



JUL 06 2010

REGISTERED MAIL

The Gateway Benevolent Society
Suite 200 - 2296 McCallum Road
Abbotsford BC V2S 3P4

BN: 894271618RR0001

Attention: Mr. Ian Worland

File #: 3015152

**Subject: Notice of Intention to Revoke
The Gateway Benevolent Society**

Dear Mr. Worland:

I am writing further to our letters dated January 21, 2009 and March 18, 2010 (copies 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 The Gateway Benevolent Society in accordance with subsection 168(1) of the *Income Tax Act*.

We have reviewed and considered your responses on behalf of The Gateway Benevolent Society dated February 19, 2009 and April 29, 2010 (copies enclosed). Notwithstanding your replies, our concerns with respect to The Gateway Benevolent Society's failure to devote all of its resources to its charitable purposes, failure to issue receipts in accordance with the *Income Tax Act* and/or its Regulations, acquisition of control of a corporation, and failure to maintain adequate records have not been alleviated. Appendices A and B, which accompanied our letter of March 18, 2010, have been revised for clarification and have also been included.

Conclusion:

The Canada Revenue Agency's (CRA) audit of The Gateway Benevolent Society (the Organization) revealed that the Organization operated primarily to facilitate the benefit of four corporations seeking to dispose of their assets in the most advantageous manner. The Organization entered into a number of tax planning transactions, along with other Canadian registered charities, in order to facilitate the sale of each corporation's assets. The CRA audit also revealed that the Organization failed to comply with the *Income Tax Act* (the Act) on the issuance of official donation receipts, in acquiring control of a corporation and failure to maintain and/or provide adequate books and records. For all of these reasons, and for each of these reasons alone, it is the position of the CRA that the Organization's registration should be revoked.

Consequently, for each of the reasons mentioned in our letters dated

Canada

Place de Ville, Tower A
320 Queen Street, 13th Floor
Ottawa ON K1A 0L5

January 21, 2009 and March 18, 2010, I wish to advise you that, pursuant to the authority granted to the Minister in subsections 149.1(3) and 168(1) of the Act, which has been delegated to me, I propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(d), 168(1)(e), subsection 149.1(1) and paragraph 149.1(3)(c) 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
894271618RR0001

Name
The Gateway Benevolent Society
Abbotsford BC

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

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

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

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

Consequences of Revocation

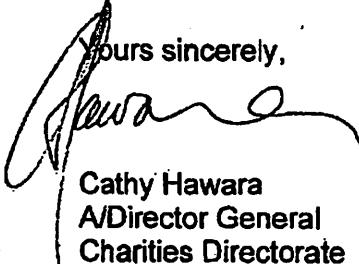
As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I Tax as a registered charity and will no longer be permitted to issue official donation receipts. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;

- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046, *Tax Return Where Registration of a Charity is Revoke* (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 "D", attached. Form T-2046 and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our website at www.cra-arc.gc.ca/charities;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (ETA). As a result, the Organization may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please 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 the prescribed form, containing prescribed information, for each taxation year. The *Return of Income* must be filed without notice or demand.

Yours sincerely,



Cathy Hawara
A/Director General
Charities Directorate

Attachments:

- Our letters dated January 21, 2009 and March 18, 2010;
- Your letters dated February 19, 2009 and April 29, 2010;
- Appendix "A", Revised Summary of Transactions;
- Appendix "B", Revised Summary of ;
- Appendix "C", Summary of ; and
- Appendix "D", Relevant provisions of the Act

cc: Mr. John Glazema



REGISTERED MAIL

The Gateway Benevolent Society
Suite 200, 2296 McCallum Road
Abbotsford, B.C.
V2S 3P4

BN: 894271618 RR0001
File #: 3015152

Attention: John Glazema

January 21, 2009

Subject: Audit of The Gateway Benevolent Society Foundation

Dear Mr. Glazema:

This letter is further to the audit of the books and records of The Gateway Benevolent Society Foundation ("Gateway") conducted by the Canada Revenue Agency (the CRA). The audit related to the operations of Gateway for the period from November 1, 2003 to October 31, 2007.

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

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

Vancouver Island Tax Services
1415 Vancouver Street
Victoria BC

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

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

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

Canada

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide Gateway 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 Gateway'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, 155)

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, Gateway has not shown through its programs and arrangements for the undertaking of activities, that it devotes all of its resources to its own charitable activities. In fact, Gateway (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.

One of the directors of Gateway owns

a corporation that specializes in listing and selling agricultural properties in British Columbia. He advised that in many situations the property owners are interested in selling the shares of their farms but most buyers are interested in buying the assets, not the shares. He further advised that, from a seller's perspective, it is more beneficial to sell the shares. Consequently, the directors worked with Blake Bromley and other legal representatives to create a tax planning arrangement to dispose of the shares and/or assets through a charity resulting in a more favorable tax advantage to the seller.

(A) Non-Charitable Transactions

Gateway's website states "As a result of a recent partnership agreement with
and

Gateway Benevolent Society now provides investment banking support, thereby ensuring maximum benefit to charitable organizations along with maximum tax benefits to donors."

Gateway was involved in a series of transactions unrelated to its charitable purpose involving the disposition of shares and/or assets of a number of farms as follows:

Fiscal Year 2004

1)

- November 20, 2003 - Purchase of 100% of the shares in the capital of _____ or \$1,527,166 including shareholder loans (Total \$1,600,000). Consideration was loan payable to _____.
- November 25, 2003 - _____ sold its assets to _____ for \$1,875,000.
- December 31, 2003 - Donation from _____ \$455,060. Consideration was loan receivable from _____.
- October 31, 2004 - receipt # 4004 in the amount of \$455,060 issued to _____ by Gateway.
- October 31, 2004 - Dividend received by Gateway from _____ \$1,242,048. Source of cash was sale of assets.
- October 31, 2004 - Year end adjustment to recognize loss and to write down share value from \$1,527,166 to 0 as a result of assets being sold by _____ to _____ for \$1,875,000. The loss was recorded as an offset to revenue on the T3010A Charity Information Return.

The audit disclosed that Gateway likely did not receive any financial benefit from this transaction and retained no assets as a result.

Fiscal Year 2005

2)

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

- February 25, 2005 - Specified gift from Theanon Charitable Foundation ("Theanon") \$665,000
- March 1, 2005 - Specified gift from Theanon \$5,250
- March 1, 2005 - Purchase of 35% of the shares in the capital of _____ for \$670,250 (balance of shares purchased by Essential Grace Foundation ("Essential") – 35% and Prescient Foundation ("Prescient") – 30%). Total purchase price was \$3,370,000 less outstanding loan.
- March 1, 2005 - Assets were gifted by _____ to Theanon on the same date.
- June 24, 2005 - Specified gift from Theanon of \$139,000. Journal entries indicate \$139,000 includes 1) repayment of \$5,000 appraisal fees and 2) repayment of \$84,000 realty fees. The balance of the transfer was paid to the Charity as a fee.
- December 31, 2005 - Year end adjustment to write down share value by \$670,250 to 0. The loss was recorded as an offset to revenue on the T3010A Charity Information Return.

3)

- May 26, 2005 - purchases all of the outstanding shares of for \$3,034,025 less liabilities - net proceeds \$1,743,280. was originally owned by Glazema & Venema, two of the founding directors of Gateway.
- May 26, 2005 - sells all outstanding shares in the capital of for \$3,275,300 to three charities: The Gateway Benevolent Society ("Gateway") \$1,142,890 - 35%, Theanon Charitable Foundation ("Theanon") \$1,142,890 - 35%, and Essential Grace Foundation ("Essential") \$989,520 - 30%. Transaction is recorded as accounts payable to (promissory notes issued).
- May 30, 2005 - gifts the assets valued at \$3,298,400 to Gateway (35%), Theanon (35%) and Essential (30%).
- May 30, 2005 - Gateway issues official donation receipt # P5001 to for \$1,154,440.
- May 31, 2005 - The quota is sold by the above three charities to three purchasers for \$2,573,400. Gateway's share of the proceeds is \$900,690. The land, building and equipment is sold back to the original shareholders for \$725,000. Gateway's share of the proceeds is \$253,750.
- May 31, 2005 - shares in the capital of are sold back to the original shareholders for \$1.
- June 16, 2005 - Proceeds from sale of assets are used to repay loan from
- December 31, 2005 - year end adjustment to write down the share value by 1,142,890 to 0. The loss was recorded as an offset to revenue on the T3010A Charity Information Return.

Fiscal Year 2007

4)

August 2007

- Malachi 3:10 Foundation ("Malachi") purchased 100% of the shares in the capital of Gateway and Malachi have directors in common - Ivor Venema and John Glazema.
- sold all of its assets to a related party.
- Gateway received a gift of \$1,800,000 with a 10-year direction from as a result of selling its assets to
- Gateway issued a charitable donation receipt for \$1,800,000 to
- Gateway transferred \$1,800,000 designated as a 10-year gift to Malachi.

All of the above examples represent circular transactions with no obvious charitable purpose. See following comments related to tax receipting of amounts related to the transactions.

(B) Gifts to Non-Qualified Donees

Gateway was registered as a private foundation effective July 31, 2000 and redesignated as a public foundation effective November 1, 2004. As stated in its governing documents,

"The purpose of the Society is to provide financial assistance for low income families and individuals in the Fraser Valley region of British Columbia in the following ways:

- (a) by subsidizing education for job training;**
- (b) by operating a benevolent fund directly through other registered charities;**
- (c) by assisting in financing Christian education; and**
- (d) educating on Christian stewardship."**

Gateway filed nil returns for the fiscal years 2000 to 2003. It is our understanding that, beginning in the 2004 fiscal year, a number of tax planning scenarios were presented to Gateway by legal representatives with regard to the purchase and sale of shares/assets of poultry and dairy farms listed for sale by a company owned by one of the Gateway directors.

It appears from the review of documents and from discussions held with one of the directors that, of the activities conducted by Gateway, 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 Gateway were devoted to participating in a number of complex farm transactions.

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

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

Fiscal Year 2004

1) Barister \$11,501.90 (Ck # 06)

- Reviewing of financial data
- Considering issues and providing advice with regard thereto.

2) \$20,126.59 (Ck # 11)

- Income tax consequences of transactions regarding proposed by Review plan in respect of sale of and undergoing research to determine whether GAAR applies.
- Discussions regarding charitable donation scheme proposed by

3) L (Ck # 12)

Invoiced to / paid by Charity

- Meetings with Glazema (Gateway director) regarding purchases of various properties and milling issues.
- Calls to Gold Commissioner's office regarding process of staking claim.
- Review law regarding reservation of minerals and mines by Crown.

4) \$1,341.15 (Ck #13)

- Email to client regarding budget changes.
- Conference with client and / revise structure.

5) \$8,583.23 (Ck # 13)

- Review proposed transactions involving Gateway and GAAR analysis, 10-year gift scenario and tax implications of wind-up.
- Discussions regarding tax issues related to preferred share alternative in structuring sale of Fed's.
- Conference regarding Part V tax.
- Discussed various tax planning issues related to proposed transactions involving Gateway.

6) \$1,348.35 (Ck # 20)

- Memo regarding rights to gravel on land.
- Revise draft aggregate purchase agreement.

7) \$1,217.64 (Ck # 23)

- 2.5 hour conference with client.

8) Barrister \$13,680 (Ck # 31)

- Reviewing various corporate financial statements and revisions to the statutory amendments and determining how to increase charity funding.

9) \$1,130.46 (Ck # 27)

- Conference with Glazema, Negus and Bromley.

Fiscal Year 2005

1) \$2,500 (Ck # 16)

- Appraisal of property.

2) \$2,500 (Ck # 19)

- Appraisal of property.

3) \$5,000

- Property search fees.

4) \$940
• Helicopter flight to Merry Island (flight training – J. Glazema).
(Cost shared with [redacted], related corporation)

5) \$400 (Ck # 22)
• Re-writing of website text for [redacted], a related corporation.

Fiscal Year 2006

1) \$5,000 (Ck # 90)
• Services rendered (no explanation provided).

Fiscal Year 2007

1) \$2,500 (Ck # 1019)
• Canucks hockey tickets purchased from [redacted] by Gateway.

2) \$6,881.91
• Discuss charitable fundraising matters & various tax issues.
• Peruse opinion re: s. 248(35) of the Act.
• Peruse opinion of [redacted] lawyer on Parklane (tax shelter).
• Review [redacted] and [redacted] transactions and consider outstanding issue/compliance.

3) \$9,230.15
• Consider options regarding SSC47 and [redacted] y.
• Peruse [redacted] documents.
• Consider debt and DQ issues related to multiple transactions.

Conclusion

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

As well, according to its Website, Gateway now provides investment banking support, an activity that is not considered to be charitable.

Due Diligence of Directors

We note with concern, with respect to the activities of Gateway 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 Gateway has been sidetracked by its involvement in complex circular business transactions that have put the assets of Gateway at risk.

For example,

- Gateway received a \$1,800,000 gift of enduring property with a 10-year direction from [REDACTED] a result of selling its assets to [REDACTED]. An official donation receipt was issued to [REDACTED] by Gateway and the gift was immediately transferred to Malachi 3:10 Foundation ("Malachi"), a charity with common directors. Malachi used the funds to acquire shares in the capital of [REDACTED] eradicating the purpose of the 10 year gift.
- Gateway allowed its receipting privileges to be used knowing it did not have unfettered right to use the funds as the intent was to immediately transfer the amount to a related charity. Gateway knowingly put the assets at risk when it agreed to be involved in this transaction.
- Gateway accepted 500,000 common shares of a private corporation, Freedom Technologies (VCC) Inc. from [REDACTED]. An official donation receipt was issued to the donor for \$100,000.

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 Gateway contravened this requirement by not properly determining the FMV of donated property and issuing receipts other than for the actual value of the property issued.

- The purchase of shares in 2004, 2005 & 2007 was not a prudent investment because it resulted in a loss in the value of the shares as follows:
 1. [REDACTED] - loss in the value of shares of \$1,527,166 offsets dividend income and donation amount.
 2. [REDACTED] - loss in the value of shares of \$1,142,890 offsets donation income of \$1,154,440.
 3. [REDACTED] - loss in the value of shares of \$670,250 offsets gift from qualified donee of \$670,250.

Apparently the depletion of value of the shares was as a result of the sale of assets by the corporation.

The directors would have known that an agreement to sell or gift the assets was in place at the time the shares were purchased because of the close relationship between the parties involved. As well, the farms were listed for sale through [REDACTED] an agricultural real estate firm owned by one of the directors of Gateway.

- Gateway remains indebted for \$50,000 to Malachi and \$15,000 to [redacted] related to the [redacted] and/or or [redacted] transactions.
- Gateway loaned \$50,000 to [redacted] on March 28, 2006 and \$50,000 on October 18, 2006. (Re: deposit on [redacted] property). Gateway transferred these investments to Malachi and reported a 100% gift to a qualified donee.
- Gateway allowed its receipting practices to be used as part of a series of complex transactions unrelated to charitable activities. For example,
 1. \$1,800,000 receipt issued to [redacted] as part of a series of transactions to dispose of shares/assets of [redacted]
 2. \$455,060 receipt issued to [redacted] as part of a series of transactions to dispose of shares/assets of [redacted]
 3. \$1,154,440 receipt issued to [redacted] as part of a series of transactions to dispose of shares/assets of [redacted]
 4. \$34,006 receipts were issued to directors Walton, Venema and Glazema respectively in 2004. Internal accountant and director were unable to explain why the receipts were issued, however a letter from Gateway's representative indicated the monies were transferred to Gateway as a result of a transaction with [redacted] that did not complete. No further explanation was provided.
- The internal accountant and the founding director were unable to explain the details of the business transactions of [redacted] and [redacted]. They advised
 1. no minutes of the meetings held with parties to the transactions were documented in writing;
 2. tax planning documents did exist but the legal representatives were not willing to provide them to the auditor for review;
 3. their external accountant would be able to provide an explanation of the transactions but the information was never received; and
 4. journal entries were provided to Gateway by [redacted] and were simply recorded in the books and records without fully understanding the transaction.

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

Conclusion

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

- using Gateway to transact a series of complex transactions for the benefit of

organizations and individuals related to the founding director of Gateway,

- allowing its receipting practices to be used for the benefit of other related organizations,
- putting the assets of Gateway at risk by loaning funds to organizations involved in the transactions,
- eradicating the donor's intent associated with making a \$1,800,000 gift of enduring property (10-year gift) by immediately transferring it to a related charity who in turn loaned the funds to other parties involved in the share/asset transaction,
- authorizing expenditures invoiced to related corporations operating out of the same office to be paid by Gateway and
- simply accepting the direction of their representatives without fully understanding the transactions.

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

It is our position that Gateway has contravened the *Income Tax Act* by issuing receipts for transactions that do not qualify as gifts. We offer the following explanations to support our position.

No Animus Donandi

In order to qualify as a charitable donation, there must be a true gift at common law. A true gift is a voluntary transfer of real or personal property from a donor, who must freely dispose of the property, to a donee, who receives the property given. The transaction may not result directly or indirectly in a right, privilege, benefit or advantage to the donor or to the person designated by the donor. Any legal obligation on the payor would cause the transfer to lose its status as a gift.

An essential element of a gift is *animus donandi* - that the donor must be motivated by an intention 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 a number of the share/asset purchase transactions involving Gateway fail to meet this latter element. The common theme, found throughout these transactions, is that as a result of a series of transactions the "donors" profit as a result of the underlying tax planning. 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 that:

- Transactions are pre-arranged and handled entirely by third parties, i.e., legal and accounting representatives.
- Gateway is simply expected to record the transactions according to the adjusting journal entries provided without fully understanding the transaction.
- Gateway loans its receipting privileges for a fee.
- The amounts received and receipted by Gateway are not true gifts because the funds are allocated to complete the transaction. At the completion of the transaction, Gateway's financial position has not increased by an amount at least equal to the receipted amount.

No Unfettered Discretion

According to Income Tax Ruling 2001-0065935(E), "In order for an expenditure to be considered a gift, it must be without conditions, from detached and disinterested generosity, out of affection, respect or charity or like impulses, and not from the constraining forces of any moral or legal duty. The donee must have an unfettered right to use a donation as they wish."

The donations made to Gateway were part of a series of transactions. Gateway did not expect to retain the amount received from the donor and in most cases the cheques were deposited directly to a lawyer's trust account to complete a complex series of transactions related to the purchase and sale of shares and/or assets of a poultry/dairy farm.

It was obviously the intention of the donor that the funds be used to complete the farm transactions. It is our view therefore that the donation would be directed and not unfettered because the funds were transferred with a purpose.

Donations

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

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

- Receipt # 6002 was issued to [REDACTED] for \$100,000 on March 1, 2006 representing a gift of 500,000 common shares that are not listed on a prescribed stock exchange. The shares of [REDACTED] were purchased on November 30, 2005 by the donor and gifted to Gateway on December 14, 2005.

If the fair market value of the donated goods is more than \$1,000, the Charities Directorate strongly recommends the property be appraised by someone who is not associated with either the donor or the charity receiving the gift (i.e., a third party). The person who determines the fair market value of the property must be competent and qualified to evaluate the particular property being transferred by way of a gift.

No independent evaluation of the fair market value of the shares was made by Gateway prior to accepting the property and issuing the official donation receipt.

- Receipts were issued in conjunction with a number of complex, circular business

transactions. Planning related to these donation receipts provided for them to be erroneously treated as enduring property.

Gateway issued receipts on the advice of representatives without fully understanding the transactions. Gateway did not have unfettered right to expend the funds as they wished.

The internal accountant and the founding director were unable to provide details of why the following receipts were issued:

- 1) # 7002 - \$1,800,000
- 2) # P5001 - \$1,154,440
- 3) # 4004 - \$455,060

Although an explanation was requested from the external accountant, it was not provided.

- Receipts were issued to directors but no explanation was given and no documentation was provided to determine if the funds were transferred to Gateway as a result of one of the dairy/poultry farm transactions. The auditor could not determine if the following donations were accurately attributed to the directors:

- 1) #4001 \$34,006 Glazema
- 2) #4002 \$34,006 Venema
- 3) #4003 \$34,006 Walton

Conclusion

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

3) Acquiring Control of a Corporation

Paragraph 149.1(3) (c) of the Act states

"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 since June 1, 1950, acquired control of any corporation."

On November 20, 2003 Gateway purchased 100% of the shares in the capital of

4) 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 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 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 *ITA* is itself sufficient reason to revoke an organization's charitable status⁴.

It is our view that Gateway failed to provide access to all of its records at the time of the audit. For example, no Board minutes or planning documents explaining the complex asset/share purchase arrangements being transacted with _____ and _____ in the books and records of Gateway were available for review. It is not reasonable that Gateway's directors were able to fully understand the business transactions presented by the representatives without being provided with written documentation.

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

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

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

In 2004, \$80,000 in professional fees were paid by Gateway with regard to planning and advice provided to Gateway with respect to the tax implications of a number of proposed transactions. The transactions related to the purchase and sale of shares and/or assets of a number of dairy/poultry businesses such as [REDACTED] Mr. Blake Bromley provided the original plan and [REDACTED] was retained 1) to analyze the income tax consequences of transactions proposed by Mr. Bromley regarding the sale of [REDACTED], 2) to determine if the general anti-avoidance rules (GAAR) of the Act applied, and 3) to review the charitable donation scheme proposed by Mr. Bromley. No supporting documentation was provided during the audit to support that these expenditures were incurred on behalf of Gateway versus entities related to the directors.

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

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

Conclusion

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

(5) 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.

Gateway has improperly completed T3010A returns for the November 1, 2003 to October 31, 2007 fiscal periods, as there were numerous errors and omissions as outlined below.

FPE 31/10/2004

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

- C11 "Did the charity make gifts to qualified donees?" The question was erroneously answered no. Gateway gifted \$70,900 to qualified donees in the fiscal year.
- Question D6 - Except for compensation, did the charity, directly or indirectly, transfer any part of its income or assets to individuals or organizations not at arm's length to the charity? Line 3950 was erroneously marked no. Refer to (B) Gifts to Non-Qualified Donees for numerous examples of amounts transferred to individuals and organizations not at arm's length to the charity.
- G1 "In the fiscal period, did the foundation acquire control of a share-capital or for-profit corporation?" The question was erroneously answered no. Gateway purchased all of the shares of on November 20, 2003.

FPE 31/10/2005

- The Directors/Trustees Worksheet, form T1235, was not completed in full as the dates of birth and the telephone numbers of all of its directors were incomplete.
- Question 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.
- Amount of \$809,250 reported on Line 4510 erroneously included \$89,000 reimbursed by Theanon to the Charity for realty and appraisal fees paid on behalf of the Vision transaction.
- C11 "Did the charity make gifts to qualified donees?" The question was erroneously answered no. Gateway gifted \$9,294 to qualified donees in the fiscal year.

FYE 31/10/2006

- The Directors/Trustees Worksheet, form T1235, was not completed in full as the dates of birth and the telephone numbers of all of its directors were incomplete.
- C11 "Did the charity make gifts to qualified donees?" The question was erroneously answered no. Gateway gifted \$427,949 to qualified donees in the fiscal year.
- Question D6 - Except for compensation, did the charity, directly or indirectly, transfer any part of its income or assets to individuals or organizations not at arm's length to the charity? Line 3950 was erroneously marked no. Refer to (B) Gifts to Non-Qualified Donees for numerous examples of amounts transferred to individuals and organizations not at arm's length to the charity.

FYE 31/10/2007

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

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 Gateway 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 Gateway, 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 Gateway by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

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

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

Yours sincerely,



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

Cc: Blake Bromley



Canada Revenue
Agency

Agence du revenu
du Canada

REGISTERED MAIL

March 18, 2010

The Gateway Benevolent Society
Suite 200, 2296 McCallum Road
Abbotsford, BC V2S 3P4

BN: 89427 1618RR0001
File #: 3015152

Attention: Mr. Ian Worland

Subject: Audit of The Gateway Benevolent Society

Dear Mr. Worland:

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

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

Failure to Operate for and Devote its Resources to Charitable Purposes

As you are aware, the Organization was registered July 31, 2000 as a public foundation. The Organization's stated purposes, as contained in its governing document are

Vancouver Island Tax Services
1415 Vancouver Street
Victoria BC

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

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

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

Canada

[t]o provide financial and other forms of assistance for low income families and individuals in the Fraser Valley region of British Columbia in the following ways:

- (a) by subsidizing education for job training;
- (b) by operating a benevolent funds [sic] directly through other registered charities;
- (c) by assisting in financing Christian education; and
- (d) educating on Christian stewardship.

In 2004 the Organization was re-designated, on request, as a public foundation.

As detailed in our previous letter, our audit reviewed the Organization's operations of November 1, 2003 to October 31, 2007 and the audit demonstrated that, during the period under review, little of the activities fall within the charitable purposes of the Organization. While we acknowledge that the Act includes, as a statutorily recognized charitable purpose, gifting to qualified donees, we also note that:

- (1) the Organization is not established for this general purpose – being instead established for the narrower purpose of providing financial and other forms of assistance to low income persons, and
- (2) the preponderance of financial and other activity during the period under review was not directed towards the achievement of the Organization's purposes, but instead towards the benefit of private individuals.

As stated in our previous letter, the Organization has primarily operated for the private benefit of private individuals and corporations, each seeking to dispose of their farm assets. In our view, the transactions were designed to route the property through registered charities under the guise of legitimate investments and gifts to facilitate the avoidance of taxes payable on the disposition of these assets, rather than to genuinely enrich the charities involved. The Organization's role in three of the arrangements was to purchase the shares of the corporation. When the assets of the corporation were sold to another corporation or gifted to another participating charity, the shares of the corporation were written down to nil at year-end.¹

Your letter of February 19, 2009 states that the transactions entered into by the Organization were done "for the purpose, and achieve the result, of securing funds for use in its charitable activities." With respect, we disagree. While it is clear that the Organization realised some benefit from the transactions, it is our view that the primary purpose of these transactions was to benefit private individuals and their corporations with incidental benefits being received by the Organization (and sometimes to the detriment of charitable funds). Specifically we note the following:

¹ Refer to Appendix A, B and C 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.

Fiscal Year 2004:

Your response characterizes this transaction as a net benefit of \$170,000 to the Organization. In our view, this overlooks the fact that, having purchased 100% of the shares in [REDACTED], it was, in our view, already entitled to the assets in [REDACTED] including the gain. Rather than simply receiving the full amount as a dividend, an artificial donation was made from [REDACTED] of property already owned by the Organization. A \$455,000 tax receipt was subsequently issued for a net benefit to the Organization of \$170,000.

Fiscal year 2005:

As outlined in our previous letter, in 2005 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 \$50,000.

In your letter you note that the net financial benefit to the Organization was \$50,000. With respect, we disagree with this characterization. In our view, as a registered charity the Organization was obligated to devote the full \$720,250 towards its charitable purposes (i.e., the provision of financial assistance to low income individuals). The purchase and pre-planned write-down of \$670,250 in shares is simply an unacceptable use of assets which should have been devoted to genuine charitable ends.

Regarding the [REDACTED] transactions, as described in our previous letter, the Organization also entered into a number of transactions, along with three other Canadian registered charities, to facilitate another sale of farm assets of a corporation, including its BC egg hatching quota. The transactions, as above, also involved the Organization's purchase of \$1,154,440 of shares from [REDACTED] and the pre-planned write-down of the shares to nil.

In your letter you note that the transaction produced a net benefit of \$11,000 for the Organization. Again, we disagree with this characterization. While the Organization,

after the transactions in question, may have received a nominal fee, it also issued a substantial tax receipt for a gift purportedly received but was left with no equivalent increase in assets.

As in our previous letter, we note that the Organization purchased, on credit, 35% of the shares in [REDACTED] for \$1,142,890 in full knowledge that these shares, as a part of this scheme, would be de-valued to zero. These shares were in fact devalued to zero when 35% of the assets of [REDACTED] – assets which the Organization already beneficially owned – were gifted to the Organization (and a tax receipt of \$1,154,440 was issued). After the pre-arranged sale of the properties and repayment of the loans, the Organization was left with little more than a small fee for participation. As such, solely based on the nature of transactions as represented to us, in the [REDACTED] arrangement it appears that the Organization improperly disposed of \$1,142,890 to purchase shares it knew would subsequently become valueless.

In 2007, the Organization received \$1,800,000 from [REDACTED] and issued a charitable tax receipt. In your letter you note that "the gift was not used to acquire shares of [REDACTED] but rather that Malachi already owned those shares." You are correct that the Malachi 3:10 Foundation did, in fact, already own the shares in [REDACTED] – 100% in fact. As such, it would appear that the Organization has structured its operations to flow money through its accounts and issue a receipt for a donation of property effectively already owned by another registered charity. Per the details outlined in our previous letter, this was done to artificially create a donation to registered charities where, in fact, the shares owned by a registered charity were being devalued to zero. The Organization's role in this transaction was to accommodate the parties involved by transferring the funds donated to it to the Malachi 3:10 Foundation.

As above, our view is that in the years under review, the Organization has not operated for exclusively charitable purposes, but has primarily operated for the benefit of private individuals. In your letter you note that, during the years in question, the Organization raised over \$231,500² for use in its charitable programs and distributed over \$400,000 to unrelated qualified donees. We respectfully disagree with this characterization as, in our view, the operations of the Organization clearly demonstrate that the Organization was operated for private tax planning purposes with its charitable purposes merely being incidental.

Between 2004 and 2005 the Organization's primary activity was participation in tax abusive planning arrangements and, during that period, it received a net benefit of \$231,500 for its participation. In that same period the Organization issued tax receipts for \$1,609,440, purchased and wrote-off \$1,813,140 in investments in private companies,

² According to your representation letter, the Organization netted \$170,000 from the Inc; \$50,000 from the [REDACTED]; and \$11,550 from the [REDACTED] transactions.

and incurred \$101,077 in legal and consulting fees. The Organization expended a mere \$80,194 on gifts to qualified donees during that period.

While, in 2006 the amount of charitable activity increased to \$427,949, we note that the largest single gift made (\$250,000) was to a non-arm's length charity, the Malachi 3:10 Foundation, the participant in the 2007 transactions. Again, in 2007, we see substantially all of the Organization's activity devoted to participation in a tax planning arrangement with a mere \$54,000 being gifted to arm's length qualified donees and \$21,691 in professional and consulting fees.

As described above, and as detailed in our previous letter, in our view the overall conduct of the Organization in the arrangements demonstrates that the Organization is operating for the purpose of promoting private interests in personal tax planning arrangements, rather than operating in furtherance of its charitable purposes. As mentioned in our previous letter, the Organization paid for various other expenses incurred by the corporations involved in the tax planning arrangements. During the audit period, the Organization paid over \$143,000 for legal and consulting fees related to these transactions, and \$41,000 to the CRA for taxes owing on behalf of one of the corporations and for other expenditures such as appraisal and property searches for transactions that, in our view, were primarily designed to benefit private individuals.

For these reasons we remain of the position that the Organization has failed to pursue its charitable purposes, failed to operate for exclusively charitable purposes as required by subsection 149.1(1) of the Act and has operated for the private gain of the individuals and corporations involved in the tax planning arrangements. As such the Organization has failed to demonstrate that it meets the test for continued registration under 149.1(1) as a charitable foundation "operated exclusively for charitable purposes".

Gifts to Non-Qualified Donees

In your letter you characterize the transactions as expenditures incurred towards fundraising. As above, it is our view that the majority of transactions were primarily designed to benefit private individuals and their corporations with an incidental benefit to the Organization (and arguably a net loss to the sector if one considers charitable funds lost through the deliberate write-down of investments). In our view, the Organization has paid for legal advice and fees on behalf of private individuals and as such there are grounds for its revocation under this Act.

In addition, it is our view that, in the transactions described above, the Organization has made a gift to a non-qualified donee by transferring \$670,250 in return for a small participation fee and shares that it knew were valueless at the time or were about to become valueless. We do not view this transaction as a simple 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 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.

In the same fashion, it is our view that the Organization knew, or ought to have known that in the transactions, the purchase of \$1,142,890 of shares, on credit, were valueless at the time or were about to become valueless. The Organization therefore made an additional gift to a non-qualified donee.

Issuing Receipts Not in Accordance with the Act

Our position remains that the assets received by the Organization from [] and [] were not valid gifts under section 118.1 of the Act.

It is our contention that, as above, the primary motivation of the corporations was not to enrich the Organization, but through a series of structured transactions, route the sale of assets through several registered charities with the sole objective to avoid or reduce the taxes otherwise payable on the disposition of assets. Transactions were structured to give the appearance of a gift for the purpose of obtaining an official donation receipt, whereas little or no benefits were obtained by the registered charities.³

It remains our view that the Organization, in the majority of the transactions described above, did not have discretion to use the assets received towards its charitable programs but was obligated to disburse these as directed. As such, it is our position the Organization was not entitled to issue official donation receipts in these circumstances.

Further, it does not appear that the gift of assets from [] and [] did not qualify as a gift at law as the transfer of assets was not legally effective. The purchase and sale agreements to sell the assets to third parties were entered into prior to the Organization's involvement. As stated in our previous letter, the Organization at no point gained unfettered ownership of the assets. In fact, the [] legal representative confirmed to the BC Chicken Marketing Board that the ownership remained in the hands of Mr. and Mrs. [] "despite any change in ownership and control of the Company [] which may have taken place". Also, as outlined in our previous letter, the [] re-acquired some of the same assets (excluding the permit and quotas held with the BC Chicken Marketing Board and BC Egg Hatching Commission) previously "donated" to the Organization and purchased the shares from the participating charities for \$1⁴. The assets did not change in value. It is in this regard that the CRA is unconvinced the corporations involved "ended up poorer" as a result of the transactions

³ In the case of [], \$1,800,000 was "donated" to the Organization who in turn issued a donation receipt and immediately transferred the funds to a related charity, Malachi 3:10 Foundation for the purpose of repaying the debt it incurred acquiring El's shares.

⁴ May 26, 2005 – Organization purchases shares of [] May 30, 2005 – [] gifts assets to Organization; May 31, 2005 Organization sells quotas to third party, assets and shares to the

entered into with the Organization. The corporations succeeded in their pre-arranged sale of assets and/or quotas while obtaining official donation receipts to offset any capital gains or taxes accruing as a result of the sales.

We accept the Organization's representations and documentation provided regarding receipts #6002, 4001, 4002 and 4003.

Acquiring Control of a Corporation

We concur with your argument that the Act does not specifically require the Minister to revoke the registration of a public foundation that has acquired control of a corporation. However, as previously stated in our letter of January 21, 2009, paragraph 149.1(3)(c) of the Act permits the Minister to revoke the registration of a public foundation that has, since June 1, 1950, acquired control of a corporation. Additionally, Charities Summary Policy CSP-C28 states "Charitable foundations cannot acquire control of any corporation. Control usually means that the foundation owns, or the foundation plus persons not dealing with it at arm's length own, more than 50% of a corporation's issued share capital with full voting rights."

Despite the Organization's representations that the acquisition occurred five years ago and that there has not been a subsequent acquisition of control, we do not agree that the Organization should not be revoked. The timing of the acquisition has no bearing on our decision; the fact remains that the Organization acquired control and retains control of the corporation to date. Additionally, we note that on March 17, 2005, the Organization entered into another "Contract of Purchase and Sale of Shares" to purchase all of the shares in the capital of [REDACTED]. Although the audit did not reveal any evidence to show that this sale did occur, no evidence has been provided indicating the contract was cancelled.

Failure to Maintain Adequate 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. 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.

Our position remains that, for all of the reasons outlined in our letter of January 21, 2009, the Organization did not maintain adequate books and records. The representations received did not alter our position.

We accept the Organization's representations that the errors and omissions on the Registered Charity Information Returns (T3010) are not grounds for revocation; however, our position remains that the Organization failed to file complete and accurate T3010s.

Appropriateness of Revocation

Finally, we note that your letter argues, "In our view, many of the allegations set out in your letter are unfounded." We disagree. As discussed above, the Organization has failed to demonstrate that it operates exclusively for charitable purposes. Instead, the Organization operates to facilitate the benefits of individuals and corporations involved in tax planning arrangements and have lent its status and tax-receipting privileges to support these personal interests. The Organization has acquired over \$3.3 million in shares and assets yet has deliberately written-off \$1,813,140 in investments and devoted only 20% or \$690,000⁵ to charitable activities. The Organization has also breached a number of other requirements of the Act as described above. It is the CRA's position that these breaches are serious contraventions of the Act and likely warrant the revocation of the Organization's registered status.

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

⁵ Included is a gift of \$250,000 made to another charity participating in the tax planning arrangements.

- 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
- Appendix "A", Summary of Transactions
- Appendix "B", Summary of Ltd.
- Appendix "C", Summary of

cc: Mr. John Glazema

Appendix "A" – Revised

Summary of

Transactions

Summary of Entities

..... was incorporated in British Columbia on January 14, 1988. Prior to February 2005, it was owned by It owned various assets including bird quota, real estate and equipment. and were amalgamated under the name of on March 1, 2005.

..... was incorporated in British Columbia on August 13, 1998. Prior to February 2005, it was owned by and

Theanon Charitable Foundation (Theanon) was incorporated under the British Columbia Society Act on September 22, 1986. It is a registered charity.

Essential Grace Foundation (Essential) was incorporated under the BC Society Act. It is a registered charity.

Prescient Foundation (Prescient) was incorporated under the BC Society Act. It is also a registered charity.

Gateway Benevolent Society (Gateway) was incorporated under the BC Society Act. It is also a registered charity.

Philanthropy Without Frontiers (PWF) was incorporated under the BC Society Act. It is also a registered charity.

..... is the spouse of (.....). They are Canadian residents of British Columbia.

..... is a real estate company in BC specializing in farm property. It is a Canadian corporation operated by John Glazema.

..... (.....) is a law firm that acted for various charities.

..... (.....) is a law firm that acted for the

Summary of Transactions

November 15, 2004

Listing agreement was signed between _____ and _____ whereby _____ agreed to sell property owned by _____ for a commission. The property included real estate, 30,050 BC egg hatching quota and equipment.

December 14, 2004

Contract of Purchase and Sale was signed whereby _____ offered to purchase property from _____ for \$3,460,000. A deposit of \$50,000 was to be paid once conditions were removed.

January 24, 2005

All conditions of the December 14th agreement were removed. This agreement was transferred from Ji _____ to _____ and _____.

January 25, 2005

A cheque from the _____ to _____ in Trust was written in the amount of \$50,000. (It is assumed that _____ is the name of business).

February 8, 2005

A share purchase agreement was signed between Gateway and the _____, the shareholders of _____ whereby Gateway agreed to purchase all of the shares of _____ for \$3,460,000. The deal was to close February 9th, although there is no evidence that it did.

February 14, 2005

Theanon purportedly gifted \$1,100,000 to Philanthropy Without Frontiers (PWF).

February 25, 2005

Theanon purportedly gifted \$90,000 to PWF. PWF purportedly lent _____ \$1,440,000 for the purpose of paying off amounts owing to the Bank of Montreal (BMO). A cheque was written in this amount from _____, a law firm acting on behalf of the _____.

Theanon purportedly made the following "Specified Gifts"

- \$665,000 to Gateway
- \$665,000 to Essential
- \$570,000 to Prescient

These gifts were purportedly disbursed through Legacy's trust account. A total of \$3,332,000 was deposited into a trust account at _____. The funds were purportedly from the charities and PWF.

February 28, 2005

A payment was made to Bank of Montreal in the amount of \$1,086,955.38 from the Trust account of _____.

The charities purportedly purchased all the outstanding shares of _____ from the _____.

for \$3,370,000 as per an Agreement for Sale (AFS). The purchase price was reduced by \$1,440,000 to account for the outstanding loan, resulting in a net purchase price of \$1,930,000. (According to the charities, this transaction actually happened on February 25, 2005).

A cheque was received by from in the amount of \$350,000. The letter accompanying this cheque states that it is a charitable gift from to Theanon.

March 1, 2005

and \ amalgamated and continued as

purportedly gifted all its assets to Theanon. Assets transferred purportedly included a broiler breeder birds quota, land and improvements (at), poultry, machinery and equipment and miscellaneous inventory in addition to livestock.

received a donation receipt in the amount of \$2,020,000 from Theanon.

The amount due to PWF by appears to have been assumed by Theanon in this transaction. It recorded a liability of \$1,440,000.

Theanon purportedly sold the former assets to the for proceeds of \$3,460,000. Theanon purportedly took back a mortgage in the amount of \$350,000 secured by the assets.

March 2, 2005

A document titled "Assignment Loan & Security" purportedly assigned the mortgage to the in exchange for \$350,000. This document, however, was apparently not signed by any of the parties involved.

Payment of \$3,109,152.98 was received from the lawyer representing the amount owing for the assets purchased.

March 3, 2005

The following cheques were written from the Sliman trust account:

- o \$3,002,852.98 to I (in trust for Theanon)
- o \$96,300.00 to (regarding commissions plus GST)
- o \$1,563,917.89 to the

May 9, 2005

A mortgage transfer was registered with Land Titles. This document purportedly records the transfer of the mortgage from Theanon to the . Its Terms indicate that consideration paid for the mortgage was \$350,000.

June 24, 2005

Charity received a specified gift from Theanon of \$54,000. Handwritten notes on trust account printout indicate the amount was paid to Charity as a fee for participating in the transaction.

Transactions

Parties involved

: A CCPC incorporated January 28, 2005. All shares owned by

was incorporated January 4, 1999. Prior to May 25, 2005 the common shares were owned 50% by [REDACTED] and 50% by [REDACTED] (the [REDACTED]). It owned land and buildings and some chickens. It held a permit and quota issued from the BC Chicken Marketing Board and permit and quota from the BC Egg Hatching Commission.

is a real estate company in B.C. specializing in farm property. It is a Canadian corporation operated by

Theanon Charitable Foundation (Theanon) was incorporated under the BC Society Act on September 22, 1986. Blake Bromley, Robert Kruse and Kenneth Woods are directors. It is a registered charity.

Essential Grace Foundation (Essential) was incorporated under the BC Society Act on October 4, 2004. The directors are Jhordan Stevenson, Paul Mancuso and Ronnie Negus. It is a registered charity.

Gateway Benevolent Society (Gateway) was incorporated under the BC Society Act on July 3, 2000. The directors are John Glazema, Ivor Venema and Paul Mancuso. It is a registered charity.

[REDACTED] a law firm in Abbotsford, BC acting for the

[REDACTED] are Canadian residents living in BC.

[REDACTED] are Canadian residents living in BC.

[REDACTED] is a Canadian corporation.

[REDACTED] is a Canadian corporation.

[REDACTED] is a Canadian resident living in BC.

([REDACTED] and the [REDACTED] are referred to as third party purchasers).

Facts and Assumptions

Feb 08, 2005

An exclusive listing contract was signed between [REDACTED] and [REDACTED] agreed to list property owned by [REDACTED]. The property mentioned is real estate, but we assume it includes other farm property owned by [REDACTED] as well. Listing price was \$3,300,000. [REDACTED] owned land and buildings, livestock and had license to work a BC Hatching Egg quota from the BC Broiler Hatching Egg Commission (the Commission) and a quota from the BC Chicken Marketing Board.

March 17, 2005

The [REDACTED] entered into a "Contract of Purchase and Sale of Shares" to sell their shares of [REDACTED] to Gateway. The purchase price was to be \$3,034,025 and on April 8th, 2005 a deposit of \$55,000 was made to [REDACTED] in trust. There is no evidence that this deal went through, although nothing in writing cancels it either.

It is assumed that there was a side agreement to this contract whereby if Gateway were to subsequently sell the quota for more than \$103 a bird, then 50% of the excess would be added to the sale price of the shares. The other 50% would go to commissions. This deal was referred to as the "quota lift."

March 30, 2005

A contract of Purchase and Sale was signed between the [REDACTED] and [REDACTED] in which the [REDACTED] agreed to purchase 15,000 BC Hatching Egg Quota from [REDACTED] for a total of \$1.65 million dollars. A deposit of \$60,000 was paid to [REDACTED]. The deal was to close May 30th, 2005. An application was made April 8th, 2005 to the Commission for transfer of quota.

March 31, 2005

A contract of Purchase and Sale was signed between [REDACTED] and [REDACTED] in which [REDACTED] agreed to purchase 5,400 BC Egg Hatching Quota from [REDACTED] for a total of \$594,000. A deposit of \$27,000 was paid to [REDACTED] in trust. Deal was to close May 30th, 2005. An application was made April 8th, 2005 to the Commission for the transfer of quota.

A contract of Purchase and Sale was signed between [REDACTED] and [REDACTED] in which [REDACTED] agreed to purchase chickens. Total price was to be \$55,000. A \$5,000 deposit was paid to [REDACTED] in trust. The deal was to close April 15, 2005.

April 4, 2005

A contract of Purchase and Sale was signed between [REDACTED] and [REDACTED] in which [REDACTED] agreed to purchase 3,050 BC Hatching Egg Quota from [REDACTED] for a total of \$329,400. A deposit of \$15,000 was paid to [REDACTED] in trust. An application was made April 8, 2005 to the Commission re transfer of the quota. The deal was to close May 30th, 2005.

May 26, 2005

Agreement for Purchase and Sale purportedly signed between the [REDACTED] and [REDACTED]. [REDACTED] agreed to purchase the shares in the capital of [REDACTED]. Purchase price was to be \$2,979,025 less \$1,235,745 total liabilities (all owing to the Bank of Montreal). A deposit of \$55,000 was agreed to have been already paid. Closing date was May 26, 2005. The remainder of the purchase price was to be paid by way of a promissory note.

Promissory note purportedly issued to the [REDACTED] from [REDACTED] in the amount of \$725,000.

The [REDACTED] purportedly resigned as directors of [REDACTED]

[REDACTED] purportedly agreed to be a new sole director of [REDACTED]

[REDACTED] purportedly subscribed to an additional 100 common shares of [REDACTED] in consideration of \$1,235,745. [REDACTED] signed a statement directed to [REDACTED] that it assumes the debt owing to the bank by [REDACTED] in the amount of \$1,235,745. Neither party informed the bank of this. [REDACTED] assets were security for this loan.

[REDACTED] purportedly sold all its purported [REDACTED] shares to Gateway (35%), Essential (30%) and Theanon (35%). (These entities are hereafter referred to collectively as 'the foundations'). Purchase price was to be \$3,275,300. Purchase price was to be paid by way of promissory note.

May 30, 2005

[REDACTED] purportedly gifted to the foundations all of its assets. Donation receipts totalling \$3,298,400 were received.

[REDACTED] purportedly declared that it was holding the land and buildings as a "bare trustee and mere nominee" for the benefit of the foundations.

"Bills of Sale" were purportedly drawn up and signed by [REDACTED] regarding the sales of quota to the [REDACTED] and [REDACTED]

Official donation receipts were issued to [REDACTED] by Essential, Gateway and Theanon.

May 31, 2005

A "General Conveyance" between the foundations as the sellers and the [REDACTED] as the buyers was purportedly drawn up. The [REDACTED] purportedly purchased land and building from the foundations for \$725,000.

An "Agreement of Purchase and Sale" between the foundations and the [REDACTED] was purportedly signed. The [REDACTED] purportedly purchased shares of [REDACTED] for \$1.00.

[REDACTED] declared that it held the land and building as bare trustee for the \$1,235,745 was paid to the Bank from the [REDACTED] trust account.

June 1, 2005

The [REDACTED] were paid \$971,552.63 from [REDACTED] trust account.

June 3, 2005

A cheque was issued to lawyer's trust account for \$250,350.

June 6, 2005

Two commission cheques totalling \$39,512 were issued from the trust account. Both cheques were identified as "quota lift".

June 16, 2005

Proceeds from the sale of assets were used to repay the loans from by Essential, Gateway and Theanon.

June 29, 2005

\$8,000 in legal fees was transferred from the account to another account.

September 2005

The applied to the BC Chicken Marketing Board to transfer their broiler breeder quota to another location. The board cancelled their license when it was learned that shares of had changed hands, no matter how briefly. wrote to the marketing board on behalf of the, stating "We confirm that and are the sole shareholders of the Company and that despite any change in ownership and control of the Company which may have taken place, at all times the ownership and control of the quota permit has remained in their hands (either personally or corporately)"

APPENDIX "C"

Purchase of

by The Gateway Benevolent Society

Parties Involved:

The Gateway Benevolent Society ("Gateway") BN: 894271618 RR0001

Legal Representatives involved:

Notes:

- * Accountant () calculated an income tax liability of \$41,059, and GST credit of \$4,323.46.
- * Donated \$455,060 to Gateway.
- * Authorization of closing of accounts at Envision Credit Union resulted in remaining funds being transferred to Gateway and remaining funds payable to

Transactions that took place:

1) buys all assets with the consent of Gateway being the sole shareholder of November 25, 2003

* is involved to some extent with The contract was assigned from to on October 15, 2003.

* The execution date of the freehold transfer on the Land Title document is November 21, 2003.

Land	\$ 655,000
Barn	\$ 100,000
House	\$ 70,000
Quota	\$ 1,025,000
Machinery	\$ 25,000
Total	\$ 1,875,000

* Assignment of Verbal Raspberry Lease excluding Raspberry Equipment

Statement of Adjustments:

Sale Price	\$ 1,875,000
Deposit	(\$ 50,000)
Purchaser's share of 2003 taxes	\$ 244.08
Purchaser's share of annual garbage fee	\$ 9.33
Balance Due	\$ 1,825,253.41

*Review of Document Book
provided by Client.*

2) Gateway buys all shares
November 24, 2003

Statement of adjustments:

Sale Price of Shares	\$ 1,600,000
Deposit	(\$ 50,000)
Purchaser's share of 2003 Taxes	\$ 244.07
Balance Due	\$ 1,550,244.07

3) Release of Mortgage registered against the in favour of
Canadian Imperial Bank of Commerce.

Execution Date - November 5, 2003

Applicant -]

Transferor - Canadian Imperial Bank of Commerce

4) Share purchase agreement between and Gateway.
November 20, 2003

Items discussed:

- The authorized shares capital of is 430,000 shares divided into 7 categories (A, B, C, D, E, F, G).
- Issued shares total comes to 100 Class "A" Voting Common Shares and 3,327 Class "F" Preference Shares.
- is currently operating a chicken and raspberry farm.
- At the closing date, there will be outstanding loans owing by to its shareholders.
- Gateway has agreed to purchase the Shareholder Loans
- The total purchase price for the shares and the shareholder loans is 1,600,000. The price will be first allocated to the shareholder loans, then to the preferred shares in the sum of \$332,700, and the balance to the common shares.
- \$50,000 deposit was paid by Gateway direct to the shareholders and will be credited towards the purchase price.

6) Capital Cost Allowance - Schedule 8
November 24, 2003

5)-25) Resolutions and Share transfer documents
November 24, 2003

26)-31) Assignment of Shareholders loans
November 21, 2003

Gateway is assigned all amounts owing to the undersigned by as at or after November 24, 2003, including any interest.

32)-33) and
Officers of
November 24, 2003

Resignations as Directors and

34) Statutory Declaration and a Declaration in Respect to the Income Tax Act.
November 24, 2008

35) Gateway's Statement of Adjustments
November 24, 2003

Purchase Price	\$ 1,600,000
Deposit	(\$ 50,000)
Purchaser's share of taxes	\$ 244.07
<u>Legal fees and disbursements</u>	\$ 10,000
Balance Due	\$ 1,560,244.07

36) Assignment of Contracts between [REDACTED] and Gateway.

Effective Date – October 31, 2003

37) Consent to Act as a Director for John Glazema
November 24, 2003

38) Records Office Agreement between [REDACTED] and [REDACTED]
October 31, 2003

39)?

40)?