



REGISTERED MAIL

Marketplace Ministries International
1776 Midland Ave
Scarborough ON M1P 3C2

BN: 89485 5246

Attention: [REDACTED]

File #: 1029586

March 18, 2013

Subject: Revocation of Registration
Marketplace Ministries International

Dear Sir:

The purpose of this letter is to inform you that a notice revoking the registration of Marketplace Ministries International (the Organization) was published in the *Canada Gazette* on March 16, 2013. Effective on that date, the Organization ceased to be a registered charity.

Consequences of Revocation:

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

c.c.: S. Sivananthakasan, Chair





JAN 31 2013

REGISTERED MAIL

Marketplace Ministries International
1776 Midland Ave
Scarborough ON M1P 3C2

BN: 89485 5246 RR0001

Attention:

File #: 1029586

**Subject: Notice of Intention to Revoke
Marketplace Ministries International**

Dear

I am writing further to our letter dated June 21, 2012 (copy enclosed), in which you were invited to submit representations as to why the registration of Marketplace Ministries International (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act*.

We have now reviewed and considered your written response dated August 3, 2012. However, notwithstanding your reply, our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position is fully described in Appendix "A" attached.

Conclusion:

Our audit revealed that the Organization 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, 2009 to December 31, 2010, the Organization issued in excess of \$23 million in receipts for cash and non-cash gifts received through this tax shelter arrangement. Of this amount, \$19 million consisted of non-cash gifts that the Organization reports to have distributed as part of its own activities. However, the Organization's records fail to substantiate that the property actually existed, that the property was in the Organization's possession, that the values recorded on the receipts were accurate or that the property was distributed for charitable purposes.

The remaining \$3.9 million was reported as tax-receipted cash donations. Of this amount, the Organization directed \$3.8 million to fundraising expenses and retained only \$125,370 over the two years for use in its own charitable activities. The Organization's earnings represent 3% of the gross cash donations received or 0.5% of the gross tax-receipted donations reported.

It is our position that the Organization has operated for the non-charitable purpose of promoting a tax shelter arrangement and for the private benefit of the tax shelter promoters. The Organization has issued receipts for transactions that do not qualify as gifts; issued receipts otherwise than in accordance with the *Income Tax Act* and its Regulations; failed to maintain sufficient books and records; and failed to file an accurate T3010, *Registered Charity Information Return*. For all of these reasons, and for each reason alone, it is the position of the Canada Revenue Agency (CRA) that the Organization no longer meets the requirements necessary for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letter dated June 21, 2012, I wish to advise you that, pursuant to subsection 168(1) of the Act, I propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(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
894855246RR0001	Marketplace Ministries International Toronto ON

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

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

Notwithstanding the filing of an Objection, 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.

A copy of the relevant provisions of the Act concerning revocation of registration, including appeals from a notice of intent to revoke registration can be found in Appendix "B", attached.

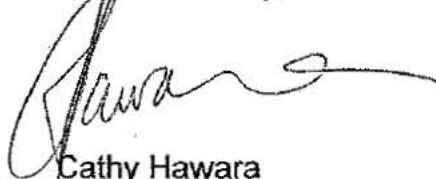
Consequences of Revocation

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 "B", 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*. As a result, the Organization may be subject to obligations and entitlements under the *Excise Tax Act* that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-800-959-8287.

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

Yours sincerely,



Cathy Hawara
Director General
Charities Directorate

Attachments:

- CRA letter dated June 21, 2012;
- The Organization's response of August 3, 2012;
- Appendix "A"; Comments on Representations of August 3, 2012; and
- Appendix "B" Relevant provisions of the Act

c.c.: S. Sivananthakasan, Chair





Canada Revenue
Agency

Agence du revenu
du Canada

REGISTERED MAIL

MARKETPLACE MINISTRIES INTERNATIONAL
1776 MIDLAND AVE
SCARBOROUGH, ONTARIO M1P 3C2

BN: 89485 5246 RR0001

Attention: [REDACTED]

File #: 1029586

Subject: Audit of Marketplace Ministries International

June 21, 2012

Dear [REDACTED]:

This letter is further to the audit of the books and records of the Marketplace Ministries International (the Organization) conducted by the Canada Revenue Agency (the CRA). The audit related to the operations of the Organization for the period from January 1, 2008 to December 31, 2010.

The results of this audit indicate that the Organization appears to be in non-compliance of certain provisions of the *Income Tax Act* or its *Regulations*. The CRA has identified specific areas of non-compliance with the provisions of the Act or its Regulations in the following areas:

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Failure to Devote Resources to Charitable Activities; Failure to Operate for Charitable Purposes	149.1(2), 168(1)(b)
2.	Failure to Accept Valid Gifts in Accordance with the Act	118.1
3.	Issuing Receipts Not in Accordance with the Act	149.1(2), 168(1)(d), Regulation 3501
4.	Failure to Maintain Adequate Books and Records & Failing to File an Accurate Information Return	149.1(2), 168(1)(c), 168(1)(e), 230(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 Organization with the opportunity to make additional representations or present additional information.

Canada

Registered charities must comply with the law, failing which the Organization's registered status may be revoked in the manner described in section 168 of the Act.

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

Identified Areas of Non-Compliance:

1. Failure to Devote Resources to Charitable Activities:

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

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

It is our view, based on our review, that the Organization does not operate entirely for charitable purposes and does not devote itself to exclusively charitable activities in pursuit of those purposes. In fact, the evidence on the file, as outlined below, demonstrates that a preponderance of the Organization'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 Organization is pursuing a non-charitable purpose and non-charitable activities in furtherance of this purpose. In our view, the Organization has expended a major portion of their time and resources 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 Organization receipted over \$23 million in donations in 2009 and 2010, the Organization actually received and devoted a comparatively insignificant amount of those resources to its own actual charitable activities.

By comparison, during each of these years of participation in the tax shelter program, the Organization reports receiving only less than \$110,000 per year in donations as part of the Organization's church activities. We acknowledge the Organization 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 Organization's main activity is the promotion of and participating in a tax shelter donation arrangement. As confirmed by the Organization, participation continued in the tax shelter arrangement throughout 2011.

The Organization was registered effective July 26, 1995, and its purpose at the time of registration was "*The purpose of this organization is to lead people to make a commitment to Jesus Christ, our Lord and Saviour, and thereby become participating member of Marketplace Ministries*". On May 5, 2009, the Organization entered into an agreement with [REDACTED] (Fundraiser) for the purpose of "*rais[ing] funds and Gifts in Kind for the [Organization] by encouraging individuals to donate as part of the Insured Giving Donation Program (Program)*". The terms of the agreement also stated the Organization allowed "*said name to be used by the fundraiser to promote the Program*".

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 Organization. On the application forms, the participant indicates the fair market value of the distribution they wish to receive from the Trust, pledges a cash donation to the Organization and agrees to donate the properties received from the Trust to the Organization¹. 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 is then listed on the EMC and can be comprised of nutraceuticals, non-perishable items, medical supplies and educational supplies. Per the literature provided by the Organization, they are seeking out individuals who have demonstrated philanthropic generosity to Canadian Charities and offering them the opportunity to become beneficiaries of the Trust. As phrased: "The Trust has a mandate to distribute Essential Merchandise to its philanthropic beneficiaries. The beneficiaries, after receiving the essential merchandise, can do with their property as they see fit. However, it is the wish of the Settlor of the Trust, and we are hopeful, given your previous and current interest in charitable giving that you will respect the Settlor's wish and donate the essential merchandise to a Canadian Charity."² The participant receives two official donation receipts from the Organization for the "gifts" made to the Organization: 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 2009 and 2010, the

¹ Per the Insured Giving Donation Program 2009 materials, the cash contribution is 20% of the fair market value of the distribution in July and increases incrementally to 21% of the fair market value of the distribution.

² Per correspondence on file obtained during audit visit of [REDACTED] dated May 31, 2009

Organization issued donation receipts for total cash contributions of \$3,985,674 and in-kind donations of \$19,442,860 made by participants in the Program.

As noted above, the Organization'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 that are needed by the various missions supported by the Organization. As discussed below, the Organization has not sufficiently demonstrated to the CRA that it, in fact, distributed the in-kind donations to their various missions.

The Organization has not demonstrated sufficient 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 Organization has stated in the initial interview it did not seek any professional opinions (legal, accounting, evaluation and so forth) prior to participating in the Program. The Organization's primary interest was receiving its 3% share of gross cash contributions made by participants.

For its role in the Program, the Organization receives only 3% of cash contributions for use of its tax-receipting ability and registered charity status. Of the cash contributions received, the Organization agrees to pay 86% to the Fundraiser and 11% to [REDACTED] for shipping, handling, storage and logistics (shipper of record May 5, 2009). The remaining 3% 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 Organization. In 2009 & 2010, the \$1,854,396 and \$2,131,278, cash contributions were reported to be disbursed as follows:

	2009	2010
Fundraiser Fees	\$1,602,692	\$1,790,252
Warehouse Fees	159,236	230,612
Escrow Agent Fees	25,369	26,958
Other	121	230
Appraisal Fees	5,250	5,650
Payable to Organization	61,432	63,938

From the Organization's participation in the Program, it is our position the Organization is merely operating as a conduit for the identified tax shelter program. In the Program, the Organization enables itself to accept the donations being promoted and to sign official donation receipts as instructed by the tax shelter promoter. The Organization was not involved in the actual receipt of the cash contributions or in-kind donations made to the Organization as all transactions were handled by [REDACTED] operating as the Organization's escrow agent. The Organization prepares its official donation receipts for participants in the Program based on lists provided once a year 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 Organization 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 Organization itself. As above, an overwhelming majority of the property received by the Organization was received through such arrangements – property the Organization neither saw, nor distributed, but rather was paid to issue tax receipts. 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 Organization 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 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". For this reason, it appears to us that there are grounds for revocation of the charitable status of Marketplace Ministries International under paragraph 168(1)(b) of the Act.

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

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

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

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

Where a registered charity chooses to operate through an appointed agent or representative (intermediary), it must be able to substantiate, generally through documentary evidence, that it has arranged for the conduct of certain specific activities

on its behalf, and has not simply made a transfer of resources to a non-qualified donee. A charitable organization is not at liberty to transfer funds or resources to other individuals or entities unless the recipient is an employee of the charity, an agent of the charity under contract, or a qualified donee. To this end, the charity must be able to demonstrate to the CRA's satisfaction that it maintains control over, and is fully accountable for, the use of resources provided to the intermediary, at all times.

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

As above, apart from its role issuing receipts on behalf of a tax shelter, the Organization represents that it has distributed the property listed in the EMCs. The Organization has been unable to substantiate that it in fact received the property listed on the EMCs and that it distributed this property as part of its own programs. The Organization 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 Organization 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 Mexico to its final destination; and to arrange for the distribution to various missions supposedly supported by the Organization. The Organization was unable to, or failed to provide documentation showing that any of these actions were performed by the Fundraiser or others acting on the Organization's behalf. Our review of the records made available by and inquiry of the Organization revealed the Organization relies on the Fundraiser to receive copies of reports, invoices and other supporting documentation of the Organization's generous in-kind gifts of office supplies and medical supplements. Of the documentation received by the Organization from the Fundraiser, it was able to supply supposed bills of lading showing shipments of goods from Mexico to Brazil between November 2009 and March 2011. Our review of the documentation revealed it was incomplete and without complete documentation, we are unable to verify if the in-kind goods belonged to the Organization and to whom the goods were allegedly distributed. Due to incomplete documentation, we cannot ascertain that the Organization maintains complete direction and control over the receipt and distribution of the in-kind goods nor can we confirm that the goods were used for a charitable purpose.

It is our view that by failing to demonstrate the Organization's on-going direction and control of the in-kind goods it allegedly distributes as part of its own programs outside Canada, notably in Mexico and South America, 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". For this reason, it appears to us that there are grounds for revocation of the charitable status of Marketplace Ministries International under paragraph 168(1)(b) of the Act.

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

The Organization 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 is intent to give. It must be clear that the donor intends to enrich the donee, by giving away property, and to generally grow poorer as a result of making the gift. It is our view that the vast majority of the transactions involving the Organization 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 is on the minimal investment 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 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. 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 section 118.1 of the Act. 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 [REDACTED] that there was a clear expectation of return with respect to the cash contribution made to the Organization. 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 and in-kind contributions made to the Organization are not gifts in the sense understood at law. The Organization was not entitled to issue official donation receipts for the amounts that it received. In our findings, the Organization has issued official donation receipts in excess of \$23 million for transactions that did not qualify as gifts. It is clear from our audit and the promotional materials of [REDACTED] which the Organization engaged as a fundraiser that the Organization 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 Organization 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 Organization, in trust by way of [REDACTED], 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 Organization 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 3% commission of cash contributions only, substantially all of which flowed into the hands of the promoters. In our view, the Organization is responsible for the issuance of \$23 million in improper tax receipts in 2009 and 2010 and this represents an extremely serious abuse of the Organization's tax receipting privileges. Compounded on this is the fact the Organization continued with this program throughout 2011 with again abuse of the 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 Act 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 gift³

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

or is otherwise related to the gift.⁴ The Organization was therefore required by the Act to reduce the value reflected on the receipt by that of the advantage. There is no indication the Organization 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 Organization participated in an arrangement designed to avoid the application of proposed subsection 248(35). We would note that proposed subsection 248(38) states that where it can be reasonably concluded that the particular gift relates to a transaction or series of transactions one of the 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 Organization is to avoid the application of subsection 248(35) by characterizing what is, in fact, a payment to receive property listed on an EMC, instead of a "gift" to the Organization. As it is clear, in our view, that one of the purposes of this transaction is to avoid the application of subsection 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 Organization is a "gift", which, as described above, given the motivation of the donors, is unlikely, the property so received by the Organization was not eligible for tax receipts reflecting a value greater than zero.

d) Fair Market Value

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 Act, 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 sell⁵.

As found in another court case⁶, 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 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.

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

⁵ *Henderson Estate & Bank of New York v M.N.R.* 73 D.T.C. 5471 et 5476.

⁶ *AG (Canada) v Tolley et al* 2005 FCA 386

It is our position the conclusion made by Rothstein, J.A. also applies to all donations of in-kind property to the Organization. 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 Organization's appraiser [REDACTED] 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 [REDACTED] 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 various missions supported by the Organization and not for the use of retail consumers. In the case of the nutraceuticals⁷, the assets are appraised by the same group and the appraisal is again based on the retail markets for individual consumers in Canada. As stated in the Appraisers report: "The Fair Market Value was based on obtaining the retail prices from various retail locations in the Greater Toronto areas as well as suppliers on the Internet."⁸ We do not believe the retail market is the relevant market for determining the fair market value of the nutraceuticals which were acquired in bulk and destined for a market where the end use was to help the various missions.

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 Organization consistently used the values provided by [REDACTED]. The appraisal provided for the office supplies by [REDACTED] stated that it did not physically inspect the goods but relied upon the information supplied by [REDACTED] July 31, 2009 and E [REDACTED] thereafter and this information is based on a Canadian price list. In each instance where the Organization was provided with a value for the goods, the Organization has not shown the due diligence undertaken by the Organization to certify the goods

⁷ Nutraceutical is defined as a combination of nutrition and pharmaceutical, refers to extracts of foods claimed to have a medicinal effect on human health. The nutraceutical is usually contained in a medicinal format such as a capsule, tablet or powder in a prescribed dose. For this Organization, it consisted of Glutamine powder, meal replacement and/or multivitamin caplets.

⁸ [REDACTED] Appraisal report dated August 20, 2009

belonged to the Organization, 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 Organization issued receipts to acknowledge was at no time beneficially owned by the Organization. In our view, the Organization at no time had the discretion to retain or use the cash and in-kind donations beyond the purported 3% 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 Organization as these were controlled and paid out by a trust accountant, [REDACTED] and the in-kind donations appear to have remained under the control of the Fundraiser or others associated with the Program. As stated in our meeting, the principals of the Organization never had the opportunity to meet [REDACTED]. The Organization was merely a recipient of the disbursements permitted from the trust account maintained in their name and it was only these funds the Organization had unfettered discretion to use. These funds amounted to \$61,431.84 in 2009 and \$63,937.61 in 2010 of the \$23 million donated in this same period.

Lastly, we have obtained information and documentation that also disputes the authenticity of the nutraceuticals purportedly shipped:

- We have information from the Consignee whose name appears on the 16 (sixteen) Bill of Ladings which were provided by the Promoter, stating he has no involvement with these shipments.
- The Promoter provided the Organization a signed undated thank-you letter from the Consignee. The individual named in this letter has stated he did not sign this letter and did not have any business dealings with the Organization.
- Through the Promoter, the Organization obtained a letter from an individual which states he was involved in the distributions of the nutraceuticals. When contacted, this individual stated he was not involved with the distribution, nor did he sign this letter.

Based on this, we are unconvinced that "gifts" have actually been made to the Organization, but rather it appears the Organization is paid a 3% 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 Marketplace Ministries International under paragraph 168(1)(d) of the Act.

3. Issuing Receipts not in Accordance with the Act:

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

Regulations 3500 and 3501 of the Act and are described in some detail in Interpretation Bulletin IT-110R3 *Gifts and Official Donation Receipts*.

The audit reveals that donation receipts issued by the Organization do not comply with the requirements of Regulation 3501 of the Act 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 Act. Under the *Income Tax Act*, a registered charity can issue official donation receipts for income tax purposes for donations that legally qualify as gifts. Our 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-110R3 Paragraph 15(e)]. Our position is fully discussed above.
- 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 Organization has failed to exercise any control over or demonstrate its on-going due diligence to ensure receipts issued complied with the Act and as such, were issued for valid gifts. The fact that Organization 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 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 paragraph 168(1)(d) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and the Regulations. It is our position the Organization issued receipts for transactions that do not qualify as gifts at law. For this reason alone, there appear to be grounds for revocation of the charitable status of Marketplace Ministries International under paragraph 168(1)(d) of the Act.

4. Failure to Maintain Adequate Books and Records and Failing to File an Accurate Information Return:

The Act, 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 Act.

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

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

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file a T3010 with the applicable schedules. It is the responsibility of the Organization 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 Organization were inadequate for the purposes of the Act. In the course of the audit, the following deficiencies were noted:

- The Organization 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 Organization. The Organization also failed to maintain or provide reports obtained from organizations allegedly receiving and distributing donated goods on behalf of the Organization. This is particularly true for their charitable operations purportedly in Mexico and Brazil. The *Registered Charity Information Returns* for 2009 and 2010 listed the Shipper, [REDACTED]

[REDACTED] as the organization providing the service of distributing the donated goods.

Of a lesser materiality, this also occurred for their operations in Sri Lanka and India (combined monetary involvement of approximately \$5,000 overall as at May 2011).

The Organization reported, as fundraising expenses, receiving and distributing gifts-in-kind donations received as a result of its participation in the tax shelter projects yet the Organization was unable to provide satisfactory documentation to support this or the warehousing, shipping, importation and distribution of the goods.

As filed, the Organization has not shown that the gross "donations" received were used for charitable purposes. We are able to confirm that all but \$125,370 of the nearly \$4 million in cash contributions was used for fundraising and administrative fees related to the Organization's participation and promotion of the Insured Giving Donation Program; expenditures which we do not consider expenditures on charitable programming.

- As stated in our interview with the Organization, they have not had any dealings or correspondence with the named contact on the invoices from [REDACTED]. These invoices, dated between July 31, 2009 and December 31, 2010, were hand delivered [REDACTED] to the Organization the day before our scheduled interview with the Organization.

[REDACTED]
These letters detail the transfer of the products/gifts-in-kind to the Organization and all close with the statement "We await your distribution instructions". No evidence was seen of any distribution instructions.

- The Organization did not provide an official detailed statement from the Escrow Agent, [REDACTED] confirming the actual amount on deposit as at December 31, 2009 of \$1,146,896 and December 31, 2010 of \$2,149,828. In response to our August 29, 2011 query, the Organization provided a reconciliation document. In our opinion, the reconciliation document is not sufficient to confirm the amounts as belonging to or received by the Organization as the document is not on letterhead of the Agent; signed or acknowledged by the Agent; or even prepared and provided by the Escrow Agent.
- The most recent shipper of record, [REDACTED] could not be verified. The telephone number supplied on the shipping invoices was confirmed

⁹ [REDACTED] is the Escrow Agent named in the agreement, signed May 5, 2009. This agreement also states there will be "Directions to [REDACTED] completed and cheques will be payable to [REDACTED]"

to belong to a construction company of a different name and this company was unaware of any [REDACTED]. [REDACTED] is the shipper of record as of August 24, 2009.

- Bills of Lading supplied showed unauthentic Bill of Lading numbers. A sample of a bill of lading supplied by the Organization has the "B/L" number as 52168436. A search on one of the shipper's website¹⁰ states "The Bill of Lading is made up of 12 characters (either 5 or 6 letters followed by 6 or 7 numbers, example: [REDACTED]1234567 or [REDACTED]123456)". There were numerous other bills of lading with invoices of the same numeric numbers as opposed to the alphanumeric numbers. Coupled with the above finding, it appears the documentation provided to purportedly substantiate the transport of the in-kind goods has been manufactured and/or altered.

The Organization improperly completed its annual *Registered Charity Information Returns* for the fiscal periods ending December 31, 2009 and December 31, 2010 in that many items reported were incorrectly identified or omitted. Specifically the following items were incorrectly identified or omitted:

Registered Charity Information Return for the period ended December 31, 2009 and December 31, 2010

- Question C7 -

For the 2009 period

The Organization appears to have used both the cash and accrual method for reporting its financial affairs. As such, the amount paid to the Fundraiser on line 5460 was \$670,677 but it appears the Organization should have reported \$1,602,692 if it was consistently using the accrual method. Alternatively, if the Organization was consistently using the cash method, it should have reported its gross revenue to be \$4,821,381 versus the \$11,165,742 it reported using the accrual method.

Schedule 2

For the 2009 period

Line 1 - the Organization listed the fees paid to the Fundraiser of \$670,677 (based on cash basis) and did not include the value of the gifts-in-kind of \$4,011,503.

Line 2 - the Organization listed the Shipper as the program recipient of the supplies.

¹⁰ [REDACTED]

For the 2010 period

Line 2 – the Organization listed the Shipper as the program recipient of the supplies.

Schedule 6

For the 2009 period

As with question C7, the Organization appears to have used both the cash and accrual method for reporting its financial affairs and has reported several items (amounts receivable from all others, inventories and total gifts) using the accrual method. Of key note here is that line 4890; the fair market value of all donated good used in charitable programs was based on the cash method, undervaluing the expenditures by \$5,209,114.

For the 2010 period

The Organization did not indicate the reporting method of accounting used - cash or accrual basis.

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

The Organization's Options:

a) No Response

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

b) Response

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

- no compliance action necessary;
- the issuance of an educational letter;

- resolving these issues through the implementation of a Compliance Agreement; or
- giving notice of its intention to revoke the registration of the Organization 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,



Kathleen Bradley
Audit Advisor

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
Address: Charities Directorate
Canada Revenue Agency
[REDACTED]
[REDACTED]

cc: S. Sivananthakasan, Chair

[REDACTED]
[REDACTED]

MARKETPLACE MINISTRIES INTERNATIONAL

COMMENTS ON REPRESENTATIONS OF AUGUST 3, 2012

Based on the Canada Revenue Agency's (CRA) audit of Marketplace Ministries International (the Organization), the Organization primarily operated for the purpose of furthering a registered tax shelter, Insured Giving Donation Program (IGDP) by agreeing, for a fee, to act as a receipting agent for this tax shelter program. As described in the balance of this letter, and in our letter of June 21, 2012, the Organization operated as a conduit for the tax shelter, is in serious breach of the requirements for registration under the *Income Tax Act* and its registration should be revoked.

1. Failure to devote resources to charitable activities

a) Non-Charitable Purposes

Per our previous letter, in order for an organization to be recognized as a charity, it must be constituted and operated for exclusively charitable purposes, and it must devote all of its resources to charitable activities in furtherance thereof, which are carried on by the organization itself.¹

Our audit revealed that the Organization failed to operate for exclusively charitable purposes by participating in the IGDP tax shelter. As a direct result, for the 2009 and 2010 fiscal periods, the Organization issued 1,412 donation receipts totalling \$23 million, of which \$19 million was for in-kind property. Of the nearly \$4 million in cash contributions received, the Organization retained only \$125,370 for its own programs and paid out the other \$3.875 million to the tax shelter fundraiser and others related to the facilitation of this program. By comparison, during each of these years of participation in the tax shelter program, the Organization received less than \$110,000/year in donations as part of its own church and mission activities. As discussed in our previous letter, the Organization has not sufficiently demonstrated to the CRA that it distributed the in-kind donations to their various missions, if in fact the goods existed.

Subsection 149.1(1) of the Act defines a "charitable organization" as an organization "...all the resources of which are devoted to charitable activities carried on by the organization itself." As was outlined previously, the majority of the Organization's resources were devoted to participating in and promotion of the IGDP tax shelter, for the benefit of the tax shelter promoters, rather than its own charitable activities. Resources are not limited to financial resources but also include personnel and facilities. Each type of resource must be considered when determining if a charitable organization has devoted all of its resources to its own charitable activities.

¹ *Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10, and *Toronto Volgograd Committee v. M.N.R.*, [1988] 3 F.C. 251 (C.A.)

For example, while we see the significant documentation of your operations carried on in Toronto and the small missions elsewhere, there is little evidence of the activities carried on through the IGDP tax shelter, despite the fact that resources the Organization devotes to these activities overshadows all of your other operations. There are many photos of your activities in the Philippines and India where you focus the majority of your non-tax shelter activities, yet the audit revealed no evidence of the activities purportedly carried on in Brazil where the tax shelter activities were to be conducted. By comparison, where you devote approximately \$100,000/year to your operations in Toronto and missions, we see no documentation for the \$19 million that purportedly helped the needy in Brazil. According to the Organization's own submissions, "We have not followed-up the [REDACTED] (the Fundraiser)] gifts in kind."²

We also take note of your comments that the IGDP tax shelter did not change the time and energy the Organization set for fundraising. Omitted from your representations were the resources required to process the additional 1,412 donations received as a result of the Organization's participation in the tax shelter. During the audited period, the Organization processed 544 donations unrelated to the tax shelter. Therefore processing more than twice the usual number of donations would, in our view, consume a substantial portion of the Organization's resources. Additionally, your representations include a summary of an additional five meetings/year the Organization held with IGDP representatives and your Board discussing the tax shelter program; meetings which were not documented or acknowledged in the Board meeting minutes or other documentation provided during the course of the audit. Additionally, and most significantly, the Organization received and devoted nearly 95% of its financial resources to the promotion and participation of the registered tax shelter with little to no oversight undertaken by the Organization's directors. Therefore, it remains our position that the majority of the Organization's resources were allocated to the non-charitable activity of supporting a tax shelter, and for the benefit of the tax shelter promoters, given that substantially all of the funds received from the tax shelter participants were ultimately returned to the tax shelter promoter. Moreover, and as discussed further below, the Organization has failed to demonstrate any direction and control over the receipt and distribution of the in-kind goods purportedly received, in order to evidence that they were used in a legitimate charitable program by the Organization to further its own charitable objectives.

It has consistently been the CRA's position that the promotion of a tax shelter or donation arrangement is not charitable at law. Our position has been published in several publications as a matter of courtesy to inform the public of our position.³ An excerpt from one such publication, Registered Charity Newsletter No 29 – Winter 2008, states the following:

Registered charities and registered Canadian amateur athletic organizations participating in abusive or fraudulent arrangements will be subject to revocation and/or monetary penalties. Further, any person, promoter, tax professional, or other third party who is closely involved with the development of an abusive or fraudulent tax shelter arrangement may be liable to penalties regarding false or

² Charity Audit: Interview Questionnaire, Version Date: 15 May 2011, Author: Tere Taekema, Director, page 8.

³ The Organization was also advised of the CRA's concerns about participating in a registered tax shelter in March 2010.

misleading information, or omission of or inappropriate use of the tax shelter identification number.

Additionally, our March 2010 correspondence, which the Organization had assured the CRA that they read, included the link to the above mentioned publication.

Tax shelter promoters must obtain a tax shelter identification number before selling their arrangements and must file annual information returns including a list of participants and other prescribed information. The tax shelter identification number is intended only to track the schemes and participants and does not entitle the participants to any of the benefits related to the tax shelter. At this point, all tax shelter schemes are audited by the CRA. A tax shelter's compliance with the Act's registration and reporting requirements does not absolve a registered charity of its obligation to ensure that its conduct in participating in such an arrangement is in compliance with the Act.

Our audit revealed that the Organization merely relied upon the information provided by the tax shelter promoter without question. Your representations state the Organization was participating with a fundraiser that had a tax shelter number, that at no time did you participate in promoting a tax shelter arrangement and that your participation was to act as a conduit for the distribution of gifts-in-kind that benefit the needy. We disagree. The contract signed by the Organization in May 2009 allowed [REDACTED], who possessed a tax shelter number, to use the Organization's charitable name and registered charity status to promote its program. The Organization also did not seek its own independent opinions or verification of the donation program as presented to it before signing the first agreement and further accepted the in-kind property valuations supplied by the tax shelter promoter. Independent advice means advice from a tax professional who is not connected to the tax shelter or to the promoter. Your representations constantly state that the Organization verified that the tax shelter had a registration number and that "[a]ny legal complications having to do with the [tax shelter] were the responsibility of the promoters of the [tax shelter]." Please recall you provided us a copy of the promotional material for the IGDP and this contained the disclaimer statement for tax shelters⁴ as required by subparagraph 237.1(5)(c)(i) of the Act. From the Organization's participation in the tax shelter, it is our position the Organization primarily operated as a conduit for an identified tax shelter and used its registration and resources for the benefit of the tax shelter and its promoters.

The actions and information provided by the Organization lead us to conclude the Organization merely operated as a conduit for a tax shelter and agreed to participate in exchange for financial compensation. As explained below, registered charities must at all times direct and control the use of their resources toward their own charitable programs, unless resources are gifted to a qualified donee. A charity cannot merely be a conduit to funnel money to an organization that is not a qualified donee. If a charity passively funds a non-qualified donee's programs, that charity is acting as a conduit. To avoid acting as a

⁴ Every promoter of a tax shelter shall include on every written statement that refers to the identification number of the tax shelter the following statement: "The identification number issued for this tax shelter shall be included in any income tax return filed by the investor. Issuance of the identification number is for administrative purposes only and does not in any way confirm the entitlement of an investor to claim any tax benefits associated with the tax shelter."

conduit, the charity must have real and demonstrable control over all the elements of the activity, so that the carrying out of that activity by the intermediary amounts to the charity carrying on the activity itself. While your representations state that you believed "being a conduit for the distribution of gifts-in-kind...benefit[ed] the needy" and that the Organization "has no reason to promote a tax shelter with which we have no connection personally or otherwise to do so," our findings have demonstrated otherwise. Your representations also admit that the Organization focused "on helping others through our actions and being a conduit for the distribution of gifts-in-kind" and that the "funds we received [were] used to pay costs that [the Organization] had contractually agreed to. The fact that any funds were left over for other charitable purposes was a blessing." The fact remains that the Organization did promote the tax shelter by enabling the promoters to use the Organization as a conduit for its own financial gain. On behalf of the tax shelter, the Organization agreed to accept the donations of cash and property listed on an EMC⁵ from participants and agreed to purportedly utilize 100% of the property as part of its own programs while paying the promoter a set fee.

Accordingly, per our previous letter, we remain of the position that the Organization ceased to meet the definition of a charitable organization as laid out in subsection 149.1(1) of the Act. During the audit period, the Organization operated primarily, or at least collaterally, for the purpose of promoting a tax shelter arrangement, using its resources for the benefit of the promoters of the tax shelter, and cannot be considered to be devoting all of its resources to charitable activities carried on by it⁶. It is our position that by pursuing this non-charitable purpose, the Organization has failed to demonstrate it meets the test for continued registration under subsection 248(1) of the Act. Canadian jurisprudence has interpreted the requirements under this subsection as (a) the purposes of the organization must be charitable, and must define the scope of the activities engaged in by the organization; and (b) all of the organization's resources must be devoted to these activities unless the organization falls within specific exemptions, which is not the case of the Organization⁷. Under paragraph 168(1)(b) of the Act, the Minister may, by registered mail, give notice to the Organization that the Minister proposes to revoke its registration because it ceases to comply with the requirements of the Act related to its registration as such. For this reason alone, there are grounds for revocation of the Organization's registered charity status under paragraph 168(1)(b) of the Act.

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

The Act permits a registered charity to use its resources (funds, personnel and/or property) in only 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.

We acknowledge that your charitable works in the Philippines are well documented with evidence of proper monitoring, budgets, periodic visits and picture documentation;

⁵ An EMC, or Essential Merchandise Certificate, is a certificate listing the quantity, description and purported value of the goods being transferred from the IGDP participant to the Organization.

⁶ We also note that, by the Organization's own admission, its participation in the tax shelter arrangement continued well beyond the audit period, ceasing December 31, 2011.

⁷ *Vanicouver Society*, supra, footnote 1, at paragraph 159

however, by comparison there is a significant lack of oversight and due diligence with respect to the Organization's involvement in the IGDP tax shelter.

In your representations, you refer to using existing friendship networks to advance charitable works which include the distribution of the in-kind donations allegedly received as a result of participation in the IGDP tax shelter. However, the individual named as the agent or distributor of the in-kind goods has stated he wasn't involved with the distribution, never saw the in-kind goods, and did not prepare the report with his purported signature on it. Additionally, one of the purported shipping companies has provided CRA a letter that the samples of the bills of lading supplied are not used by their organization; are not their standard forms; and contain invalid numbers, booking numbers and container numbers.

Furthermore, your representations mention that meetings were held regularly at the offices of [REDACTED] (the Promoter) to discuss locations of distribution, product availability and procedures for necessary documentation. This conflicts with our interview with the Organization wherein the Organization indicated that it received all bills of lading, inventory transfer letters, and a thank you letter the night before the audit commenced from [REDACTED] Promoter president. Also, while the inventory transfer letters state, "We await your distribution instructions," we found no evidence of such instructions being provided.

Per our previous letter, there is no valid evidence the \$19 million of inventory in Brazil existed, was in Brazil or that it was disbursed to needy individuals in Brazil or elsewhere. Your representations show the property being warehoused, selected and moved to a site in Recife, Brazil from Mexico. While we recognize that the Organization did not, at any given time, have physical possession of the nutraceuticals and stationary, it claims that it did retain third parties to oversee the property purportedly gifted to it. These third parties were supposedly contracted to warehouse and ship the nutraceuticals and stationary on the Organization's behalf.

According to the report on file, purportedly from [REDACTED], the vitamins and meal replacement supplements were moved to 3 areas in Brazil, not just one; notably, Salvador, Fortaleza and Recife. As noted in our letter June 21, 2012, this agent has denied having any dealings with the Organization and has denied signing the report. Your representations merely state that [REDACTED] provided verbal updates on the distribution and destination of the goods rather than addressing the seriousness of our audit findings. There has been no indication that the stationary or the L-Glutamine powder, valued at \$2.2 million, was ever distributed. The Organization transferred approximately \$3.9 million in cash to third-parties for a variety of activities and costs relating to the acquisition and shipping of the property, but has failed to adequately verify, monitor or supervise these activities and their costs. In addition, no contract was on file to actually disburse the property to charitable beneficiaries in charitable programs controlled by the Organization. Lastly, our audit revealed that the documentation that was ultimately provided to the Organization the night before our audit visit was incomplete and inaccurate; the details of which were outlined in our previous letter. The CRA is therefore not satisfied that the Organization has demonstrated that these activities were carried out on its behalf or that sufficient

⁸ With regard to the report, this is on letterhead with the masthead as being from [REDACTED] but the name below the signature is spelled as [REDACTED]

documentation has been provided to support the volumes and values claimed by the Organization as its own charitable activity.

With respect to your charitable works in Sri Lanka, we accept that the funds were given to a staff member yet we understand the funds were ultimately given to a Sri Lankan army chaplain who then disbursed it where he saw fit. The Organization should have had proof of additional instructive, supervisory, and reporting mechanisms in place to demonstrate that the funds were distributed strictly to charitable beneficiaries as per the Organization's directions and used for their intended purpose which was to provide educational programs for basic life skills. In addition, the Organization has not provided enough information concerning the program details and the use of the funds in charitable programs in Sri Lanka. For example, the youth rally mentioned is not further detailed as to the charitable purpose which it was to further. Without any further information, we cannot say with certainty this was not a political rally, which is not a charitable activity.

We accept your representations regarding the use of funds in India.

Under paragraph 168(1)(b) of the Act, the Minister may by, registered mail, give notice to the Organization that the Minister proposes to revoke its registration because it ceases to comply with the requirements of the Act related to its registration as such. It remains our position that by failing to demonstrate the Organization's ongoing direction and control of the in-kind goods it allegedly distributed as part of its own programs outside Canada, notably in Mexico and Brazil, the Organization has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) of the Act as a charitable organization "all the resources of which are devoted to charitable activities carried on by the organization itself". For this reason alone, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

2. Failure to issue receipts in accordance with the Act:

Pursuant to subsection 118.1(2) of the Act, a registered charity can issue tax receipts for income tax purposes for donations that legally qualify as gifts. The Act requires a registered charity to ensure the information on its official donation receipts is accurate. The requirements for the contents of the receipts are listed in Regulation 3501 of the Act. A registered charity could have its registered status revoked under paragraph 168(1)(d) of the Act for issuing tax receipts other than in accordance with the Act or that contain false information.

It remains our position that the Organization contravened the Act by accepting and issuing receipts for transactions that do not qualify as gifts. The Organization issued tax receipts exceeding \$23 million received as a result of its participation in the IGDP tax shelter. We maintain that the property for which the tax receipts were issued were not gifts at law and the receipted values were grossly inflated.

a) No *Animus Donandi*

CRA maintains the position that there is no intention to make a "gift" within the meaning assigned at section 118.1 of the Act. Participants in the donation arrangement were

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. It remains that the promotional materials' primary focus is on the minimal investment required by participants. Participants in these arrangements are merely expected to put forward a minimal investment to receive generous tax receipts in return.

While the Organization has submitted representations suggesting that participants in the tax shelter did intend to make a *bona fide* gift to it and were interested in their programs, the Organization has also stated, "No, I have not had any communication from donors in the program."⁹ We accept that some donors may have had an interest in the Organization's non-tax shelter programs; however, this does not alter our findings that substantially all participants in the tax shelter program appear to have been motivated to give to the Organization solely for the tax benefits they received as a result of their participation. The Organization had little to no interaction with the tax shelter participants beyond the issuance of receipts. Based on our findings, the Organization did not see or physically receive the nutraceuticals and stationary but was provided information as to the value of the property purportedly donated to it and was given instructions as to whom and in what amounts to issue receipts. In our opinion the combination of the tax credits and other benefits donors received, these transactions lack the requisite *animus donandi* to be considered gifts.

b) Transfer not Gifts – Benefit received

Additionally, we are of the opinion that the transactions themselves lack the necessary elements to be considered gifts at law. At law, a gift is a voluntary contribution of property without expectation of consideration in return. In this case, the participants received some form of consideration or benefit that was directly linked to their cash contribution. Your representations state that participants have the option of not contributing cash yet receiving a distribution from a trust; however, we note that your records show only one person out of more than 700 participants in a two year span who did not contribute cash. This sole person is an officer of the Fundraiser who received a donation receipt exceeding \$200,000 for a cash donation of zero.

It is clear, based upon our audit and the promotional materials of the Fundraiser that there was a clear expectation of return with respect to the cash contribution made to the Organization. Participants receive the benefit of becoming owners of property listed on an EMC, without cost, from The Giving Trust(s) 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.

c) Application of the Proposed Legislation

The Department of Finance has proposed new legislation with respect to charitable donations and advantages, applicable in respect of gifts made after December 20, 2002. These rules would allow a taxpayer to make a gift to a charity and receive some advantage in return; however, the value recorded on the receipt must reflect the eligible amount of the gift made (i.e., the value of the gift made less any advantage received by the donor).

⁹ Charity Audit: Interview Questionnaire, Version Date: May 15, 2011, Author: Tere Taekema, Director, page 13

We are of the opinion that the tax shelter participants received consideration for their cash contribution in the form of a benefit or an advantage as defined by proposed subsection 248(32) of the Act and this benefit or advantage was directly linked to and flowed from pre-arranged conditions. In our view, the benefit must be taken into consideration when determining whether consideration flowed to the participant in return for a gift made to a charity¹⁰.

The donation of the nutraceuticals and stationary were separate steps in the tax shelter program, as represented in promotional brochures. While your representations note that the Fundraiser reviewed and discussed the legal opinion it received with the Organization and that you understood the proposed legislation did not apply, we disagree. The fair market value of the subsequent gift of that property, the nutraceuticals and stationary products, to the Organization is deemed, by virtue of proposed subsection 248(32) of the Act, to be the advantage. Proposed subsection 248(35) of the Act deems this gift to be no more than the amount of the cash contribution. Consequently the amount that the Organization was required under the Act to record on its official donation receipts as the in-kind property's deemed fair market value is significantly lower than what was actually recorded by the Organization. As such, receipted amounts were highly overinflated, failing to account for the amount of the advantage donors received, notwithstanding the fact that donors were not entitled to donation receipts at all, given that the transactions did not qualify as gifts.

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

d) Fair Market Value

It remains our position that the values reported on the tax receipts for the in-kind gifts of stationary and nutraceuticals do not represent their factual fair market value, if in fact the goods exist. The Act requires that donation receipts issued for property, other than cash, record "the fair market value of the property at the time the gift is made."

Documentation on file shows the inventories were valued by the appraisers, [REDACTED] and [REDACTED], using a desk top appraisal

¹⁰ *F. Max E. Marechaux v. HMQ* 2009 TCC 587

method¹¹. The inventory values were determined using the goods listed on the inventory transfer letters, assuming zero goods in inventory at the beginning of January each year and assigning a Canadian retail market value. Representations established that a discount retail price was used.

Per our previous letter, it is our opinion the factual valuation should have assigned a bulk price to the in-kind property. Additionally, we were not provided with any other information to authenticate the value assigned to the in-kind property such as the source of the prices used. For example, exact details were not known or provided by the Organization for the nutraceuticals such as the manufacturer, a copy of the label to verify quantity, expiration dates if applicable and so forth. Our research revealed that one product purportedly received, AGP-L-Glutamine powder, is not recommended for anyone under the age of 18 yet this is the Organization's target recipient group. Searches have shown the only reference on the internet for the AGP-L-Glutamine powder is from 2003 and this is only a testimonial from a bodybuilder. It leads us to question if the powder is currently in production and on the market. Nevertheless, the appraisal reports in 2010 and 2011 state that all such products were new and in excellent condition.

It is the CRA's position that the \$19 million receipted by the Organization does not reflect the factual fair market value of the in-kind goods. It is our position that the Organization issued official donation receipts at the value constructed by the tax shelter promoters. It is also our position the resulting fair market value recorded on the official donations receipts remains overstated for the reasons above and per our letter of June 21, 2012. As such, we are of the position the Organization received and relied upon a valuation based on an analysis of the wrong market.

e) Property Transferred

As we had pointed out in our earlier letter, we are greatly concerned that the property for which the Organization issued receipts was at no time beneficially owned by the Organization. It is our finding that the in-kind property remained under the control of the Fundraiser and/or others associated with the tax shelter program and that the Organization demonstrated little to no control over its receipt or distribution. The Organization represents that it reconciled the in-kind goods purportedly received against inventory transfer letters and shipping information provided to it by the Fundraising and/or Promoter, yet we note that such documentation was provided to the Organization immediately before our audit commenced and we have concerns about the validity of the documentation. Therefore, we cannot accept your representations nor has the Organization provided sufficient evidence that the property exists.

f) Issuing Receipts not in Accordance with the Act

The representations of August 3, 2012, do not alter our findings and our position that the official donation receipts issued by the Organization to acknowledge the property received

¹¹ [REDACTED]

from participants in the IGDP tax shelter were not valid gifts under section 118.1 of the Act. We have fully discussed our position on this subject above.

Accordingly, it is the CRA's position that the Organization issued receipts for transactions that do not qualify as gifts at law and breached Regulation 3501. Under paragraph 168(1)(d) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and the Regulations. It is our position the Organization 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 the Organization under paragraph 168(1)(d) of the Act.

3. Failure to maintain adequate books and records and failing to file an accurate information return:

Our position remains unchanged regarding maintaining adequate books and records and the inaccuracies reported on the T3010, *Registered Charity Information Returns* filed. Your representations do not alter our positions and we offer the following rebuttals.

Our audit revealed the Organization's books and records were inadequate in several areas. As discussed above, there is no substantial evidence provided to the CRA that the purported \$19 million of in-kind goods held as inventory in Mexico and Brazil were disbursed as intended to the needy. The person who the Promoter has said distributed the in-kind goods has denied any involvement in the distribution of the in-kind goods including signing the report on file purportedly verifying the in-kind goods were distributed as intended and as instructed by the Organization. Additionally, the shipping company listed on several bills of lading have provided written proof to the CRA stating these are not their documents. The shipping company has confirmed the bills of lading supplied by the Organization as proof of the in-kind goods movement between locations are not related to their company; are not the standard forms used by their company; and contain invalid bill of lading numbers, booking numbers and container numbers. These, in addition to the numerous other instances of incomplete or inaccurate documentation outlined in our previous letter, lead us to conclude that there is no accurate documentary evidence substantiating the receipt or the distribution of the \$19 million of in-kind goods held as inventory in Mexico and Brazil.

Based on representations provided by the Organization, it is clear that donation revenue has been reported on the accrual basis and expenses, for the most part, have been reported on the cash basis. We accept your representations that the 2010 T3010 was filed on the cash basis, but per our findings, a combination of both the cash and accrual methods were used to report the information on the T3010 filed. Failure to use a consistent accounting method has resulted in misleading information for readers and users of the T3010 for both 2009 and 2010.

By example, the 2009 T3010 should have reported \$1,602,677 at line 5020 "Total expenditures on fundraising" of Schedule 6 using the accrual method rather than the \$670,677 as reported using the cash method. This variance of \$932,015, representing underreported fundraising fees, was then never reported on either the 2009 or 2010 Schedule 6.

Additionally, the Organization failed to report \$4,011,503 in gifts-in-kind received in 2009 on its Schedule 2, yet had reported the same amount as being used in its charitable programs on Schedule 6. Furthermore, the Organization reported inventory of \$5.2 million on its 2009 Schedule 6, yet provided an appraisal report dated January 15, 2010, reporting inventory on hand of \$9.2 million as of that date; the same amount for which it issued in-kind receipts. If the Organization in fact had inventory on hand of \$9.2 million in 2010, it could not have distributed \$4.011 million of nutraceuticals and stationary in 2009 as reported. These same errors were repeated for the 2010 fiscal period. Finally, the Organization reported that the purported shipper of the property was the recipient of the property. It appears the Organization may not have understood the guidance contained in T4033, *Completing the Registered Charity Information Return*, on how to complete line 210 of Schedule 2; however, our audit has revealed that the Shipping and Handling Agreement signed August 24, 2009, shows that the shipper is not contractually responsible for distributing said property. As such, the shipper could not have distributed the in-kind property and it remains unresolved as to whom actually distributed the in-kind property if it was, as the Organization professes, distributed on their behalf.

It remains our position that the Organization's records are not sufficient to support the information, financial and otherwise reported on its annual information return and that the annual information returns were improperly completed for each of the reasons outlined in our letter of June 21, 2012.

Under paragraphs 168(1)(c) and 168(1)(e) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it fails to file form T3010, *Registered Charity Information Return*, as and when required under the Act or a Regulation and it fails to comply with or contravenes section 230 of the Act dealing with books and records. It is our position the Organization failed to comply with and contravened section 230 of the Act and failed to file an accurate *Registered Charity Information Return*. For these reasons, there are grounds for revocation of the charitable status of the Organization under paragraphs 168(1)(c) and 168(1)(e) of the Act.

Section 149.1 Qualified Donees

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) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;
- (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 it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;
- (b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;
- (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;
- (d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length; and
- (e) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever.

Section 168:**Revocation of Registration of Certain Organizations and Associations****168(1) Notice of intention to revoke registration**

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 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, if

- (a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);
- (b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or
- (c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

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

Where the Minister

- (a) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.2) and (22) and 168(1) by the Minister, to a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for registration as a registered Canadian amateur athletic association, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,
- (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,

- (a.2) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.3), (22) and 168(1) by the Minister, to a person that is a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1) that is or was registered by the Minister as a qualified donee or is an applicant for such registration, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,
- (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,
- (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 person in a case described in paragraph (a), (a.1) or (a.2), the applicant in a case described in paragraph (b), (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.

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),
- (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
- (d) 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
- (c) 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) or (12) applies

188(4) Transfer of property tax

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" 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" 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.

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 sent 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 particular person in respect of the particular person'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 particular person after the day on which the Minister first assessed that liability and before the particular time to another person that was at the time of the transfer an eligible donee in respect of the particular person, 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 other 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 or registered Canadian amateur athletic association, 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.