



Canada Revenue
Agency

Agence du revenu
du Canada

REGISTERED MAIL

Prescient Foundation
Suite 1555 – 1500 West Georgia Street
Vancouver BC V6G 2Z6

Attention: Mr. Blake Bromley

BN: 85580 2708

File #:3026623

February 8, 2011

**Subject: Revocation of Registration
 Prescient Foundation**

Dear Sir:

The purpose of this letter is to inform you that a notice revoking the registration of Prescient Foundation (the Organization) was published in the *Canada Gazette* on February 5, 2011. 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.

Canada

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

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

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

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

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

Yours sincerely,



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

Enclosures

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



Canada Revenue
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du Canada

REGISTERED MAIL

Prescient Foundation
Suite 1555-- 1500 West Georgia Street
Vancouver BC V6G 2Z6

DEC 23 2010

BN: 855802708 RR0001
File #: 3026623

Attention: Blake Bromley

**Subject: Notice of Intention to Revoke
 Prescient Foundation**

Dear Mr. Bromley:

I am writing further to our letters dated January 21, 2009, March 18, 2010 and May 10, 2010 (copies enclosed), in which you were invited to submit representations as to why the registration of Prescient Foundation (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

We have now reviewed and considered your written responses dated February 18, 2009, July 16, 2009, April 9, 2010, August 13, 2010, and your comments during your conversation with the Director of Compliance of the Charities Directorate on August 31, 2010. However, notwithstanding your representations, 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 on these matters is summarized in Appendix A attached.

Conclusion:

The Canada Revenue Agency (CRA) audit has revealed that the Prescient Foundation (the Organization) was not complying with the requirements set out in the *Income Tax Act*. In particular, it was found that the Organization has failed to demonstrate that it operates exclusively for its own charitable purposes and that it maintains adequate books and records.

Consequently, for the reasons mentioned herein, and as further explained in our letters dated January 21, 2009, and March 18, 2010, 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*:

Canada

Place de Ville, Tower A
320 Queen Street, 13th Floor 3350 E (00)

Notice is hereby given, pursuant to paragraphs 168(1)(b) 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
855802708RR0001

Name
Prescient Foundation
Vancouver BC

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

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

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

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

Consequences of Revocation

As of the effective date of revocation:

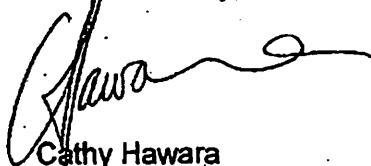
- a) the Organization will no longer be exempt from Part I Tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as deductions to corporate donors 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 "C" 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* (the 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).

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

Yours sincerely,



Cathy Hawara
Director General
Charities Directorate

Attachments:

- CRA letters dated January 21, 2009, March 18, 2010, May 10, 2010
- Representation letters dated February 18, 2009, July 16, 2009, April 9, 2010, August 13, 2010
- Appendix "B", Relevant provisions of the Act

Failure to Operate for and Devote its Resources to Charitable Purposes:

Transactions involving

Our letters of January 21, 2009, and March 18, 2010, detailed a series of transactions¹ through which the Prescient Foundation (Organization) and two other charities had purchased the shares of [REDACTED]. Despite your submissions on this issue, it remains our position that the transactions were not undertaken to fulfill the Organization's mandate of disbursing funds to qualified donees but to confer substantial benefits on private individuals.

In your representations, you explained that the Organization (along with two other charities) purchased the shares of [REDACTED] to "cause" the latter to make a significant gift (farm assets) to [REDACTED]². In your view, this is sufficient to demonstrate that the Organization operated for the purpose of "disbursing funds to qualified donees". As previously explained, we disagree with this characterization.

First, we cannot agree that a gift of assets from a separate corporation to a qualified donee constitutes a disbursement of funds by the Organization itself, even where the shares of that corporation are owned by the Organization. The disbursement is that of the corporation.

Second, whether it was the Organization or [REDACTED] that caused the transfer of farm assets to [REDACTED] it is our position that the transfer did not represent a *bona fide* gift. As detailed previously³, [REDACTED] made various cash transfers to the Organization and two other charities that purchased the shares of [REDACTED] just days before [REDACTED] purportedly gifted its assets to [REDACTED]. The proximity of the dates and nearly-identical values⁴ of the cash transfers by [REDACTED] and the purported gift of farm assets to [REDACTED] indicated the transactions were circular in nature. Even if we accepted your assertion that the Organization had caused farm assets to be transferred to [REDACTED], the transactions could only be characterized as an exchange of properties rather than a gift.

It is therefore our conclusion that the Organization did not make a gift nor caused a gift to be made to a qualified donee. As described in our previous letters, we do not agree that the primary purpose of these transactions was to enrich the

¹ See Appendix A to our letter of March 18, 2010.

² You raised this argument in your letter dated February 18, 2009, your Service-Related Complaint dated June 25, 2010, and your conversation with our Director of Compliance on August 31, 2010.

³ See footnote 1.

⁴ Theanon paid \$1,900,000 in cash to the Organization and the other two charities on February 25, 2005. [REDACTED] transferred farm assets to [REDACTED] from [REDACTED] valued at \$2,020,000 (\$3,460,000 net of \$1,440,000 in outstanding debt) on March 1, 2005. A further cash payment of \$54,000 was paid to the Organization by [REDACTED] on June 24, 2005.

charities involved. Rather, it is our position that the intent of these transactions was simply to facilitate the sale of farm assets⁵ by [redacted] to an outside purchaser while avoiding taxes otherwise payable by the sellers. As previously indicated⁶, an agreement was already in place to sell the farm assets to an outside purchaser before the share transaction took place. If [redacted] sold the assets directly to the outside purchaser, the sale would have been subject to a capital gains tax. Dividend taxes would also be applicable when the sales proceeds are withdrawn from [redacted] by the [redacted]. By purportedly gifting the farm assets to [redacted] before the eventual sale, [redacted] was able to offset the capital gains tax otherwise payable with the tax receipt issued by [redacted]. Furthermore, the net proceeds of sales purportedly received by [redacted] approximately offset the cash payments it made to the Organization (and two other charities) five days prior. Effectively, the Organization's (and the two other charities') purchase of the shares of [redacted] represented a routing of the proceeds from the sale of farm assets to the [redacted] on a tax-free basis⁷.

It is our conclusion that the Organization primarily operated for non-charitable purposes during the period under review. The Organization purportedly received a gift of \$574,500 which it should have devoted to charitable activity or genuine disbursement to qualified donees. Instead, these funds were used to purchase shares from private parties that (1) were to become valueless when the underlying property was transferred out of the corporation and (2) the underlying property of which was already sold to a third party. It is our position that the Organization purchased these shares in order to allow private parties to receive funds on a tax-free basis. We note that in the fiscal period ending November 30, 2005, this represents substantially all of the Organization's financial activity.

In your conversation with our Director of Compliance on August 31, 2010, you contended that the Organization "came out with more money". Per our previous letters, we cannot accept that the fact that the small fee paid to Prescient justifies the use of \$574,500 of the Organization's resources to purchase and write-down shares.

Therefore, and as described in our previous letters, it remains the CRA's position that the Organization has failed to operate exclusively for charitable purposes as required by the Act, but has operated collaterally, if not primarily, to promote a tax planning arrangement for the benefit of private individuals. In our view, this reason alone is sufficient in and of itself to warrant the revocation of the Organization's status.

⁵ Including real estate, 30,050 BC egg hatching quota and equipment. See Footnote 1.

⁶ See footnote 1.

⁷ The [redacted] were able to offset the capital gains tax on the sale of the [redacted] shares with the capital gain exemption on farm property.

Finally, you requested that CRA await the decision of the Tax Court of Canada ("TCC") on the [] before concluding the audit. As you are aware, the Charities Directorate is responsible for auditing registered charities and determining their compliance with the Act. In general, the factors behind the reassessment of a taxpayer and the compliance issues of a registered charity would be different. In our view, the potential decision of the TCC relating to the tax liability of the taxpayer is unlikely to alter the view of the CRA as to whether the Organization operated in compliance with the Act. As such, we are not willing to hold this matter in abeyance.

Gifts to Non-Qualified Donees

1. Transfer of \$574,500 to the []

Our letter of March 18, 2010 explained that we considered the \$574,500 paid to the [] to be a gift to a non-qualified donee. You disputed this position in your letter of April 9, 2010, explaining that the [] shares became valueless only because the Organization caused [] to make a gift to []. As we have detailed above, we do not accept the position that the transfer of property from [] constitutes a gift or disbursement from Prescient. As above, it was apparent from our review of the tax planning scheme that the Organization was fully aware of the purpose of the pre-ordained transactions. The Organization knowingly transferred \$574,500 to private individuals to acquire shares that were to become valueless when the pre-sold assets were transferred out of the corporation. Therefore, we remain of the conclusion that the Organization made a gift to a non-qualified donee in this transaction.

2. Transfer of \$500,000 to the Data Foundation (DATA)

As explained in our previous letter, it is the CRA's view that the Organization has made a gift to a non-qualified donee by transferring funds to DATA, a 501(c)(3) non-profit organization in the United States.

You have expressed your disagreement with CRA's interpretation of article XXI of the *Canada-US Tax Convention* (the Treaty). In your Service-Related Complaint, you informed us of your intention to apply to the Competent Authority to settle this issue and requested that we hold the audit in abeyance in the meantime.

As discussed in our previous letters, the CRA's longstanding position with respect to this issue has been articulated in a number of publications. In our view, this matter is settled. While you are welcome to provide your comments with respect to this interpretation to the CRA, we are not prepared to suspend the audit.

In our view, each of the gifts, described above, in and of itself would be sufficient to warrant the revocation of the Organization's registration.

Accordingly, and as per our previous letters, we remain of the view that the Organization fails to meet the definition of charitable foundation as laid out in subsection 149.1(1) of the Act. By operating primarily, or at least collaterally, for the benefit of private individuals, it cannot be said to have been operated for exclusively charitable purposes. Further, by gifting its resources to individuals or entities that are not qualified donees, we are further of the view that the Organization failed to operate for exclusively charitable purposes. For each of these reasons, it is our view that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

Failure to Maintain Adequate Books and Records & Registered Charity Information Return

Our position remains that the Organization failed to maintain and/or provide adequate books and records. A registered charity must maintain, and make available to the CRA at the time of the audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent to the audit. The Organization was provided sufficient time to prepare and provide its books and records prior to and during the course of our audit, yet chose not to make all of its records available.

The representations contained certain records that were not provided during the course of our audit; however, it remains our position that the records provided clearly do not relate to the Organization's own operations. The records pertain to the above noted transactions and were incurred by [redacted] and the parties involved in that tax planning arrangement, yet were paid for by the Organization. We would also note that despite the Organization incurring minimal expenditures for the period audited, the missing information represented substantially all of the Organization's gross expenditures. It also provided further evidence that the net profit the Organization retained from the share selling arrangement was further reduced by the payment of fees incurred by [redacted] *et al.*

Under subsection 149.1(3) of the Act, the Minister may revoke the registration of the registered charity in the manner as described at paragraph 168(1)(e) of the Act because the registered charity has failed to comply with or contravenes any of sections 230 to 231.5 of the Act. It is our position the Organization has contravened section 230 of the Act for failing to maintain complete records to verify the information contained within its Registered Charity Information Returns and financial statements. For this reason, there are grounds for revocation of the charitable status of Prescient Foundation.

Section 149.1: [Charities]

149.1(2) Revocation of registration of charitable organization

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

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

149.1(3) Revocation of registration of public foundation

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

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

149.1(4) Revocation of registration of private foundation

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

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

149.1(4.1) Revocation of registration of registered charity

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

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

Section 168: Notice of intention to revoke registration

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

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

168(2) Revocation of Registration

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

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

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

168(4) Objection to proposal or designation

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

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

Where the Minister

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

Section 180: Appeals to Federal Court of Appeal

180(1) Appeals to Federal Court of Appeal

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

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

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

Section 188: Revocation tax

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

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

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

188(1.1) Revocation tax

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

$$A - B$$

where

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

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

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

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

188(1.2) Winding-up period

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

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

188(1.3) Eligible donee

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

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

188(2) Shared liability — revocation tax

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

188(2.1) Non-application of revocation tax

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

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

188(3) Transfer of property tax

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

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

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

188(4) Idem

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

188(5) Definitions

In this section,

"net asset amount"

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

$A - B$

where

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

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

"net value"

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

$A - B$

where

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

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

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

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

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

189(6.1) Revoked charity to file returns

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

- (a) file with the Minister
 - (i) a return for the taxation year, in prescribed form and containing prescribed information, and
 - (ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and
- (b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

189 (6.2) Reduction of revocation tax liability

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

- (a) the amount, if any, by which
 - (i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was mailed and ends at the end of the one-year period exceeds
 - (ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and
- (b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

189(6.3) Reduction of liability for penalties

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

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

189 (7) Minister may assess

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



CANADA REVENUE
AGENCY

AGENCE DU REVENU
DU CANADA

Prescient Foundation
Suite 1555 – 1500 West Georgia Street
Vancouver, BC
V6M 2Z6

REGISTERED MAIL

Attention: Blake Bromley

January 21, 2009

BN: 855802708 RR0001
File #: 3026623

Subject: Audit of Prescient Foundation

Dear Mr. Bromley:

This letter is further to the audit of the books and records of Prescient Foundation ("Prescient") conducted by the Canada Revenue Agency (the CRA). The audit related to the operations of Prescient for the period from December 1, 2004 to November 30, 2007.

Although none of the directors made themselves available to attend the initial interview on May 6, 2008 or the exit interview on May 8, 2008, the auditor met with Leslie Brandlmayr to advise that the CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* (the Act) and/or its *Regulations* in the following areas:

AREAS OF NON-COMPLIANCE:		
		Reference
1.	Failure to Devote All of Its Resources to its Charitable Purposes – Gifts to Non-Qualified Donees	149.1(1) 168(1)(b)
2.	Failure to maintain adequate books and records	168(1)(e) 230(2)
3.	Failure to file a T3010A Information Return as required by the Act.	149.1(14) 168(1)(c)

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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 Prescient with the opportunity to address our concerns. In order for a registered charity to retain its registration, legislative and common law compliance is mandatory, absent which the Minister of National Revenue (the Minister) may revoke the charity's registration in the manner described in section 168 of the Act.

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

Identified Areas of Non-Compliance:

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

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

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

- (1) the purposes of the organization must be charitable, and must define the scope of the activities engaged in by the organization; and*
- (2) all of the organization's resources must be devoted to these activities."*

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

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

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

A charity must be able to show through documented evidence and proper books and records that it undertook charitable activities in furtherance of its charitable purposes and not simply made a transfer of resources to a non-qualified donee. A charity is not at liberty to transfer funds or resources to other individuals or entities unless the recipient is an employee of the charity, an agent of the charity under contract, or a qualified donee. To this end, the charity must be able to demonstrate to the CRA's satisfaction that it maintains control over, and is fully accountable for, the use of resources provided to the intermediary, at all times.

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

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

(A) Non-Charitable Transactions

Prescient was involved in a series of transactions unrelated to its charitable purpose as follows:

Fiscal Year 2005

(amalgamated under the name of _____ on March 1, 2005

- February 25, 2005 – specified gift from _____ Charitable Foundation \$570,000.
- March 1, 2005 – specified gift from Theanon \$4,500.
- March 1, 2005 – Purchase of 30% of the shares in the capital of _____ for \$574,500.
Balance of shares purchased by Essential Grace Foundation ("Essential") – 35% and The Gateway Benevolent Society ("Gateway") – 35%. Total purchase price was \$3,370,000 less outstanding loan.
- March 1, 2005 – Assets were gifted by _____ to _____ on the same date.
- June 24, 2005 – Specified gift from _____ of \$54,000. Handwritten notes on trust account printout indicate the amount was paid to Prescient as a fee for participating in the _____ transaction.
- November 30, 2005 – Year end adjustment to write down share value by \$574,500 to 0. The loss was recorded as an offset to revenue on the T3010A Charity Information Return.

Fiscal Year 2006

Donation from : (".....") \$150,000

- December 28, 2005 - \$150,000 10-year gift to Prescient from
- February 27, 2006 - Registration of private foundation, Open Purse Foundation. ("Open Purse").
.....s one of the founding directors of Open Purse and 50% shareholder of
- July 5, 2006 - \$150,000 10-year gift transferred to Open Purse.

Donations from Legal Trust Accounts \$500,000

- December 21, 2005 - Prescient deposits the proceeds from the following trust accounts: 1) \$198,975.14 and 2) \$301,024.86, a total of \$500,000. A notation on the deposit slip indicates the deposits are related to the
- December 22, 2005 - Prescient transfers \$500,000 to Data Foundation ("Data") as directed by / The subject line on Prescient cheque #3 payable to Data indicates \$500,000 from : was to be transferred to Data.

Loan Receivable : Charitable Foundation \$120,000

- June 26, 2006 - Loan to \$120,000
- June 29, 2006 - Loan repaid by \$120,000

All of the above examples represent circular transactions with no obvious charitable purpose. It appears that Prescient acts as a conduit in that it allows other individuals and organizations to accommodate their needs by flowing funds through the charity.

See following comments related to additional books and records requested during and subsequent to the audit review but never received.

(B) Gifts to Non-Qualified Donees

Prescient was registered as a public foundation effective April 16, 2004. As stated in its governing documents, the objects of the Corporation are

- a) "To receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee or agent, to hold, invest, develop, manage, accumulate and administer funds and property for the purpose of disbursing funds and property exclusively to registered charities and "qualified donees", and
- b) to conduct any and all activities and exercise any and all such powers as are necessary for the achievement and furtherance of the objects of the Corporation."

It appears from the review of books and records that, of the activities conducted by Prescient, very few would fall within its charitable mandate. In fact, the evidence on the file demonstrates that the preponderance of the effort and resources of Prescient were devoted to participating in a series of complex circular transactions unrelated to its charitable purpose.

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

Fiscal Year 2005

- 1) p \$10,748.15
 - Trust account indicates amount relates to transaction
 - No invoice or documentation provided
- 2) c. \$21,400
 - No invoice or documentation provided
- 3) i \$15,227.70
 - Legal fees relate to transaction (as per trust account)
 - Paid by Prescient

Fiscal Year 2007

- 1) \$50
 - Fee for Insider Report filed late during the March 5-11, 2007 period paid by Prescient on behalf of insider company, Almoner Foundation and issuer
- 2) Due to Almoner Foundation \$781.78
 - Prescient repaid, on behalf of Almoner Foundation for GST owing as per notes on cheque stub #10.

Conclusion

The audit found that Prescient failed to demonstrate that it used all of its resources (funds, personnel and/or property) for its own charitable purpose or to gift to qualified donees. In fact, it made disbursements to a number of individuals and/or organizations that do not represent qualified donees and allowed other individuals and organizations to flow funds through Prescient to accommodate their own needs.

Due Diligence of Directors

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

For example

- Prescient accepted 200,000 common shares of a private corporation, [redacted] from [redacted]. An official donation receipt was issued to the donor for \$50,000.

Under the Act, a charity may issue a donation of property other than cash, but it must ensure that the accurate fair-market value ("FMV") is determined and recorded on the receipt.

It is our view that Prescient exercised a lack of due diligence determining the FMV of donated property and may have issued receipts other than for the actual value of the property issued.

- The purchase of [redacted] shares in 2005 was not a prudent investment because it resulted in a loss in the value of shares of \$574,500 reducing the value to 0. Apparently the depletion of value of the shares was as a result of the gifting of assets to Theanon.

We were advised by one of the directors, Blake Bromley that, at the time of the purchase of these shares, Prescient anticipated that [redacted] would gift its assets to [redacted]. This is evidenced by the fact that the gift of the assets of [redacted] took place on March 1, 2005, the same date as the shares were purchased.

The directors would have known that an agreement to gift the assets was in place at the time the shares were purchased because the charity receiving the gift, [redacted], and the charity purchasing the shares, Prescient, have at least one director in common.

- The directors allowed Prescient to be used as part of a series of transactions unrelated to its charitable purpose. For example,
 1. Prescient received and receipted an amount of \$150,000 from [redacted] with direction to transfer the amount to Open Purse Foundation, a private foundation. [redacted] and Open Purse have a common shareholder/director. The amount could have been gifted directly to the private foundation by [redacted].

2. Prescient accepted \$500,000 from the trust accounts of two law firms on behalf of _____ with direction to transfer the funds to Data. Blake Bromley is a director of both Prescient and Data. The amount could have been transferred directly from _____ to Data.
 3. Prescient loaned \$120,000 to _____ a related charity on June 26, 2009. Three days later the full amount was repaid.
- One of the directors, Blake Bromley, advised that with respect to the transaction
 1. there are no minutes of directors or other meetings regarding the share purchase;
 2. there are no minutes of directors or other meetings where the gifting of these assets to _____ was discussed;
 3. the financial benefit to Prescient in participating in this transaction was minimal;
 4. he made the decision on behalf of Prescient to purchase the shares.

The duties of the directors of a charity include decision making, investing charitable property, performing corporate governance and the active management and protection of charitable assets. The fiduciary duties of the directors go beyond furthering the charitable objects of the charity and the interests of the charity should be put ahead of the interests of the directors and their related corporations.

Conclusion

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

- using Prescient to transact a series of complex transactions for the benefit of other organizations and individuals,
- allowing its receipting practices to be used for the benefit of other individuals and organizations,
- authorizing expenditures unrelated to Prescient to be paid by Prescient, and
- simply accepting the decisions of one of the directors with regard to a number of transactions without written documented evidence of full director acceptance and understanding.

2) Failure to Maintain Adequate Books and Records

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

- The policy of the CRA relating to the maintenance of books and records, and books of account, is based on several judicial determinations, which have held that:
- it is the responsibility of the registered charity to prove that its charitable status should not be revoked²;
- a registered charity must maintain, and make available to the CRA at the time of an audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto³; and
- the failure to maintain proper books, records and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status⁴.

It is our view that Prescient failed to provide access to all of its records at the time of the audit review or subsequent to the audit review. For example,

1. No board minutes or planning documents outlining the complex asset/share purchase arrangement being transacted with [redacted] were available for review in the books and records of Prescient. It is not reasonable that Prescient's directors were able to fully understand the business transactions presented by the representatives without being provided with detailed written documentation.
2. No correspondence or written documentation providing details of why trust account amounts from law firms [redacted] (\$198,975.14) and [redacted] (\$301,024.86) transferred to Prescient on behalf of [redacted] were directed to Data. Information was requested by the auditor during the audit review and in writing on July 30, 2008 - Query #6. No response has been received.
3. No correspondence or written documentation providing details of why the \$150,000 from [redacted] was gifted to Prescient with direction to forward the same amount to Open Purse. Information was requested by the auditor during the audit review and in our letter of July 30, 2008. No response has been received.

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

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

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

4. Prescient did not properly determine the fair market value of the common shares of _____ Inc donated by _____ to ensure that the official donation receipt issued reflects the actual value of the property. The auditor was advised that the value was based on the book value provided by the company.
5. Copies of all of the official donation receipts issued by Prescient were not provided during or subsequent to the audit review. For example, copies of receipts #003 and #004 issued in 2006 and 2007 respectively were not received.

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

- The supporting records provided to substantiate Prescient's activities indicated that Prescient failed to devote all of its resources to its own charitable purpose.
- Payments for legal and consulting fees were not supported with adequate documentation to verify that they were incurred by Prescient.

Conclusion

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

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

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

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

Prescient has improperly completed T3010A returns for the December 1, 2004 – November 30, 2007 fiscal periods, as there were numerous errors and omissions as outlined below:

FPE 30/11/2005:

- C2 "Describe how the charity carried out its charitable purposes during the fiscal period." No description was provided.
- D6 "Except for compensation, did the charity, directly or indirectly transfer any part of its income or assets to individuals or organizations, not at arm's length to the charity?" Line 3950 was erroneously marked no. Refer to B) Gifts to Non-Qualified Donees for numerous examples of amounts transferred to individuals and organizations not at arm's length to the charity.

- E3 Line 4650 Other Revenue – loss of share value should have been \$574,500 as per adjusting entries/general ledger, not \$547,500 as shown.

FPE 30/11/2006:

- D4 "Did the charity carry on programs, directly or indirectly, outside Canada?" Line 2100 was answered yes.
F1 "What were the total expenditures on programs outside of Canada?" Line 5400 is Nil.
No evidence of programs conducted outside of Canada was found during the audit.
- Qualified Donees Worksheet – Business number and location for Data Foundation not listed.

FPE 30/11/2007:

- D6 "Except for compensation, did the charity, directly or indirectly transfer any part of its income or assets to individuals or organizations, not at arm's length to the charity?" Line 3950 was erroneously marked no. Refer to B) Gifts to Non-Qualified Donees for numerous examples of amounts transferred to individuals and organizations not at arm's length to the charity.
- D4 "Did the charity carry on programs, directly or indirectly, outside Canada?" Line 2100 was answered yes.
F1 "What were the total expenditures on programs outside of Canada?" Line 5400 is Nil.
No evidence of programs outside of Canada was found during the audit.
- Qualified Donees Worksheet – Business numbers for qualified donees not listed.

The Charity's Options:

a) No Response

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

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

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

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

Yours sincerely,

Jeanne Effler, CGA
Audit Division
Telephone (250) 363-0276
Facsimile (250) 363-3862

7



Canada Revenue
Agency

Agence du revenu
du Canada

March 18, 2010

REGISTERED MAIL

Prescient Foundation
Suite 1555 – 1500 West Georgia Street
Vancouver BC V6G 2Z6

BN: 855802708 RR0001
File #: 3026623

Attention: Blake Bromley

Subject: Audit of Prescient Foundation

Dear Mr. Bromley:

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

We have now reviewed and considered your written response dated February 18, 2009; however, notwithstanding your reply, our concerns have not been entirely alleviated. As such, we wish to clarify our positions based on your representations and to provide the Organization with the opportunity to make additional representations or present additional information. In order for a registered charity to retain its registration, legislative and common law compliance is mandatory, absent which the Minister of National Revenue (the Minister) may revoke the Organization's registration in the manner described in section 168 of the Act.

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Canada

Failure to Operate for and Devote its Resources to Charitable Purposes:

As you are aware, the Organization was registered April 16, 2004, as a public foundation. The Organization's stated purposes, as contained in its governing document are:

- a) to receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee or agent, to hold, invest, develop, manage, accumulate and administer funds and property for the purpose of disbursing funds and property exclusively to registered charities and "qualified donees";
- b) to conduct any and all activities and exercise any and all such powers as are necessary for the achievement of the objects of the Corporation."

The Organization, you have represented, does not conduct its own charitable activities, but operates exclusively for the purpose of receiving funds for the purpose of disbursing these funds to qualified donees.

As detailed in our previous letter, during the period under review, December 1, 2004 to November 30, 2007, the Organization engaged in a series of transactions that, in our view, were unrelated to its charitable purpose and predominantly included transactions designed to benefit private individuals and non-qualified donees. It is our view that the Organization primarily operated for the purpose of promoting a private tax planning scheme and has structured its affairs for the benefit of private individuals to the detriment of the Organization's charitable mandate.

As outlined in our previous letter, between 2005 and 2006 the Organization entered into a number of transactions, along with three other Canadian registered charities, to facilitate the sale of farm assets of a corporation, including its BC egg hatching quota. In our view, the transactions were designed to route the property through the participating registered charities under the guise of investments and gifts, to facilitate the avoidance of taxes otherwise payable on the disposition of these assets, rather than to genuinely enrich the charities involved. The Organization's role in the arrangement was to receive funds from another registered charity and to use those funds to purchase the shares of the corporation. The Organization did in fact purchase these shares in full knowledge that the assets of the corporation were to be gifted to another participating charity causing its investments to be de-valued to nil. For its part in the arrangement, the Organization received \$54,000. An in depth overview of the transaction the Organization entered into is outlined in Appendix "A".

In your letter you suggest that "[t]he end result of these transactions was that Prescient caused the disbursement of assets with a net value of \$606,000 to a qualified donee." While your characterization of the end result is interesting, we respectfully

disagree. With respect to the Organization itself, the end result appears to be that, rather than utilizing the \$574,500 received from other registered charities towards its charitable mandate, it instead disposed of \$574,500 through the purchase of soon-to-be-valueless shares and was left with \$54,000 for its role.

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

- The farm property and BC egg quota to be sold by [redacted] were routed through [redacted] Charitable Foundation and subsequently sold to third-parties;
- An amount equivalent to the pre-arranged sale price of the farm property (\$3,460,000) was, through a series of transactions including the purchase of soon-to-be valueless shares, received and transferred out by the participating registered charities to the sellers of the farm property;
- A donation receipt of \$2,020,000 was issued to [redacted]; and
- Relatively minor participation fees were received by the registered charities involved totalling approximately \$150,000.

As such, it remains our view, that during the period under audit the Organization did not operate for charitable purposes, but collaterally, if not primarily, operated for the private benefit of private individuals.

Gifts to Non-Qualified Donees:

Transfer of \$574,500 to the [redacted]:

It is our position that the Organization has made a gift of a non-qualified donee by transferring \$574,500 to the [redacted] in return for a small participation fee and shares that it knew were valueless at the time or were about to become valueless.¹ We do not view this transaction as an acceptable purchase of an investment by the Organization as the devaluation of the shares was pre-planned. As such, we are of the view that the transfer of the funds to the [redacted] was a gift to a non-qualified donee other than in accordance with the Act and in violation of its mandate that it operate for exclusively charitable purposes.

Transfer of \$500,000 to Data Foundation (Data):

Subsequent to our January 21, 2009 letter, we obtained additional information from both a third party source and the Organization. It was confirmed that the sole purpose of the transfer of funds from the [redacted]

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

to the Organization was to flow \$500,000 through to DATA, a 501(c)(3) non-profit organization in the US. [redacted] was advised by a DATA contact that the Organization would be able to facilitate this transfer. Gifts made to a non-resident charity do not meet the Act's definition of a "qualified donee" therefore by transferring funds to DATA, the Organization has made a gift to a non-qualified donee other than in accordance with the Act and in violation of its mandate that it operate for exclusively charitable purposes.

In your letter of July 16, 2009, you outline your arguments with respect to the *Canada-US Tax Convention* (the Treaty) and ask for the CRA to detail its legal arguments on the proper interpretation of article XXI. With respect, we note that the CRA's longstanding position on the Treaty is expressed in the Registered Charity Newsletter Special Release of Autumn 1996 and confirmed in Technical Interpretations 9428085 and 9728355. In our view, paragraph 7 of the Treaty (then paragraph 6) outlines a limited situation whereby a gift to certain US charities are eligible to the limited relief from Canadian taxation described in that section as if they were made to a Canadian registered charity. The CRA has been clear that its interpretation is that the treaty does not deem US charities to be registered charities for the purposes of the Act such that the US charity could be considered a "qualified donee". Should you wish to provide input to the CRA regarding this proper interpretation of this provision, it is open to you to provide your comments in writing to the Income Tax Rulings Directorate on this matter.

Failure to Maintain Adequate Books and Records & Registered Charity Information Return:

Our position remains that the Organization failed to maintain and/or provide its books and records. A registered charity must maintain, and make available to the CRA at the time of the audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply documentation and records on a piecemeal basis, sometime subsequent to the audit. The CRA was clear as to which records it was to be provided access to and the Organization was provided sufficient time to prepare and provide its books and records prior to and during the course of our audit, yet chose not to make all of its records available.

The representations contained certain records that were not provided during the course of our audit. We note with concern that the records provided appear to indicate that the Organization has paid for legal fees relating to transactions primarily benefiting [redacted], as well as a "gift planning and strategy" provided in 2005, presumably relating to the transactions involving [redacted] and the related parties involved in that tax planning arrangement. This is of concern for a number of reasons notably that:

1. The transactions described above and in Appendix "A" were almost exclusively structured for the benefit of the seller and, as such the payment of the fees by the Organization for the tax planning affairs of private individuals is an inappropriate use of property which should be used for the benefit of charitable beneficiaries; and
2. During the period under review Mr. Bromley acted both in the capacity of Director of the Organization and Director of _____ thus standing in a potential conflict of interest and the ability to personally profit from the resources of the Organization. The invoice for \$21,400 provides little to no information regarding the meetings attended and consultations attended by Mr. Bromley which to justify the payment by Organization to _____

We would also note that as the Organization incurred minimal expenditures for the period audited, the missing information represented substantially all of the Organization's gross expenditures in 2005².

In your letter you argue that the Act does not require board minutes or planning documents be created for individual transactions. The Act, however, requires a registered charity to maintain information in such a form as to determine whether there are grounds for the revocation of its registration under the Act. Again, we note that in 2005, substantially all of the Organization's activity revolved around the \$574,500 expended to purchase shares in a private company and fees relating to this transaction. In our view, the Organization would therefore be required to document the board's discussion and approval of the engagement of _____ – including the purpose and terms of its engagement, and review and approval of his work provided to the Organization and fees. The minutes of the Board of Directors would also be required to document the purpose, review and analysis of the purchase of shares – particularly around how the expenditure was in furtherance with the Organization's stated mandate.

Similarly, in 2005 and 2006, the Organization received \$500,000 which was both its largest receipt and largest disbursement during the fiscal period. In your letter of March 19, 2009, you outline a number of facts regarding representations received with respect to the transfer of funds to the Data Foundation. Again, none of the details described therein - including the appeal for support by the US Foundation, consideration by the board as to whether it fit within its mandate, why the Organization should flow funds through its accounts rather than direct the _____ to make the gift directly, or even the representations made to the Data Foundation – are detailed in any of the Organization's books and records. The \$150,000 ten-year gift received and transferred

² The remaining invoices included the charge of \$10,748.15 from _____ for Mr. Bromley's registration of the Organization and a \$21,400 charge from _____

Excluding the purchase of shares which the Organization wrote down to zero, the Organization's total expenditures were \$38,258.

(notably in violation of that same direction) also suffers from a similar lack of documentation.

In short, we remain of the position that the Organization has not maintained adequate books and records and has not provided proper access to its records during the course of an audit.

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

The Organization's Options:

a) No Response

If you choose not to respond, please advise us in writing of your intent. In that case, the A/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 A/Director General of the Charities Directorate will decide on the appropriate course of action, which may include:

- no compliance action necessary;
- the issuance of an educational letter;
- resolving these issues through the implementation of a Compliance Agreement; or
- the Minister giving notice of its intention to revoke the registration of 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,



Jeanne Effler, CGA
Audit Division
Telephone (250) 363-0276
Facsimile (250) 363-3862

Attachments:

- Our letter dated January 21, 2009
- Your letter dated February 18, 2009
- Your letter dated July 16, 2009
- Appendix "A" Summary of Transactions

cc: Sherry Cox

Christopher Richardson