



REGISTERED MAIL

The Barbara and David Zukor Charitable Foundation of Hampstead
5699 CH. Queen-Mary
Hampstead QC H3X 1X5

DEC 10 2013

BN: 886974955RR0001

Attention: Mrs. Barbara Zukor

File #:0844142

Subject: Notice of Penalty
The Barbara and David Zukor Charitable Foundation of Hampstead

Dear Madam:

I am writing further to our letter dated April 29, 2013 (copy enclosed), in which you were invited to submit representations as to why we should not assess a penalty to The Barbara and David Zukor Charitable Foundation of Hampstead (the Organization) in accordance with section 188.1 of the *Income Tax Act*.

We have carefully reviewed and considered your written response of May 27, 2013. However, notwithstanding your reply, our concerns with respect to the Organization's non-compliance with the requirements of subsection 188.1(4) have not been alleviated.

It is our conclusion that these submissions do not provide sufficient reason why the Canada Revenue Agency (CRA) should not assess a penalty to the Organization. We offer the following explanation to help you understand our decision.

Under the common law, a gift is a voluntary transfer of property without consideration. The Organization is registered as a charitable foundation. In order to satisfy the definition of a "charitable foundation" pursuant to subsection 149.1(1) of the Act, a "charitable foundation" is defined as, "a corporation or a trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof."

Canada

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

It is the opinion of the CRA that the Organization has conferred an undue benefit to the directors, by paying personal expenses of the directors, namely tuition fees of family members. Furthermore, the manner in which the invoice was paid resulted in a tax advantage for the directors.

The directors made a gift to the Organization, for which they were issued charitable donation receipts. The gift was then transferred by the Organization to Hebrew Academy in settlement of the religious portion of tuition fees incurred by the directors in respect of their children. You stated in paragraph 3 of your representations that "the school would provide charitable receipts for religious education, notwithstanding the source of the funds". We acknowledge that if paid directly to the school, the religious portion of school fees would be allowed as a donation credit. However, by making a charitable donation to the Organization, which was subsequently donated to the Hebrew Academy, the directors of the Organization received an official donation receipt equal to 100% of the paid amount of donation and therefore benefited from a provincial and federal eligible donation tax credit. If the directors had otherwise paid the tuition fees directly to the Hebrew Academy, they would have received a donation receipt equal to the eligible amount of donation for religious education calculated by the Hebrew Academy in accordance with Information Circular 75-23. However, that amount would have only been eligible for a donation tax credit at the federal level (federal tax credit), as Revenu Quebec has no provision to allow tuition fees even if they relate to religious instruction. By using the Organisation's resources, the directors were able to benefit from both provincial and federal eligible donation tax credits.

You stated in paragraph 4 of your representations "in my opinion, it was no different if I donated funds to the Foundation, which in turn funded the charitable donation to Hebrew Academy, or if we donated personal funds to Hebrew Academy". We wish to reiterate the fact that the problem with the arrangement stems from the fact that for the year under review, the Organization did not make a donation to the Hebrew Academy i.e. a voluntary transfer of property without consideration, since the amounts in question were bookmarked for the payment of amounts owing by the directors to the Hebrew Academy in respect of their children's tuition fees. We also note with interest that for the year under review, the Organization gifted \$13,858 in total to qualified donees; of that amount, the vast majority \$12,658 or 91% was in payment of tuition fees owing to the Hebrew Academy by the Zukor family.

Consequently, for each of the reasons mentioned in our letter dated April 29, 2013, I wish to advise you that, pursuant to section 188.1(4) of the Act, I propose to assess a penalty to the Organization.

Penalty Assessment:

The penalty assessed by the CRA is calculated as follows:

Fiscal Period Ending:	December 15, 2008.
Undue benefits	\$12 658
Penalty applied per <i>ITA</i> subsection 188.1(4)	105%
Total Penalty Owing per subsection 188.1(4)	\$13,291
Undue benefit	

In accordance with subsection 189(6.3) of the Act, the penalty may be paid to an eligible donee as defined in subsection 188(1.3). An eligible donee in respect of a particular charity is a **registered charity**:

1. 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;
2. that is not subject to a suspension of tax-receipting privileges;
3. that has no unpaid liabilities under the *Income Tax Act* or the *Excise Tax Act*;
4. that has filed all its information returns; and
5. that is not subject to a security certificate under the *Charities Registration (Security Information) Act*.

The CRA requires the following documentation to confirm that the eligible donee received the penalty payment:

- a letter addressed to the Director, Compliance Division (mail to address below), signed by an authorized representative of the eligible donee, confirming the penalty payment was received and the amount paid; and
- a copy of either the cancelled cheque or evidence of a non-cash transfer.

Should you choose instead to make your payment to the CRA, please make the cheque payable to the Receiver General for Canada and mail it to:

Director
Compliance Division
Charities Directorate
Canada Revenue Agency
320 Queen Street, 7th Floor
Ottawa ON K1A 0L5

Please note that in accordance with subsection 149.1(1.1) of the Act the penalty payment made to an eligible donee shall not be deemed to be an amount expended on charitable activities nor a gift made to a qualified donee.

Failure to pay this penalty amount or make arrangements for payment will result in reconsidering our decision not to proceed with the issuance of a Notice of Intention to Revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

If you have any questions or require further information or clarification regarding the penalty payment, please contact Mr. Eli Morad at 613-894-7456 .

Appeal Process:

Should you wish to appeal this Notice of Penalty in accordance with subsection 165(1) 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 mailing of this letter. 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

Public Notice:

By virtue of paragraph 241(3.2)(g) of the Act, the following information relating to the Organization's penalty assessment will be posted on the Charities Directorate website:

Penalty Assessment:

Name of Organization:	The Barbara and David Zukor Charitable Foundation of Hampstead
Registration Number:	886974955RR0001
Effective date of Penalty:	March 10, 2014
Reason for Penalty:	Failure to Devote All of Its Resources to its Charitable activities/ Providing Personal Benefits to Members of the Organization

Act Reference:	188.1(4), 188.1(5)
Amount of Penalty:	\$13,291

I trust the foregoing fully explains our position.

Yours sincerely,



Cathy Hawara
Director General
Charities Directorate

Attachments:

- CRA letter dated April 29, 2013
- Representations dated May 27, 2013

c.c.: Mrs. Julie Larsen
3333 Graham Blvd. room 400
Mont-Royal QC H3R 3L5



CANADA REVENUE
AGENCY

AGENCE DU REVENU
DU CANADA

NOTICE OF ASSESSMENT - AVIS DE COTISATION

Date of mailing - Date de l'envoi	Business Number – Numéro d'entreprise 886974955RR0001	Taxation year - Année d'imposition 2008
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NAME OF ORGANIZATION – NOM DE L'ORGANISME

The Barbara and David Zukor Charitable Foundation of Hampstead

Penalty amount \$13,291	Amount paid	Balance owing \$13,291
Montant de la pénalité	Montant payé	Solde dû

Explanation of assessment – explication de la cotisation

Providing personal benefits to members of the Organization, contrary to subsection 188.1(4) of the Income Tax Act.

Andrew Treusch
Commissioner of Revenue
Commissaire du revenu

Canada