950 was erroneously marked no. Refer to (B) Gifts to Non-Qualified Donees for numerous examples of amounts transferred to individuals and organizations not at arm's length to Malachi.

FPE 31/12/2007

- The Directors/Trustees Worksheet, form T1235, was not completed in full as the dates of birth and the telephone numbers of all of its directors were incomplete.
- 10-12

- Question D6 - Except for compensation, did the charity, directly or indirectly, transfer any part of its income or assets to individuals or organizations not at arm's length to the charity? Line 3950 was erroneously marked no. Refer to (B) Gifts to Non-Qualified Donees for numerous examples of amounts transferred to individuals and organizations not at arm's length to the charity.
- Line 5000 Total charitable program expenditures reported \$1,718,409. The correct amount was \$17,184.

The Charity's Options:

a) No Response

If you choose not to respond, please advise us in writing of your intent. In that case, the Director General of the Charities Directorate may give notice of its intention to revoke the registration of Malachi 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 Malachi, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include:

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

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

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

Yours sincerely,



Jeanne Effler, CGA

Audit Division

Telephone: (250) 363-0276

Facsimile: (250) 363-3862

Cc: Blake Bromley

APPENDIX "A"

SUMMARY OF ELL'S DAIRY FARM LTD. TRANSACTION

PARTIES INVOLVED

() () company) BN: {
() () (Shareholders: , ,) BN:
() () company) BN: {
() () company) BN: {
() () () company) BN: {
() () ()
()
() BN: {
Malachi 3:10 Foundation (Malachi)
() BN: {

SUMMARY OF TRANSACTIONS

February 28, 2007 Agency Agreement set up between Malachi and (agent).
Malachi authorizes the agent to acquire all of the issued and outstanding shares of () and to borrow or obtain funds to complete the acquisition.

May 25, 2007 () purchases 100% of the shares
in the capital of () on behalf of Malachi effective \$2,000,000
July 1, 2007.
Financing:

June 7, 2007

_____ purchases all of the assets of _____
on behalf of _____ and _____ effective
July 1, 2007 as follows:

- 1) milk quota \$3,665,160
- 2) cattle \$309,840
- 3) feed inventory \$25,001

\$4,000,000

Financing:

_____ \$3,000,000

June 7, 2007

_____ agrees to purchase farmland from
_____ on behalf of _____ and _____
effective July 1, 2007

\$1,800,000

Financing:

Farm - \$1,100,000

Loan - \$450,000 (from _____)

June 30, 2007

Extension Agreement amending effective
date of share purchase to Aug 1/07.

July 20, 2007

Malachi borrows \$700,000 from _____
Funds used to purchase 100% of shares in the capital of _____
Total purchase price \$2,200,000.

July 23, 2007

_____ borrows \$1,500,000 from _____ and _____

_____ \$1,500,000 from _____

Malachi borrows \$1,500,000 from _____
(August 30/07 Malachi loans \$1,140,000 to _____)

\$700,000 from _____ and \$1,500,000 from _____, used to
purchase 100% of the shares in the capital of _____
Total purchase price of the shares \$2,200,000.

July 27, 2007

Credit Agreement with _____ to borrow \$4,500,000
authorized by _____, _____,
(_____), and _____

July 31, 2007

Statement of Adjustments - share purchase

August 1, 2007

Statement of Adjustments – asset purchase
(Statement also includes sale of milk quota to
for \$700,000)

Asset Purchase	\$5,800,000
Asset Purchase	700,000

Financed by:

\$4,500,000

\$450,000

\$533,333

\$250,000

\$250,000

\$283,333

\$283,333

(Note: Aug 24/07 Malachi loans \$250,000 to
and \$250,000 to

August 16, 2007

gifts \$1,800,000 to Gateway who in turn gifts it
to the Malachi 3:10 Foundation.

August 23, 2007

pays dividends of \$1,140,000 (\$640,000 cash and
debt transfer of \$500,000)