Canada Revenue Agency | Agence du revenu du Canada

FEB 0 1 2013

REGISTERED MAIL

Trinity Global Support Foundation
c/o Milot Law
Suite 2200
181 University Avenue
Toronto ON M5H 3M7

BN: 851387159RR0001
File #: 3036711

Attention: Mr. Duane Milot

Subject: **Notice of Intention to Revoke**
Trinity Global Support Foundation

Dear Mr. Milot:

I am writing further to our letter dated April 10, 2012 (copy enclosed), in which you were invited to submit representations as to why the registration of Trinity Global Support Foundation (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act*.

We have now reviewed and considered your written response of July 27, 2012. However, notwithstanding your reply, our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position is fully described in Appendix "A" attached.

Conclusion:

Our audit revealed that the Organization devoted a significant portion of its resources to the promotion of the Mission Life Financial Inc. and Canadians Care donation arrangements. As a result of its participation in these arrangements, between June 1, 2007 and May 31, 2010, the Organization reportedly received nearly $25 million in cash and in-kind property.

With respect to the Mission Life Financial Inc., a registered tax shelter, the Organization issued tax receipts exceeding $1.13 million for cash contributions and $16 million for pharmaceuticals. Of the cash contributions received, the Organization paid nearly $1.03 million to the promoters of the tax shelter and to the Organization's directors or related parties. It is our position the Organization issued the tax receipts improperly, particularly given our finding that the $16 million recorded for the pharmaceuticals were grossly inflated. As a result, we conclude neither contribution qualifies as gifts at law.

With respect to the Canadians Care promoted donation arrangement, the Organization issued tax receipts exceeding $7.8 million for leveraged cash contributions. The Organization invested over $7 million into investments held by corporations related to its directors and also related to the donation arrangement. These funds were subsequently lost due to the actions of those corporations. The Organization was also found to have improperly paid over $865,000 to individuals and corporations related to the Organization's directors.

Our audit has also revealed insufficient separation between the Organization's operations and the personal business and financial interests of those responsible for its operation. In particular, the Organization has entered into collusive contractual arrangements with directors and related parties, which resulted in substantially all of the actual cash received being diverted into the hands of the promoters and related companies rather than used for charitable purposes.

It is our position that the Organization has operated for the non-charitable purpose of promoting gifting donation arrangements and for the private benefit of the gifting donation arrangement promoters. The Organization also invested in non-qualified investments; gifted to non-qualified donees; issued receipts for transactions that do not qualify as gifts; issued receipts otherwise than in accordance with the Act and its Regulations; failed to maintain adequate books and records; and failed to file an accurate Form T3010, *Registered Charity Information Return*. For all of these reasons, and for each of these reasons alone, it is the position of the CRA that the Organization's registration should be revoked.

Consequently, for each of the reasons mentioned in our letter of April 10, 2012, I wish to advise you that, pursuant to subsections 168(1) and 149.1(4) of the Act, I propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

> *Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d), 168(1)(e) and 149.1(4)(b) of the* Income Tax Act, *that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.*

Business Number	**Name**
851387159RR0001	Trinity Global Support Foundation London ON

Should you wish to object to this notice of intention to revoke the Organization's registration in accordance with subsection 168(4) of the Act, a written Notice of

Objection, which includes the reasons for objection and all relevant facts, must be filed within **90 days** from the day this letter was mailed. The Notice of Objection should be sent to:

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

Notwithstanding the filing of an Objection, a copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of 30 days from the date this letter was mailed. The Organization's registration will be revoked on the date of publication. A copy of the relevant provisions of the Act concerning revocation of registration, including appeals from a notice of intent to revoke registration can be found in Appendix "B", attached.

Consequences of Revocation

As of the effective date of revocation:

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

b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the relevant provisions of the Act concerning revocation of registration, the tax applicable to revoked charities, and appeals against the revocation tax, can be found in Appendix "B", attached. Form T-2046, and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our website at www.cra-arc.gc.ca/charities;

c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (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 1-800-959-8287.

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

Yours sincerely,

Cathy Hawara
Director General
Charities Directorate

Attachments:
- CRA letter dated April 10, 2012;
- Your letter dated July 27, 2012;
- Appendix "A", Comments on Representations; and
- Appendix "B", Relevant provisions of the Act

cc: U. Joe Fontana
148 York Blvd.
Suite #204
London ON N6A 1A9

CANADA REVENUE AGENCY | AGENCE DU REVENU DU CANADA

REGISTERED MAIL

Trinity Global Support Foundation
148 York Street, Suite 204
London ON N6A 1A9

BN: 85138 7159RR0001

Attention: Mr. U. Joe Fontana

File #: 3036711

April 10, 2012

Subject: Audit of Trinity Global Support Foundation

Dear Mr. Fontana:

This letter is further to the audit of the books and records of the Trinity Global Support Foundation (the Organization) conducted by the Canada Revenue Agency (the CRA). The audit related to the operations of the Organization for the period from June 1, 2008 to May 31, 2010.

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 Resources to Charitable Activities	149.1(1), 149.1(4)(d), 168(1)(b)
2.	Failure to Accept Valid Gifts in Accordance with the Act	118.1, 168(1)(b), 248(32)
3.	Failure to Issue Receipts in Accordance with the Act	149.1(1), 168(1)(d), Reg. 3501
4.	Failure to Maintain or Provide Adequate Books and Records	149.1(1), 168(1)(e), 230(2)
5.	Failure to File an Accurate T3010 *Registered Charity Information Return*	149.1(1), 168(1)(c)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Organization with the opportunity to 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 Organization'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 Resources to Charitable Activities

The Organization is registered as a private foundation. Pursuant to subsection 149.1(1) of the Act, "charitable foundation" means a corporation or trust "...operated exclusively for charitable purposes". As per the Organization's constitution and bylaws, it was founded to pursue the following charitable objectives and activities:

-To receive and maintain a fund or funds and to apply all or part of the principal and income therefrom, from time to time to charitable organizations, that are also registered charities under the *Income Tax Act*;
-To relieve poverty by providing food and other basic supplies to persons of low income by establishing, operating and maintaining shelters for the homeless, and providing counselling and other similar programs to relieve poverty;
-To advance and teach the religious tenets, doctrines, observances and culture associated with the Christian faith;
-To establish, maintain and support a house of worship with services conducted in accordance with the tenets and doctrines of the Christian faith;
-To support and maintain missions and missionaries in order to propagate the Christian faith; and
-To establish and maintain religious school of instruction for children, youth and adults.

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

Once registered, a charity must only pursue activities in furtherance of the specific charitable purposes as approved by CRA. The implicit understanding is that the charity will not undertake any activity beyond those described in the application for charitable registration. This is necessary to ensure that the charity will operate within the limitations imposed by the Act.

Operating Ultra Vires

As above, registered charities are required to pursue activities in furtherance of the purposes for which they are established. There is some concern that the Organization is operating outside of its stated objects as approved by CRA upon registration.

It appears that the Organization is engaging in activities that are not consistent with its charitable objects and, in our view the activities are not charitable at law. Based on our audit, the Organization does not operate for wholly charitable purposes and the activities it undertakes do not support its charitable purposes in a manner consistent with charitable law. In fact, the evidence on the file, as outlined below, demonstrates a preponderance of effort and resources devoted to non-charitable activities. The Organization has devoted a substantial portion of its efforts and resources to participating in non-charitable activities including promoting a registered and an unregistered tax shelter donation arrangement, conveying personal benefits upon its directors or persons dealing with the Organization at non-arm's length, directing funds to non-qualified investments, incurring excessive fundraising costs, gifting to non-qualified donees and engaging in activities which are not consistent with its registered objects. The Organization appears to devote only a small portion of its net fundraising profits to its own charitable activities.

Promoting a Registered Tax Shelter Arrangement

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

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

In October of 2009, the Organization established a relationship with Mission Life Financial Inc., a registered tax shelter whereby the Organization was named as a participating charity. A detailed overview of the tax shelter is provided in the enclosed Appendix A. The basic premise of the tax shelter is that participants acquire pharmaceuticals on credit and donate the pharmaceuticals to the Organization. The Organization purportedly distributes the pharmaceuticals as part of its own charitable programs and issues official donation receipts to the participants as directed by the tax shelter promoter.

It is our opinion that the primary purpose of this tax shelter is to allow participants to profit from making a "gift" through the claiming of a donation credit. Participants are out of pocket no more than 20% of the total receipted value of the pharmaceuticals and the eligible amount of their gift, according to the receipts issued, is the purported value of the pharmaceuticals plus the contributed cash minus the calculated advantage. A participant claiming a net donation of $10,563[1] would be able to claim a combined Federal and Ontario

[1] Pharmaceuticals purportedly valued at $10,500 donated to the Organization plus cash payment equal to 3% of the value of the pharmaceuticals or $315 minus the calculated advantage or $252 (equivalent to 80% of the cash payment).

donation tax credit rate of $4,902 and his net return on actual cash outlay is $2,787[2] or 132%. The return on cash for residents of other provinces varies based on the tax credit rates applicable to each province.

The Organization began participating in the tax shelter program in 2009 by accepting participant cash contributions equivalent to 3% of the purported value of the pharmaceuticals pledged. Of the cash contributions received, the Organization paid fees to the tax shelter that averaged 77% of the cash contributions received. Our audit discovered that the Organization netted the amounts paid to the tax shelter against the cash contributions received thereby materially misstating its factual income and expenditures. We found that the Organization was provided with lists of tax shelter participants and a cheque equivalent to the participants combined 3% cash contributions as well invoices from the tax shelter equivalent to 77% of the cash contributions. The invoices issued by the tax shelter were purportedly for transportation, shipping, storage, and insurance. Our audit subsequently revealed that of the cash contributions retained, the Organization distributed substantially all of it to directors of the Organization and/or related parties. Refer to our discussion below.

In 2010, the Organization began receipting for both the participants' gifts of pharmaceuticals and continued to receive cash contributions. The Organization receipted over $16 million for the pharmaceuticals and $1.13 million for the cash contributions. Of the $1.13 million received in cash, the Organization spent $867,460 on administration fees paid to the tax shelter and another $161,371 on management and administration fees paid to companies controlled by the Organization's directors and/or related parties. This represents a staggering 91.8% of the total funds received from the participants of the tax shelter. In summary, of the cash retained by the Organization, only $21,500 was spent on charitable activities in support of its own charitable programs.

Although the 2011 fiscal was not included in the audit period, the Organization provided CRA with a donation summary for this period showing $68 million receipted as a result of its participation and promotion of the Mission Life Financial Inc. tax shelter and we have discovered the Organization also entered into a contract with Global Learning Gifting Initiative (GLGI), another registered tax shelter.

Promoting an Unregistered Tax Shelter Donation Arrangement

In 2008, the Organization began participating in Canadians Care, an unregistered leveraged donation arrangement wherein participants borrow funds from GEMS Capital Management Services Inc. A detailed overview of the donation program is provided in the enclosed Appendix A. The basic premise of the donation program is that a participant enters into a loan agreement with GEMS Capital Management Services Inc. for an amount determined by the participant. As a condition of the agreement, the participant contributes 25% of the loan thusly obtained, to GEMS Capital, as pre-payment of interest on the three-year full recourse loan and to pay for administrative expenses. The participant then uses the loan proceeds to make a donation to the Organization. The intention is that the Organization

[2] Total cash outlay equivalent to $1,800 pre-paid interest + $315 cash contribution. Participant receives donation tax credit, in Ontario, valued at $4,902 therefore net return on cash outlay is $2,787 ($4,902 - $2,115).

will invest these funds in income generating investments to help sustain the Organization's charitable programs.

As a result of its participation in the donation program in 2008, the Organization receipted over $7,806,636 to participants in that year. As will be discussed later in this letter, the Organization used these funds for investing and fundraising purposes rather than to further their own charitable programs. Of the amount received through the donation program, it appears that $7,030,836 or over 90% of these funds were invested and subsequently lost through said investments.

Additionally, the Ontario Securities Commission (OSC) commenced an investigation against Ciccone Group, 990509 Ontario Inc. and Vincent Ciccone. The OSC investigation alleges that the parties "committed a fraud by using investor funds for purposes other than the investment purposes that were communicated to investors." Also, the OSC proceedings claim "proceeds from the distributions were directed to Ciccone business ventures, to charities or loaned to friends, associates and/or companies related to Ciccone in circumstances where there was no or very little prospect of ever generating returns, despite the fact that Ciccone and Ciccone Group promised over 20% returns". [3]

Our review showed an overwhelming majority of the Organization's resources for the 2008 fiscal period are devoted to and received from its participation in the Canadians Care donation program. The manner in which the Organization has structured itself to accommodate this donation program has become an end in itself. Operating for the purpose of promoting a tax shelter donation arrangement (whether registered or unregistered) is not a charitable purpose at law.

We find the Organization's participation in these donation arrangements to be problematic, as, in our view, the Organization appears to be facilitating arrangements designed to avoid the application of the provisions of the Act and may be designed to create improper tax credits. In our view, the Organization is operating primarily for the purpose of promoting both a registered and an unregistered tax shelter program as the Organization has not shown or otherwise indicated it is conducting any other activities aside from the small portion of gifts made to qualified donees. The Organization is an integral part of the arrangements - being paid to issue tax receipts and circulate funds (as directed) in an artificial manner to facilitate and lend legitimacy to the overall arrangement.

Based on the evidence provided during the audit and given the manner in which the Organization has structured its financial affairs for the private benefit of the registered and unregistered tax shelter, its promoters and its directors along with its proportionally high levels of involvement and collusion in these financial arrangements, it is our view a collateral purpose, if not primary purpose of the Organization is, in fact, to support and promote the donation arrangements. Operating for the purpose of promoting a registered or unregistered tax shelter is not a charitable purpose at law. As such it is our view that the Organization does not meet the test of "private foundation", as defined in 149.1(1) in that it not constituted and operated for exclusively charitable purposes. For this reason, it appears to us that there may

[3] http://www.osc.gov.on.ca/documents/en/Proceedings-SOA/soa_20110930_ciccone.pdf

be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

Failure to Carry Out its Own Charitable Activities

In section 149.1, the Act states that a charitable organization must devote all of its resources to charitable activities carried on by the organization itself. The Act reinforces this requirement in paragraph 149.1(4)(b), by authorizing the Minister to revoke the registration of a charity if it fails to make required expenditures on charitable activities carried on by it and by way of gifts to qualified donees.

The legislative intent conveyed by the expression "carried on by the organization itself" of paragraph 149.1(1)(a) requires a charitable organization to actively engage in its own charitable activities. A charity is allowed to have another organization or individual act on its behalf. In such a relationship, however, the registered Canadian charity must be responsible in a direct, effectual and constant manner for the charitable activities to which its resources are being applied. The fact that the activities being undertaken by another organization may be consistent with the goals and objectives of the registered charity is insufficient to meet this operational test.

A registered charity can work with other organizations or persons and still meet the own activities test provided it employs certain arrangements that enable it to retain direction and control over its resources. Such can be accomplished through agents, contractors or other intermediaries under structured arrangements that allow it to retain direction and control of its resources. While there is no requirement at law that an agency agreement has to be in written form, it is essential for the registered Canadian charity to establish the parameters of its relationship with its agent by maintaining adequate bookkeeping and record systems.

The charity must demonstrate, through documented evidence, that actual events transpired which prove the continued existence of the principle-agent relationship. The charity must provide CRA with a means of examining the internal decision making mechanisms within the charity's own structure through it books and records. This can be demonstrated with minute records such as: minutes of board meetings that contain sufficient detail to illustrate direction and control over the relationship; internal communications; and policies and procedures that show that the charity acted as the guiding-mind in the principle-agent relationship.

Accordingly, where a charity works in this manner, it should enter into a formal arrangement, in each case, which establishes that:

- the intermediary is to carry out certain identified and fully described activities that the charity wishes to accomplish, on the charity's behalf, during a specified term. The scope of the intermediary's authority to act on the charity's behalf should be clearly defined in relation to each project;
- the charity's funds will remain separate and apart from those of the intermediary, so that the charity's role in any particular project or endeavour is independently identifiable as its own charitable activity; and,

- the intermediary will provide regular and comprehensive written reports to the charity, including expense vouchers and receipts, concerning the on-going activities that are carried out on the charity's behalf. While the exact reporting schedule may depend on the nature of the individual project, it is suggested that reports should be required quarterly or semi-annually, at minimum. These written reports should be supplemented at least annually by a complete financial report outlining the use of all transferred funds.

In March of 2009, the Organization undertook a children's feeding program called Show Kids You Care that feeds over 130,000 children per week across Canada. Show Kids You Care was formerly known as the Children's Emergency Foundation (CEF). CEF was revoked in May of 2009 due to its involvement in a tax shelter program and other non-charitable activities.

The Organization entered into a transfer agreement with CEF and agreed to operate the children's feeding program as well as retain certain key staff members of the feeding program. The Organization entered into a separate agreement with Jill McKinney and Associates Inc. (JMA). Ms. Jill McKinney is the former Executive Director of CEF. The agreement states that the CEO and President of the Organization shall meet regularly with Ms. McKinney, to review the activities of the feeding program and provide appropriate assessment and direction. The agreement also states that the Organization will review documents, reports, statements, and other communication forwarded to it by JMA and shall provide responses in a timely manner. JMA was responsible to submit to the CEO and President an annual budget and operating plan which appears to demonstrate that JMA is responsible for the operations of the feeding program in its entirety rather than it being a program operated by the Organization. We also found or were not provided with any documentation to support that the Organization had any involvement in the selection process of the beneficiaries of the feeding program, that it remained the guiding mind of the feeding program or any other program operated by Show Kids You Care nor were there any notations in the Organization's meeting minutes of its involvement and control over the activities purportedly operated under its umbrella of charitable programs.

It is our view that the Organization failed to demonstrate that it maintained direction and control over the use of its resources to meet the own activities test. As such it is our view that the Organization does not meet the test of "charitable foundation", as defined in 149.1(1) in that it is not constituted and operated for exclusively charitable purposes. For this reason, it appears to us that there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

Personal Benefit

Paragraph 149.1(1)(b) of the Act stipulates that no part of a charity's income is payable or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof. The CRA considers the meaning of the term "trustee", for registered charity purposes, to include those persons who stand in a fiduciary relationship to the charity, having general control and management of the administration of a charity, including directors of corporations established for charitable purposes. This is, essentially, a rule against self-

dealing, reflecting the general rule of equity that a trustee must not profit out of his position of trust, nor must he place himself in a position where his duties as a trustee conflict with his own interests. It is also a statutory embodiment of the common law test that individuals with ties to a charity should not profit from their association with the charity.

These rules are incorporated into the Organization's own Letters Patent as the special provisions state, "*The corporation shall be carried on without the purpose of gain for its members, and any profits or other accretions to the corporation shall be used in promoting its objects.*" The Letters further state, "*The directors shall serve as such without remuneration, and no directors shall directly or indirectly receive any profit from his/her position as such, provided that directions may be paid reasonable expenses incurred by them in the performance of their duties.*"

The CRA's position regarding the remuneration of directors is that *bona fide* payments for actual services rendered do not constitute a "personal benefit" of the type prohibited by the Act for the directors of registered charities. Accordingly, a registered charity may remunerate its directors or entities controlled by its directors for other services actually performed on behalf of the charity, as long as those payments are reasonable under the circumstances, and in the normal course of operations. The Organization has made payments to various corporations and individuals who share common ownership with both current and past directors of the Organization whereby the corporations and individuals are remunerated for management, consulting and services rendered.

The audit has revealed that the following individuals, personally or through corporations held by the Organization's directors, received the following payments in the following years:

Director/ Related person	Related Corporation	2008	2009	2010	Description of fees
Vincent Ciccone	990616 Ontario Inc.		$25,625		Management fees
Vincent Ciccone	1663575 Ontario Inc.	$325,000			Fees paid to GEMS
Karen Thompson-Ciccone	990509 Ontario Inc.		$4,270	$33,266	Consulting fees
Carmine Domenicucci	GEMS Capital Limited Partnership II	$325,000			Fees paid to GEMS
Hon. Joe Fontana	719382 Ontario Ltd.		$10,250	$30,750	Consulting fees
Patrick Holmes	Holrob Advisory Services		$18,000	$29,500	Financial services
U. Joe Fontana	1748993 Ontario Inc.			$62,730	Services as president
Total		**$650,000**	**$58,145**	**$156,246**	

The Organization claims to have paid each of the directors' corporations for services rendered. According to the Organization's representations, 990616 Ontario Inc. was paid fees for providing administrative and accounting services plus any other duties involved in the start-up of the day to day operations and 990509 Ontario Inc. was paid for rental payments for use of office space. The numbered corporation, 719382 Ontario Ltd., was purportedly paid to manage all public relations, all communications, all relationships with sponsors and partners, all corporate affairs, relationship with participating charities; meet all CRA requirements; initiate promotion of the Organization; government relations; review all of the Organization's contracts; and provide advisory services. There was no evidence provided during the audit to support that any of the services allegedly provided by these corporations were provided to the Organization.

Further, as will be explained in greater detail below, Mr. Domenicucci and Mr. Ciccone received additional funds through their capacity as shareholders of GEMS Capital Limited Partnership II, a key player in the facilitation of the unregistered donation program operated by Canadians Care.

Our review of the information provided during the audit indicates there has not been sufficient separation between the directors' affairs and the financial and business interests of individuals responsible for administration and management of the Organization's programs and that the Organization's programs have been operated in such a way as to benefit those interests. The Organization exists as little more than a shell with the capacity to issue receipts for income tax purposes, and that this capacity has been exploited as a means by which cash contributions received are paid out as fees or investments to corporations owned by the Organization's directors and/or related parties.

We do not consider the payments to be reasonable or *bona fide* payments for services rendered. The amounts paid to the above noted persons are such that, of the actual interest earned and cash contributions received, substantially all is siphoned off as administrative expenses, either paid to the tax shelter or persons who operate at non-arm's length with the Organization. Per above, of the interest earned by the Organization in 2009, 11% was paid to corporations owned by the directors. The situation became even more problematic in 2010 when the Organization began receiving cash donations from its involvement with the registered tax shelter. Of the cash contributions received, 31% was disbursed to related persons. Combined with 78% paid in administrative fees to the tax shelter promoter, the Organization was left with a deficit even before it spent any funds on its own charitable activities.

Amendments to the Act introduced as part of Bill C-33 state that a registered charity that makes a disbursement or otherwise makes available any part of its income, rights, property or resources for the personal benefit of any person who is a proprietor, member, shareholder, trustee or who deals not at arm's length with such a person is liable to a penalty under subsection 188.1(4) equal to 105% of the amount of the benefit. This penalty increases to 110% of the amount of the benefit for a repeat infraction within 5 years. By making disbursements to the above individuals and/or corporations, the Organization has conferred

undue benefits on its directors. However, we do not consider that these sanctions are an appropriate alternative to revocation, given the serious nature of non-compliance.

It is our view, that by transferring charitable assets for the private gain of a director or a related person, the Organization has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) as a private foundation that "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". For this reason, it appears to us that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

Non-Qualified Investment

According to subsection 149.1(1) of the Act, a non-qualified investment of a private foundation means a debt, share, or a right to acquire a share held by a private foundation that was issued by various persons or individuals linked to that foundation. If the foundation does not receive interest or dividends equal to the minimum amount, that issuer is liable for a tax equal to the amount of the shortfall.

The Organization invested $5,655,000 in GEMS Capital Limited Partnership II (GEMS)[4] on January 7, 2009. GEMS was to invest these funds in various financial instruments with interest being paid back to the Organization for its investment. GEMS used the monies invested by the Organization to make a loan to 990509 Ontario Inc. o/a Ciccone Group Inc. (the Ciccone Group). As a result, the Ciccone Group issued a promissory note to the Organization in the amount of $5,005,000 with imputed interest of $90,604.93 and a maturity date of August 31, 2010. As established previously, Karen Thompson-Ciccone was both an active member of the board of directors of the Organization at the time of the investment and the controlling shareholder of the Ciccone Group at the time this loan was made. In our view, the relationship between the Organization and the Ciccone group is non-arm's length.

In November of 2008, the Organization invested in an American company transferring $1,375,836 to a company named Axcess Fund Management, L.L.C. In January of 2009, the Organization transferred its ownership of this investment to the Ciccone Group. This was decided by the executive committee of the Organization, although it is uncertain why this was done. These funds were to be invested with the Ciccone Group via a short term note at a rate of 5.25% with partial redemptions available to meet liquidity requirements. The Ciccone Group again issued a promissory note to the Organization dated June 4, 2009, maturing November 26, 2009, in the amount of $1,516,793, which included the initial amount of $1,375,836 plus interest.

---

[4] GEMS Capital Limited Partnership II was started on January 6, 2009 by Carmine Domenicucci who is 100% shareholder of the General Partner of GEMS Capital Limited Partnership II. A numbered company, 1663575 Ontario Inc., controlled by Vincent Ciccone, is also a partner in GEMS. At the time that the investment was made with GEMS by the Organization, both Carmine Domenicucci and Vincent Ciccone were directors of the Organization. As such, a non-arms length relationship existed between the Organization and GEMS.

The Organization accrued interest at the agreed upon rate for both promissory notes issued and on August 13, 2010 issued a demand letter to the Ciccone Group requiring payment in full. The demand letter contained two parts: part one made a formal demand for the accrued interest on the $5,005,000 promissory note in the amount of $352,648 and part two made a formal demand for the accrued interest on the $1,375,836 promissory note in the amount of $140,773. The Organization received a letter from the Ciccone Group in response to its demand letter on September 2010, which stated that the Ciccone Group was "unable to pay out the interest due and the principal at this time or in the future". The Ciccone Group subsequently declared bankruptcy on November 30, 2010.

During the audit period the Organization received $7,806,636 or 91.5% of its total income in fiscal 2009, from its participation in the Canadians Care arrangement. Of the funds received, the Organization invested $7,030,836 in outside companies. As a result, the Organization held two promissory notes, valued at $6,380,836 (plus applicable interest) with the Ciccone Group, who, as established above, is a related party of the Organization. Additionally, it appears that as a result of these investing activities, $650,000 was retained by GEMS, which ultimately was for the direct benefit of its shareholders, namely Mr. Domenicucci and Mr. Ciccone.

Our review showed that during the audit period an overwhelming majority of the Organization's resources are devoted to investing for the purpose of raising funds. The manner in which the Organization has structured itself to accommodate this activity has become an end in itself. It is our view that the Organization has been established and operated for the private gain of GEMS and the related parties associated with the Organization and GEMS as each has put themselves in a position to direct the movement of funds received from donation arrangement participants between and into their corporate entities.

Further, the Organization has permitted its resources to be used for the purpose of a non-qualified investment and ultimately for the private benefit of several of its directors. The Organization has blindly entered into this arrangement without due consideration of the implication this relationship would have on its resources and its ability to support its own charitable programs. The Organization failed to demonstrate due diligence and maintain direction and control over its funds at all times and as such was in pursuit of a non-charitable activity. In the end, the poor decisions of the board which appear to be more in support of its directors' financial position than the pursuit of its charitable purpose resulted in the Organization loosing these funds when the Ciccone Group filed for bankruptcy. As the investing of the funds of the Organization is not considered a charitable activity, the subsequent loss is not considered a charitable expenditure.

As a result, we are of the view that the Organization ceased to continue to meet the definition of private foundation as laid out in subsection 149.1(1) of the Act. During the audit period the Organization is operated primarily, or at least collaterally, for the purposes of promoting a financial arrangement that is contrary to charitable law and cannot be considered to be devoting all of its resources to charitable activities carried on by it. For this reason alone, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

Gifts to Non-Qualified Donees

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

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

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

Where a registered charity chooses to operate through an appointed agent or representative (intermediary), it must be able to substantiate, generally through documentary evidence, that it has arranged for the conduct of certain specific activities on its behalf, and has not simply made a transfer of resources to a non-qualified donee. A charitable organization is not at liberty to transfer funds or resources to other individuals or entities unless the recipient is an employee of the charity, an agent of the charity under contract, or a qualified donee. To this end, the charity must be able to demonstrate to the CRA's satisfaction that it maintains control over, and is fully accountable for, the use of resources provided to the intermediary, at all times.

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

The Organization has purportedly distributed pharmaceuticals to various African countries directly as a result of its participation in and promotion of the Mission Life Financial Inc. registered tax shelter. The audit revealed that the pharmaceuticals were transferred to intermediaries via an agency agreement. The Organization transferred 356,880 pharmaceutical units to Diocese of Kakamega in Kenya. While an agency agreement exists, the terms thereof were not fully complied with. Specifically, item 4 of the agency agreement stipulates, among other things, that "[the Organization] shall designate, at its sole discretion, a list of qualified health care organizations, institutions or professionals that provide services worthy of its support". Our audit revealed that the Organization relied on the recipient organizations to apply the pharmaceuticals to the areas that they determined to be in greatest need. Item 10 of the agency agreement states that "the agent shall maintain detailed records of distributed products and provide [the Organization] with written receipts specifying the use

of these pharmaceuticals". Item 14 of the agency agreements requires the agent to maintain adequate books and records to substantiate compliance with its obligations. The audit revealed that the agents did not provide the Organization with evidence that adequate books and records were maintained. The Organization has failed to demonstrate to the CRA's satisfaction that it maintained control over, and was fully accountable for, the use of resources provided to the intermediaries. Therefore, it is CRA's position that the Organization has relinquished control and gifted the pharmaceuticals to non-qualified donees. It is further our position the Organization has failed to satisfy subsection 149.1(1) of the Act with regard to devoting resources to its own charitable activities.

Furthermore, the audit revealed that the Organization also made cash gifts to non-qualified donees as follows:

- The Organization gifted $133,070 to Strategic Christian Services in 2009; an American organization that does not meet the definition of a qualified donee as per paragraph 110.1(1)(a) of the Act.

Fundraising Activities

Fundraising is not a charitable activity. A registered charity can raise funds to support its charitable purposes, but;

- If the fundraising activity becomes the primary emphasis of the charity, then it is not operating exclusively for charitable purposes; and
- If a substantial portion of the charity's revenues is devoted to the fundraising activity, it is not considered to be devoting its resources to charitable activities.

In connection with the Organization's relationship with Children's Emergency Foundation as discussed above, the Organization has engaged in excessive fundraising activities. CEF had entered into an agreement with Responsive Marketing Group, RMG, a company offering fundraising services. When CEF was revoked and the Organization undertook its programs, CEF's fundraising contract remained valid under its new name - Show Kids You Care. Responsive Marketing Group (RMG) merged with Xentel DM, who offered similar fundraising services. The agreement was still in the name of RMG and dated April of 2009. In 2010, the Organization reported $1,274,756 as fundraising revenue from this agreement, with fundraising costs of $663,062.42 which represents 52% of total fundraising revenue.

Taking into consideration that the Organization also paid the tax shelter $867,460 but failed to report this amount as an expense, but rather netted the amount against the revenue received from the tax shelter, the Organization has materially misrepresented its devotion of resources to fundraising activity.

Our audit findings reveal that the Organization devotes a substantial portion of its actual cash contributions to fundraising activities. It is our view that by pursuing these non-charitable purposes, the Organization has failed to demonstrate that it meets the test for

continued registration under 149.1(1) as a charitable foundation "all the resources of which are devoted to charitable activities".

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

It is our position that both the cash and in-kind donations received by the Organization from participants are not valid gifts under section 118.1 of the Act. We offer the following explanations to support our position.

No *Animus Donandi*

Under the common law, a gift is a voluntary transfer of property without consideration. However, an additional essential element of a gift is *animus donandi* - that the donor must be motivated by an intention to give. As stated in Grant McPherson v. HMQ *(2007 DTC 326)*:

> "[20] There is an element of impoverishment which must be present for a transaction to be characterized as a gift. Whether this is expressed as an animus donandi, a charitable intent or an absence of consideration the core element remains the same."

Justice J. Bowie further clarifies in 2004 UDTC 148, Dwight Webb (Appellant) v. Her Majesty the Queen (Respondent):

> "These cases make it clear that in order for an amount to be a gift to charity, the amount must be paid without benefit or consideration flowing back to the donor, either directly or indirectly, or anticipation of that. The intent of the donor must, in other words, be entirely donative." [Emphasis added]

It must be clear that a 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, based on the transactions described above and in Appendix A, that the primary motivation of the participant was not to enrich the Organization, but through a series of transactions and a minimal monetary investment, to make a profit through the tax credits so obtained. We recognize that the charitable tax credits available with respect to donations are not usually an advantage or benefit that would affect whether a gift is made. However, it is our position that mass-marketed donation arrangements promising participants that they will be able to claim tax credits for charitable donations far in excess of the expenditures actually made (i.e. the actual cash outlay and subsequent reduction in the donor's net worth), lack the requisite *animus donandi* for the transactions to be considered gifts. It is further our position, that the series of events allegedly entered into by the participant, were done in a manner to create the illusion that no benefit or advantage was received by the participant.

In support of this position, we note the promotional materials of the registered and unregistered tax shelters primarily focus on the participant's substantial "cash on cash return" as a result of participation. In the Mission Life registered tax shelter, minimal investment is required of the participant in order to acquire pharmaceuticals from the authorized vendor, LogiPharm and the participant is not obligated to incur any additional cash outlays to repay

the loan. The terms of repayment of the promissory note state that the loan is repayable by cash or by "credit certificate". The participant has the option to repay the promissory note by delivering to the tax shelter a credit certificate, which can be obtained from LogiPharm by delivering to the latter identical pharmaceuticals. Under the loan agreement the participant grants the tax shelter a limited power of attorney to transfer any unapplied prepaid interest, to any authorized agent in connection with the tax shelter. The authorized agent acquires the identical pharmaceuticals on behalf of the participant from the world market for significantly lower prices than the alleged fair market value of the pharmaceuticals bought on credit. Therefore, if a participant exercises his/her option to repay the promissory note by credit certificate through the acquisition of identical pharmaceuticals, the participant would have no further obligations to the tax shelter beyond the original cash outlay. No prudent person would select the option to repay by cash, requiring a cash outlay from personal resources equal to the face value of the credit certificate, knowing that the option to repay by credit certificate would not require any additional cash outlay from personal resources.

The participants rely upon the tax shelter and LogiPharm to acquire the pharmaceuticals and transfer title of them to the Organization without using or seeing the property. The participants' involvement is limited to completing and signing the documents and issuing the required cheques described above. All of the transactions were conducted on behalf of the participants by the tax shelter and LogiPharm. Minimal information is provided to the prospective participants as to how the pharmaceuticals will benefit the Organization, what the Organization will do with them or the activities of the Organization aside from its participation in the tax shelter arrangement.

As it pertains to the Canadians Care donation program, participants contribute 25% of the loans purported value out of pocket and receive a loan. The promotional materials fail to mention any repayment options afforded by the participants. Transactions are pre-arranged and handled entirely by promoters or other pre-arranged third parties. A participant in the arrangement is merely expected to put forward a minimal investment to receive generous tax receipts in return.

As such, it is our position that there is no intention to make a "gift" within the meaning assigned at section 118.1 of the Act. Participants in this donation arrangement are primarily motivated by the artificial manipulation of the tax incentives available rather than a desire to enrich the participating charity. In our view, these transactions, given the combination of the tax credits and other benefits received, lack the requisite *animus donandi* to be considered gifts.

Transfers not gifts – Benefit Received

Additionally, we are of the opinion that the transactions themselves lack the necessary elements to be considered gifts at law. The participants receive some form of advantage or benefit that is linked to their participation in the tax shelter program. It is clear, based upon our audit and the promotional materials of the tax shelter that there was a clear expectation of financial return with respect to the donation made to the Organization. The participants acquire pharmaceuticals on 100% credit and have the option to repay their promissory note in pharmaceuticals not dollars. The benefit stems from the terms of repayment of the promissory

note. Participants are able to repay the promissory note by delivering to the tax shelter, a credit certificate obtained by LogiPharm, by delivering to the latter, identical pharmaceuticals. The pharmaceuticals may be acquired on the international market, at amounts significantly less than the alleged fair market value of the original pharmaceuticals bought on credit. The fact that the promissory note was payable by credit certificate through the purchase of identical pharmaceutical at a significantly lower price represents a material and significant benefit to the participant. It is our view that the tax shelter promoters knew that the pharmaceuticals could be purchased from a manufacturer for a unit price much lower than the $120/unit value used by the Organization when the pharmaceuticals were donated it.

The fact that a benefit was received as a result of the financing arrangements with the tax shelter and not directly from the Organization does not render the transfer a valid gift since the financing was not provided separately from the donation and the two are intricately linked. It is our opinion that since the financing forms an integral part of the donation any benefit that flows to the participant through the series of predetermined transactions would invalidate the gift. In Marechaux v. The Queen 2010 FCA 287, Evans, J.A. stated:

> "We are not persuaded that the Judge got the law wrong. Counsel cited no authority for the proposition that only a benefit provided to an alleged donor by the donee can prevent a payment to a charity from being a gift for the purpose of section 118.1. Nor do we see any principled reason in the present context for disregarding a benefit simply because it was provided by a third party, particularly where, as the Judge found in this case, the "donation" was conditional on the provision of the benefit." [Emphasis added]

In our view, it is clear that the pharmaceuticals transferred to the Organization were not gifts in the sense understood at law and that the Organization was not entitled to issue official donation receipts for their overstated value. In our findings, the Organization issued official donation receipts exceeding $16 million for transactions that did not qualify as gifts and for amounts clearly in excess of the pharmaceuticals' factual fair market value. Also, according to information provided by the Organization, at its own doing, the Organization issued official donation receipts in December of 2010 in excess of $68 million, in the same manner. It is clear from our audit and the promotional materials of the tax shelter that the Organization knew, or ought to have known that there was discrepancy in value of the pharmaceuticals donated to it. The Organization knew, or ought to have known, that it was not entitled to issue donation receipt for these transactions.

Application of the Proposed Legislation

Even without reference to the common law definition of a gift, it is our position that proposed subsection 248(32) of the Act applies to these transactions as well. While this legislation is still proposed, once passed into law, it applies to all transactions covered by the audit period under review. In our view, the financing of the tax shelter and the donation program loans, result in an advantage received in consideration[5] for the gift made to the Organization or is otherwise related to this gift[6]. As per above, the financing arrangement in

[5] See proposed sub-paragraph 248(32)(a)(i)
[6] See proposed sub-paragraph 248(32)(a)(iii)

the Mission Life tax shelter enabled the participant to finance 100% of the purchase price of the pharmaceuticals. The terms of the promissory note provide the option to repay the promissory note by delivering a credit certificate to the tax shelter, which the participant could obtain from LogiPharm, by delivering to the latter identical pharmaceuticals. As a result, a participant who exercises this option would not be required to make an additional cash outlay to acquire the identical pharmaceuticals. Therefore, a participant's cash outlay in respect of the cost of the pharmaceutical is zero since the pharmaceuticals were purchased on 100% credit and the terms of repayment of the financing arrangement are such that participants would not be required to incur any future cash outlay to settle their obligation. The Organization was therefore required by the Act to reduce the value reflected on the receipts issued by the value of the advantage.

The Organization obtained an opinion from Corporate Valuation Services Limited (CVS) on whether the participants would receive an advantage under the proposed subsections 248(31) and 248(32) of the Act. CVS provided the opinion that a cash contribution equivalent to 3% of the pledged pharmaceuticals purported value made to the Organization as a precondition to participate in the program would give rise to a small advantage to the participant. Based on this opinion, the Organization issued donation receipts for 20% of the cash contributions; the remaining 80% was reported as an advantage on the cash donation receipts.

It is our opinion that the advantage reported on the receipt is grossly understated given that the participants' cash outlay to acquire the pharmaceuticals was zero and that they were not required under the financing arrangement to incur any additional cash outlays from their own resources to settle their debt obligation as stated above.

Paragraph 248(35)(a) deems the fair market value of property acquired by a taxpayer under a gifting arrangement that is a tax shelter as defined by subsection 237.1(1) to be the lesser of the fair market value (FMV) otherwise determined or the cost of the property. It is our view the fair market value otherwise determined is approximately $9.69/pharmaceutical unit and the participant's actual cost of the pharmaceuticals is nil. As such, the FMV of the pharmaceuticals is deemed, by virtue of proposed subsection 248(35), to be no more than zero. Consequently the amount that the Organization was required under the Act to record on its official donation receipts as the deemed FMV of the gift is significantly lower than what was actually recorded by the Organization.

In addition, proposed subsection 248(34) generally provides that the gift portion of any transaction involving a limited recourse debt is deemed to be no more than the amount of the initial cash payment. As a taxpayer may additionally claim a gift with respect to a repayment of the principal amount of the limited-recourse debt in the year it is paid. As such, it is our opinion the Organization was not entitled to issue an official donation receipt for the full value of the loans participants received by participating in the Canadians Care donation program. While the promotional materials suggest the loans obtained from GEMS Capital are full recourse loans, the actions of the lender and the Organization imply the loans are not and will not be full recourse.

Additionally, it appears that the Organization participated in arrangements designed to avoid the application of proposed subsection 248(35). We would note that proposed subsection 248(38) states that where it can be reasonably concluded that the particular gift relates to a transaction or series of transactions one of the purposes of which is to avoid the application of subsection 248(35), the eligible amount of the property so gifted is nil. As such, it is our view that even if the property received by the Organization is a "gift", which, as described above, given the motivation of the participants, is unlikely, the property so received by the Organization was not eligible for tax receipts reflecting a value greater than zero.

Fair Market Value

"Fair market value" (FMV) is not defined by the Act; however, a standard definition generally accepted is, the highest price, expressed in dollars, obtainable in an open and unrestricted market between informed, prudent parties dealing at arm's length and under no compulsion to buy or sell[7].

As outlined by Rothstein, J.A. in *AG (Canada) v Tolley et al 2005 FCA 386*, in applying the Henderson definition of FMV, the first step is to accurately define the asset whose FMV is to be ascertained. Rothstein, J.A. discusses the relevance of donating a group of items versus an individual item and states that because the items were only acquired and donated in groups, the relevant asset was the group of items, and not the individual items in the group.

It is our position the conclusion made by Rothstein, J.A. also applies to the donation of pharmaceuticals. Based on the quantities donated, the relevant asset is considered to be the group of goods donated, not the individual items within each group. Rothstein, J.A. continues by stating it is wrong to assume that the FMV of a group of items is necessarily the aggregate of the price that could be obtained for the individual items in the group.

The second step in applying the Henderson definition is to identify the market in which the merchandise was traded. Rothstein, J. A. identifies this group of items might not be sold in the same market as individual items, and highlights this distinction through a comparison of the wholesale versus retail markets.

In Klotz v The Queen 2004 TCC 147, Bowman, A.C.J. stated "It is an interesting question that I need to consider here whether the price paid for something is truly indicative of fmv [sic-fair market value] where the predominant component in the price paid is the tax advantage that the purchaser expects to receive from acquiring the object."

Based on our findings, the FMV on the donation receipts issued is not indicative of the factual FMV of the goods donated. The FMV recorded on the official donation receipts is based upon the Canadian retail market and based upon the individual pills included in one treatment unit and not the treatment unit, in its entirety, as one unit. The valuation method used by the appraiser commissioned by the tax shelter claimed that the Ontario Drug Benefit Plan Formulary (ODBF) was an appropriate standard for establishing the price of the treatment units. The ODBF generally establishes prices for individual pills bought by individual

Ontario consumers for individual consumption. We are of the opinion the retail market is not the relevant market as the treatment units are manufactured, sold and distributed outside of Canada, acquired in bulk and were never intended to be used for personal consumption in Canada. The Organization provided an opinion on the fair market value as at April 30, 2009. It is not clear if the tax shelter or the Organization was responsible for commissioning the opinion. Based on the ODBF prices, CVS concluded that the fair market value of one treatment unit[8] was $120.00[9]. A valuation conducted by the CRA valued the treatment units at $9.69/unit. It is our opinion the FMV and the discounted value recorded on the official donations receipts remain overstated for the reasons above.

We note with interest that the tax shelter and the Organization relied on CVS to determine the FMV of the pharmaceuticals used in the tax shelter. It is our understanding that the tax shelter purchased the pharmaceuticals in bulk from the manufacturer through a series of predetermined and interconnected transactions yet chose to obtain a valuation to support the alleged FMV of the drugs when purchased by a participant in the tax shelter program. It would seem logical that the original purchase invoices for the pharmaceuticals should be used to determine the cost or FMV of the pharmaceuticals and that the valuation obtained was not necessary.

Due Diligence

We note with concern, with respect to this particular issue, that it appears that the Organization's directors have demonstrated a lack of due diligence with respect to receipting practices. In fact, and as above, we are of the opinion that the duty of the directors to operate in the best interests of the Organization has been side-tracked by its collusion with the registered and unregistered tax shelter arrangements.

As above, we note a failure by the Organization to demonstrate its due diligence in verifying the authenticity of the registered and unregistered tax shelter arrangements. By failing to do so, the Organization has allowed official donations receipts to be prepared for transactions that are not valid gifts which has resulted in the Organization issuing receipts for property it did not receive and has operated as a conduit for the registered and unregistered tax shelter arrangements.

Under paragraphs 168(1)(d) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its Regulations. It is our position that the Organization has issued receipts otherwise than in accordance with the Act and the Regulations. For each reason identified above, there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d).

---

[8] A treatment unit consists of seven doses of 3-in-1 AIDS ARV Cocktail (Lamivudine-150mg, Zidovudine-300mg, Nevirapine-200 mg), one dose of Ciprofloxacin-250mg and seven doses of Fluconazole-150mg).

[9] CVS valued the Ciprofloxacin at $1.00/unit, the ARV Cocktail was valued at $80.50/unit, and finally the Fluconazole was valued at $38.50/unit. CVS's report indicated that LogiPharm provided a coupon price of $18.00/unit; an approximate 15% discount from the cash price.

3. Failure to Issue Receipts in Accordance with the Act

The law provides various requirements with respect to the issuing of official donation receipts by registered charities. These requirements are contained in *Regulations* 3500 and 3501 of the *Act* and are described in some detail in Interpretation Bulletin IT-110R3 *Gifts and Official Donation Receipts*.

The audit revealed that the donation receipts issued by the Organization do not comply with the requirements of *Regulation* 3501 of the Act and IT-110R3 as follows:

- Receipts issued to acknowledge property received as a result of the Organization's participation in both the registered and unregistered tax shelter were not valid gifts under section 118.1 of the Act. Under the *Income Tax Act*, a registered charity can issue official donation receipts for income tax purposes for donations that legally qualify as gifts. Our findings are explained above;
- Receipts issued to acknowledge goods received as a result of the Organization's participation the registered tax shelter were not independently appraised by the Organization. The Organization used the valuation report commissioned by the tax shelter promoter as support for the values recorded on the official donation receipts issued. The Organization did not seek to obtain an independent valuation report. As above, we are of the view that the amounts recorded on the tax receipts are not reflective of the factual fair market value of the property donated;
- Receipts issued to acknowledge gifts in kind failed to provide the name and address of the appraiser of the property as required by Regulations; and
- The receipts are missing the name of Canada Revenue Agency.

Additionally, we would like to inform you that the amendments to the Act, which were introduced as part of Bill C-33 and discussed earlier in this letter also apply to official donation receipts. As a result of the amendments, a registered charity that issues an official donation receipt that includes incorrect information is liable pursuant to subsection 188.1(7) of the Act to a penalty equal to 5% of the eligible amount stated on the receipt. This penalty increases to 10% for a repeat infraction within 5 years.

Pursuant to subsection 188.1(9) of the Act, a registered charity that issues an official donation receipt that includes false information is liable to a penalty equal to 125% of the eligible amount stated on the receipt, where the total does not exceed $25,000. Where the total exceeds $25,000, the charity is liable to a penalty equal to 125% and the suspension of tax-receipting privileges as per paragraph 188.2(1)(c). We do not believe that either of these sanctions are an appropriate alternative, given the serious nature of the matter of non-compliance.

Under paragraph 168(1)(d) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its *Regulations*. It is our position that the Organization has issued receipts otherwise than in accordance with the Act and the *Regulations*. For each reason identified above, it appears to us that there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

4. Failure to Maintain or Provide Adequate Books and Records

Subsection 230(2) of the Act requires that every registered charity shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing:

- Information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under the Act;
- A duplicate of each receipt containing prescribed information for a donation received by it; and
- Other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under the Act.

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

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

Our audit revealed the books and records kept by the Organization were inadequate for the purposes of the Act. In the course of the audit, the following deficiencies were noted concerning the Organization's records:

- The Organization did not keep/provide minutes of meetings relative to important board decisions. In particular, discussions that stipulated the basis for fees paid to the related corporations outlined above for alleged services rendered. Per above, it is our opinion the amounts paid were designed to benefit the directors of the corporations from the net cash proceeds the Organization received as a result of participating in the registered and unregistered tax shelter programs.

- The Organization did not keep/provide documentation to substantiate the basis for the administration fees paid to the registered tax shelter. In one instance there was an invoice #[redacted] dated April 21, 2010 indicating shipping costs of $5,000; however no supporting documentation was provided. The Organization did not provide any agreements between itself and the registered tax shelter to substantiate these fees. We find this behavior inconsistent with normal business practice.

- In 2010, the Organization received tax shelter revenues $1,132,312; however, only reported $249,253 on its annual information return. The Organization netted the

administration fees paid to the tax shelter promoter against the revenues received, thereby materially misstating the true financial picture of the Organization.

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

5. Failure to File an Accurate T3010 *Registered Charity Information Return*

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file a *Registered Charity Information Return* (T3010) with the applicable schedules.

It is the responsibility of the Organization to ensure that the information that is provided in its T3010, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirement to file an information return if it fails to exercise due care with respect to ensuring the accuracy thereof.

The Organization improperly completed the T3010 for the fiscal period ending May 31, 2010 in that items reported were omitted or inaccurate. Specifically:

- Section E: Certification is not signed.
- The inventory has been overstated as the Organization was using $120 per unit and CRA's position is the value is $9.69.
- The Organization failed to report gross revenue received from and total administration fees paid to/retained by the tax shelter. Rather, it netted the total administration fees from the gross revenue and reported only the 23% net amount retained from the tax shelter.

The Organization improperly completed the T3010 for the fiscal period ending May 31, 2009 in that items reported were omitted or inaccurate. Specifically:

- Schedule 1: Foundations – the Organization indicated that it did not have any debts owing to it that meet the definition of a non-qualified investment; however, the Organization had a promissory note issued from a related corporation (see explanation above).
- The Organization reported $367,110 of enduring property transferred to qualified donees, but no such transfer in fact occurred.
- The Organization reported $523,000 of specified gifts transferred to qualified donees, but no such transfer in fact occurred.

Under paragraph 168(1)(c) 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 fails to file an information return as an when required under the Act. It is our position the Organization has

failed to comply with the Act by failing to file an accurate T3010. For this reason there may be grounds to revoke the registered status of the Organization under paragraph 168(1)(c) of the Act.

The Organization's Options:

a) No Response

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

b) Response

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

- no compliance action necessary;
- the issuance of an educational letter;
- resolving these issues through the implementation of a Compliance Agreement; or
- 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,

[redacted]
166 Frederick Street
Kitchener, ON N2G-4N1

Telephone: [redacted]
Facsimile: (519) 585-2803

Enclosure: Appendix A

Appendix A

Mission Life Financial (the tax shelter)

Based on the Mission Life promotional material, the registered tax shelter purportedly operates as follows:

- A participant borrows a Credit Certificate from Mission Life Financial. The Credit Certificate has a face value equal to the purchase price of the pharmaceuticals the participants wishes to acquire and is in exchange for an eight year promissory note;
- The participant is required to pre-pay interest for the first four years in advance to the tax shelter. The interest rate on the promissory note varies depending on the month of participation;
- The participant uses the Credit Certificate to purchase pharmaceuticals consisting of ARV Cocktail, Ciprofloxacin, and Fluconazole for $120/unit from the tax shelter - the participating vendor. The pharmaceuticals are purchased 100% on credit;
- The participant pledges to gift the pharmaceuticals to the Organization by signing a pledge agreement;
- As a condition of participating in the program, the participant must make a cash contribution to the Organization equal to 3% of the pharmaceuticals purported $120/unit value;
- After making the cash contribution and gifting the pharmaceuticals to the Organization, the participant receives two charitable donation receipts - one for the purported value of the pharmaceuticals and a second for the 3% cash contribution;
- The cash receipt indicates that an advantage has been received by the participant equal to 80% of the cash contribution;
- The participant is entitled, within eight years of purchasing the pharmaceuticals, to deliver to LogiPharm pharmaceuticals which are of a pharmacologically identical type, quantity and quality of the originally purchased pharmaceuticals and in return LogiPharm agrees to return the Credit Certificate to the participant;
- To achieve this, the participant grants the tax shelter, pursuant to the pledge agreement, a limited power of attorney under which terms the participant is entitled at any time prior to the end of the loan term to direct the tax shelter to transfer any unapplied prepaid interest, to any authorized agent in connection with the tax shelter. The authorized agent would use the transferred amount from the unapplied balance of the prepaid interest to purchase the identical pharmaceuticals on behalf of the participant, which would be used to reacquire the Credit Certificate from LogiPharm; and
- The participant has the option of paying the principle amount of the loan within eight years either in cash or by returning the Credit Certificate to tax shelter.

As an example, a participant wishing to participate in June 2009 would borrow a Credit Certificate from the tax shelter with a face value of $10,500. The participant then enters into an agreement with LogiPharm to acquire 87.5 pharmaceutical units valued at $120/unit. The participant provides the previously obtained Credit Certificate issued by the tax shelter to LogiPharm in exchange for an eight year promissory note bearing interest at 4.29%, as payment for the pharmaceuticals. The participant then makes a cash contribution equal to 3% of the pharmaceuticals purported value or $315 to the Organization as a condition of participating in the program. The participant also pays $1,800 representing his prepaid

interest on the promissory note to the tax shelter for a total cash outlay of $2,115. The participant pledges to gift all the pharmaceuticals to the Organization. In return, the participant is issued two charitable donations receipts: one for the $10,500 in pharmaceuticals gifted and another for the $315 cash contribution less the deemed advantage of $252t. At the end, the participant has an eight year loan payable either in cash or by returning the Credit Certificate to the tax shelter.

The participant's actual involvement in the above transactions is limited to completing and signing the required documents and issuing the cheques mentioned above.

All of the transactions were conducted by the tax shelter and LogiPharm on behalf of the participant pursuant to limited power of attorney granted to them.

Canadians Care Donation Arrangement

Based on the Canadians Care promotional material, the donation program purportedly operates as follows:

- A participant applies through Canadians Care Humanitarian Corporation for a three-year full recourse loan from GEMS Capital. The loan will be co-signed by GEMS Capital;
- The participant pays GEMS Capital a fee equivalent to 25% of the loan amount. The fee is to be used for administrative purposes by GEMS Capital and to pre-pay interest charges on the loan. Loan interest is at prescribed rates as defined by CRA;
- The participant then donates the entire loan amount to the Organization and receives a donation receipt;
- The participant claims the donation receipt when submitting his/her income taxes. For participants in Ontario, the participant receives a donation tax credit equal to 46.41% (combined Federal and Ontario rate), or $4,641 per $10,000 donation; and
- The net benefit to the participant is $2,141 ($4,641 - $2,500 out of pocket fee paid).

ITR APPENDIX "A"

Trinity Global Support Foundation

Comments on Representations of July 27, 2012

Based on the Canada Revenue Agency's (CRA) audit of Trinity Global Support Foundation (the Organization), the Organization primarily operates for the purpose of furthering two gifting donation arrangements, Mission Life Financial Inc. (Mission Life) and Canadians Care by agreeing, for a fee, to act as a receipting agent for these donation arrangements. As described in the balance of this letter, and in our letter of April 10, 2012, the Organization is operating as a conduit for the donation arrangements; is in serious breach of the requirements for registration under the *Income Tax Act* and its registration should be revoked.

1. Failure to Devote Resources to Charitable Activities

Our audit revealed that an overwhelming majority of the Organization's resources are devoted to and received from its participation in the Mission Life registered tax shelter and the Canadians Care donation arrangement. In our view, and taking into account the manner in which the Organization has structured itself to accommodate these donation arrangements, the promotion of these tax shelter arrangements has become an end in itself. Operating for the purpose of promoting a donation arrangement, registered or unregistered, is not a charitable purpose at law.

Based on our findings that the Organization devotes substantially all of its resources towards the promotion and facilitation of these donation arrangements with little left for its own charitable programs, we find it difficult to conclude that the predominant purpose of the Organization is anything other than promoting the Mission Life and Canadians Care donation arrangements. Accordingly, per our previous letter, we remain of the position that the Organization ceased to meet the definition of a charitable foundation as laid out in subsection 149.1(1) of the Act. During the audit period, the Organization operated primarily, or at least collaterally, for the purpose of promoting abusive donation arrangements and cannot be considered to be devoting all of its resources to charitable activities carried on by it.

Operating *Ultra Vires*

The Organization was registered on the basis of the charitable purposes and activities described in its application for registration. Registration was granted on the understanding that its activities would be limited to those that further its stated charitable purposes.

The Organization's objects were clarified at the time of registration by the Charities Directorate and the Organization very clearly indicated that it intended to only support qualified donees and/or conduct charitable activities in support of its stated objects in Canada. As such, CRA granted registration on the understanding that the Organization would only be engaging in activities that further these purposes and that such activity would only be conducted within Canada. Further, in a letter dated March 17, 2009, the Organization re-affirmed that their mandate was to relieve hunger and poverty, advance programs and

services to benefit children and youth, and to advance spiritual tenets and teachings. According to our records, the Organization's objects have not been formally amended through supplementary letters patent to show that it has broadened its mandate to pursue additional charitable purposes.

Although we agree that the Organization does engage in some charitable activities related to its stated purposes, such as gifting to qualified donees, an overwhelmingly large percentage of the Organization's funds are used to engage in activities designed to promote the aforementioned tax shelter arrangements, and outside of the scope of its stated charitable mandate.

The Organization submits that "it believed that an association with a registered tax shelter and with a donation program was necessary to raise funds that enabled it to carry on its charitable purposes and activities". The Organization further submits that it felt that this was justified, notwithstanding the high administrative fees "as it would receive millions of dollars in life saving goods and given that it had no prior experience in these types of programs". Notwithstanding this response, it is our position that neither the fundraising expense nor the amounts claimed as expenditures on charitable programs can be considered to be expenses incurred to further the Organization's specific purposes. Further, as below, the Organization has failed to demonstrate that it carried out these activities itself – i.e., by maintaining direction and control over these activities conducted outside Canada or over the resources itself, or by maintaining documentation to substantiate the ultimate use of the property.

Tax Shelters

We agree with your comments that CRA regularly registers and monitors tax shelter arrangements and that the Mission Life tax shelter was in compliance with the *Income Tax Act* with respect to its registration and reporting requirements. Tax shelter promoters must obtain a tax shelter identification number before selling their arrangements and must file annual information returns including a list of participants and other prescribed information. The tax shelter identification number is intended only to track the schemes and participants and does not entitle the participants to any of the benefits related to the tax shelter. All gifting tax shelter schemes are audited. As such, a tax shelter's compliance with the Act's registration and reporting requirements does not absolve a registered charity of its obligation to ensure that its conduct in participating in such an arrangement is in compliance with the Act.

It remains our position that the majority of the Organization's resources are devoted to and received from its participation in abusive tax shelter donation arrangements, both registered and unregistered. Our audit revealed that the Organization's total expenses for the audit period were $12,561,793. Of this, $6,505,914[1] or 52% related to the facilitation of the Canadians Care donation arrangement itself. A further $867,460 related to the facilitation of

[1] This amount reported by the Organization represents the loss on investments or write-down recognized when the companies to which it purportedly invested its funds received from the Canadians Care participants filed for bankruptcy.

the Mission Life tax shelter resulting in 58% of the Organization's expenses devoted to facilitating donation arrangements. Given that the Organization devotes significantly more resources towards the facilitation of these programs than it does on its own charitable programming, we find it difficult to view the predominant purpose of the Organization to be anything other than promoting the donation arrangements with which it was involved. Per our previous letter, it remains our position that the Organization ceased to meet the requirements for continued registration as a charity because it failed to operate exclusively for charitable purposes and devote its resources exclusively to those purposes.

Operating for the purpose of promoting a tax shelter donation arrangement is not a charitable purpose at law. While we acknowledge that the Organization has stated that it has discontinued its participation in both the Mission Life and Canadians Cares donation arrangements, there has been evidence to suggest that the Organization is participating in a similar tax shelter donation arrangement, namely Global Learning Gifting Initiative[2].

Mission Life

Our audit revealed that the Organization operates for the purpose of furthering the AIDS treatment for Sub-Sahara Africa, as promoted by Mission Life, a registered tax shelter. The Organization agreed, for a fee, to act as a receipting agent for Mission Life. Per our previous letter, it is the CRA's position that the Organization's charitable activities have been side-tracked for the purpose of participating in and promoting this tax shelter, which is not charitable at law.

The audit revealed that the Organization entered into agreements with persons associated with the Mission Life tax shelter program to accept and receipt property (pharmaceuticals[3]) contributed by Mission Life's participants. The vast majority of the property received by the Organization was directed in such a manner that it benefited the tax shelter promoters, with proportionally insignificant amounts being expended on the Organization's own charitable programs. As discussed below, the Organization has also been unable to substantiate that it retained direction and control over the receipt and distribution of the pharmaceuticals allegedly received from participants in the Mission Life tax shelter.

For its role, the Organization was financially compensated from the cash contributions[4] made by participants of the tax shelter. In 2010, the Organization retained a mere 6% of the total cash contributions received from its participation in Mission Life, with 77% of the amount received paid back to Mission Life and 17% paid out as compensation to the directors of the Organization for services purportedly rendered. With such a small percentage of the funds actually available for use in its own charitable programming, it remains our position that the Organization cannot be said to be established and operated exclusively for charitable purposes.

---

[2] www.glgi.ca

[3] The pharmaceuticals – ARV Cocktail, Ciprofloxacin and Fluconazole – are also known as treatment units with one treatment unit consisting of the three pharmaceuticals.

[4] Participants make a cash contribution (equivalent to 3% of the treatment units' purported fair market value (FMV) and purchase price) to the Organization or another participating charity.

It is also agreed that the Organization had no involvement in preparing the promotional materials for or the marketing of the Mission Life program to participants. The Organization's only involvement was to receive the donations of pharmaceuticals, to ensure that the charitable donation tax receipts were issued for the grossly inflated fair market value of the pharmaceuticals and arrange for the distribution of the pharmaceuticals, as promised, to medical clinics in "Sub-Saharan Africa". While we are not alleging that the members of the Organization themselves directly promoted the tax shelter scheme to the public *per se*, we disagree with the Organization's characterization of its lack of involvement and knowledge of the tax shelter. Given that the Organization devotes significantly more resources towards the facilitation of this tax shelter than it does on its own charitable programs, reporting these amounts in its T3010 as its own activities, it is difficult to conclude that a predominant purpose of the Organization is to be anything other than facilitating the promotion of this tax shelter.

As such, the Organization has admittedly relinquished almost total control over its activities to the tax shelter promoter. The Organization has no interaction with the participants beyond the issuance of receipts nor did it physically receive or satisfactorily demonstrate that it retained ownership of the pharmaceuticals that it purports to receive and distribute. The Organization only received information as to the purported value of the property donated to it and was given instructions as to whom and in what amounts to issue tax receipts. Your representations indicate that your president was responsible for coordinating the distribution of millions of doses of the donated treatment units; however, the Organization also indicated it paid large fees to Mission Life for this very function. As outlined in our previous letter and discussed below, the agency agreements the Organization entered into to cover the distribution of pharmaceuticals were not adhered to. The Act precludes registered charities from relinquishing control of its resources to a third party without the registered charity's continuous direction and control to ensure that its resources are applied strictly to charitable programs on its behalf. In this regard, we conclude that the Organization's primary function was to simply structure its operations to facilitate the tax shelter donation arrangement and act as the receipt issuing entity in a tax shelter arrangement.

Canadians Care

Our audit also revealed that the Organization primarily operates for the purpose of furthering the Canadians Care donation arrangement. The Organization agreed, for a fee, to act as a receipting agent for Canadians Care and, as per our previous letter, it is the CRA's position that the Organization's charitable activities have been side-tracked for the purpose of participating in and promoting this donation arrangement as well, which is not charitable at law.

Per our previous letter, the Canadians Care donation arrangement is a leveraged arrangement wherein participants purportedly gifted loan proceeds to the Organization. For its role in the Canadians Care donation arrangement, the Organization retained only 19% of the total loan proceeds received and invested the remaining monies in companies owned by previous directors of the Organization. The Organization admits it erroneously invested 64% of the funds in GEMS Capital Limited Partnership II and 17% in 990509 Ontario Inc., a company owned by Mr. and Mrs. Ciccone, previous directors of the Organization. These

investments were subsequently lost when 990509 Ontario Inc. filed for bankruptcy[5]. The investing of funds in and of itself is not a charitable activity. Charities must be mindful of the risk involved in investing and ensure that its funds are protected from such risks.

As outlined above and per our previous letter, it is our position that the Organization fails to meet the definition of a private foundation as laid out in subsection 149.1(1) of the Act as it operated primarily, or at least collaterally, for the purposes of promoting abusive donation arrangements and cannot be considered to be devoting all of its resources to charitable activities carried on by it. The Organization does not operate for wholly charitable purposes and the activities it undertakes do not support its charitable purposes in a manner consistent with charity law. For this reason alone, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

990509 Ontario Inc. (Ciccone Group Inc.) and GEMS Capital Limited Partnership II (GEMS Partnership)

Your representations indicate that the "Board of Directors of the [Organization] decided to invest funds in Ciccone Group Inc. and in GEMS Partnership." You also indicate that "it appears that funds originally invested in GEMS Partnership were later converted into an investment in Ciccone Group Inc." Based on the facts presented in your letter, it is understood that the Organization believed this was a prudent decision. However, there is no indication, through documentary evidence, as to why the Board of Directors felt this way or that it performed its due diligence to substantiate this decision.

Board minutes presented during the audit do not contain any notation regarding the discussions held concerning the investments with GEMS Partnership. In fact, at no time during the audit or in subsequent representations does the Organization provide sufficient documentation to support that it conducted itself appropriately, at all times, in a non-arm's length relationship with the Ciccone Group Inc., Karen or Vincent Ciccone or any other entity that is controlled in whole or in part, by any member, current or past, of its Board of Directors. As such, it is reasonable for the CRA to assume that the decision to invest in GEMS Partnership was made due to the relationship it had with the Ciccone's, as the founders of the Organization and as 100% shareholders in the Ciccone Group Inc. Additionally, the fact that U. Joe Fontana, Hon. Joe Fontana Sr., 966016 Ontario Inc. (a related company owned by Karen-Thompson Ciccone), and the Ciccones as individuals, were all listed as creditors with the Ciccone Group Inc., indicates that a very close, non-arm's length relationship existed between all parties involved.

Our concerns with this investment do not rest wholly with the fact that the Organization lost the funds invested but rather with the nature of the relationship between the entities involved in the investment. Had the Organization invested funds with a listed company on a prescribed stock exchange, as suggested in your letter, and after careful, well documented discussion of the Board of Directors and subsequent loss of said invested funds, it is unlikely that CRA would have an issue. However, that is not the case. The Organization did not invest with a

[5] GEMS subsequently loaned the funds invested by the Organization to 990509 Ontario Inc.

listed company of a prescribed stock exchange but rather a private corporation with which the Organization has a close relationship. Also, the Organization failed to adequately document that it conducted its due diligence with respect to the investment in relation to the arm's length relationship.

As we mentioned in our previous letter, we noted that the Ontario Securities Commission's investigation of the Ciccone Group Inc. and Vincent Ciccone alleged that the parties "committed a fraud by using investor funds for purposes other than the investment purposes that were communicated to investors" but we did not allege that the Organization participated in this fraud.

Other Charitable Purposes and Activities

In your representations, you indicate that the Organization is involved with many other charitable activities which have not been considered by CRA. Firstly, you indicate that "the [Organization] collected approximately $17 million dollars' worth of pharmaceuticals, and had distributed approximately $12 million dollars of pharmaceuticals by December of 2010 to its agents in Africa." In order to verify this, you indicate "that a group representing the [Organization] visited the Diocese of Kakamega in order to see firsthand how the pharmaceuticals were being used and how they were helping." There has not been any documentation identifying the "group" that travelled to Africa, their association with the Organization or the results of their alleged visit, nor would a follow-up visit(s) be sufficient to demonstrate the Organization directed and controlled these activities as required by the Act. Also, as outlined above, it is our opinion that the Organization's activities involving the distribution of pharmaceuticals overseas are not an activity that furthers the Organization's governing purpose.

The CRA acknowledges that the Organization has gifted amounts to qualified donees in respect of relief of poverty, dealing with children and youth and dealing with spiritual tenets. This amount, however, is relatively immaterial compared to reported total expenditures. During the audit period, the Organization reported total expenditures at line 5100 of $11,536,226 yet we have otherwise determined that it gifted $1,124,833[6] or 9.75% of total expenditures to qualified donees. It should be noted that amounts incurred for the domestic feeding programs in schools across the country are not included in these amounts for reasons that will be discussed below[7].

---

[6] The Organization reported the purported value of the pharmaceuticals distributed to the Diocese of Kakamega as a gift to a qualified donee. The Diocese of Kakamega is not a qualified donee as defined by the Act. A review of the 2011 T3010 also reveals the Organization reported this same error by reporting gifts made to the Dioceses of Kakamega and Fianarantsoa totalling $32,796,968 as gifts to a qualified donee; neither Diocese is a qualified donee as defined by the Act.

[7] The amounts distributed by Show Kids You Care and reported as part of the Organization's programs for the years under audit total $329,653. Even if we considered this amount to be incurred as a result of charitable programs operated under the Organization's direction and control, the Organization could have reported devoting 12.6% of its total expenditures to charitable activities.

In March of 2009, the Organization undertook a children's feeding program called Show Kids You Care following the revocation for cause of Children's Emergency Foundation (CEF) due to its involvement in a tax shelter program and other non-charitable activities. The Organization entered into a transfer agreement with CEF and agreed to operate the children's feeding program as well as retain certain key staff members of the feeding program.

Again, we point out that we were not provided with any documentation to support that the Organization had any involvement in the selection process of the beneficiaries of the feeding program, or that it remained, at all times, the guiding mind of the feeding program or any other program operated by Show Kids You Care. The Organization failed to provide any documentation to support its involvement and control over the activities purportedly operated under its umbrella of charitable programs, specifically Show Kids You Care. It appears that the Show Kids You Care program is being operated as a separate entity entirely.

It remains the opinion of CRA that the Organization was not carrying on its own activity with the Show Kids You Care program and that this program carried on many of the same activities which led to its predecessor's revocation. At the initial interview on May 2, 2010, the Organization indicated it did not wish to continue with the Show Kids You Care program. During our audit, Ms. Kristy Taylor, Show Kids You Care, Executive Director, advised that it would not follow in CEF's footsteps and would not participate in any tax shelter arrangement; however, our research has revealed that through the Organization, it became involved in the tax shelter program operated by Global Learning Giving Initiative (GLGI)[8]. In fact, Ms. Taylor was shown in a video on the Web site of GLGI promoting the activities of Show Kids You Care[9] and the program is featured in GLGI's quarterly Journal. Also, as discussed below, it appears to have retained or carried over a similar third party fundraising contract wherein the net proceeds to it are less than the amounts retained by the fundraiser.

Therefore, as outlined above and in our previous letter, it appears that the Organization does not maintain direction and control over this program, and as a result, any expenses related to this program are considered non-charitable in nature. As such, although the Organization does donate a limited proportion of its funds to qualified donees, Show Kids You Care, is not one of them. Thus, in relative comparison, the percentage of the Organization's total expenditures actually used for charitable programing (including donating to qualified donees) is not sufficient for it to meet the definition of a charitable foundation operated exclusively for charitable purposes.

Failure to Carry Out Its Own Charitable Activities (Control and Direction)

Per our previous letter, a charity must always be in control of its resources in order to demonstrate that it is satisfying the definition of a private foundation and devotes all of its resources to charitable activities *carried on by the organization itself or through qualified donees.*

---

[8] http://www.glgi.ca
[9] http://www.glgi.ca/video

The Organization is a registered charity, with the designation of a private foundation. The Act allows registered charities, including those designated as private foundations, to devote their resources:

a) towards charitable activities carried on by the organization itself; and/or
b) to making gifts to organizations that are "qualified donees".

As you note, "foundations are not prohibited from carrying on their own programs and many carry on some direct charitable activities." We agree that the Organization carried out very limited amounts of its own charitable activities and/or donated to qualified donees but we reiterate that a majority of the Organization's activities are not charitable nor are they conducted under its direction and control. As explained previously, the Organization participated in abusive donation arrangements, which are non-charitable activities and undertook a children's feeding program which it permitted to be operated by a separate entity with no observable oversight.

Personal Benefit

It remains our position the Organization has, in part, operated for the private gain of its directors. The Organization has entered into contracts with, and paid out management fees to, various corporations owned by the Organization's directors and we find the amounts paid inappropriate, unsubstantiated and/or unreasonable.

In your response, you outline the responsibilities of the President of the Organization, providing hours spent on various activities, etc. Since we do not consider the Show Kids You Care program to be a qualifying program operated by the Organization, any time spent on it is to be excluded and considered non-charitable in nature. It should be noted that similar breakdowns were not provided for the other individuals/corporations receiving funds for management fees.

The Organization has failed to provide documentation to support that it had done its due diligence with respect to tendering out the contracts, or showing how the candidates chosen were the best for the job. It is reasonable to assume that as the Organization was able to track the hours of the president of the Organization, similar statistics and documentation should be available with respect to contracted services from related corporations. While contracts were provided, one would still expect detailed breakdowns of hours and tasks performed to be available in the course of normal business practices.

Concerning the $650,000 paid to related individuals by the Organization, your representations indicate that "the [Organization's] view was that the $650,000 was always owed to it by GEMS Capital (or Ciccone Group Inc.), and it appears that the amounts were either donated to a registered charity on its behalf ($300,000) or repaid by Ciccone Group Inc. ($350,000)." The Organization does not address how Karen Thompson-Ciccone was able to make the entries in the accounting records unknown to the Board of Directors. The explanation offered by the Organization regarding this amount owed to it, however, further demonstrates the lack of direction and control that the Organization exercised over its funds, and that the non-arm's

length relationship that existed between the Ciccone Group Inc. and the Organization was abused for the personal gain of the related parties and its' directors. By allowing another entity to make a donation on its behalf with no documentary evidence to support that the donation was at the explicit direction of the Organization supports the CRA's view that the Organization was not acting independently in this relationship but rather was an extension of one or two individuals who controlled the relationship. In the end, the poor decisions of the board which appear to be more in support of its directors' financial position than the pursuit of its charitable purpose ultimately resulted in the Organization losing these funds when the Ciccone Group filed for bankruptcy.

It remains our view that the Organization has failed to demonstrate, through documentary evidence that services were rendered by the corporations at fair market value for similar services or for *bona fide* services rendered by the directors.

As such, as outlined above, it remains our position that the Organization has operated for the private gain of its directors and has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) of the Act as a charitable foundation. For this reason alone, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

Non-Qualified Investment

In your representations, you state that "the [Organization] takes the position that, at all relevant times, it was at arm's length with Ciccone Group Inc." You reference section 256 of the Act stating that "in the case of corporate entities, two corporations are only considered not to be at arm's length if they are both controlled directly or indirectly by the same person or group of persons." We are of the opinion that your representations do not disprove that there was either direct or indirect influence by the Ciccones and Carmine Domenicucci in making these business decisions[10]. Your representations indicate that the Board of Directors did consider several investments, but ultimately decided to invest the above funds in GEMS Partnership. However, documentary evidence of such decisions has not been provided.

Directors of charitable corporations and trustees of charitable trusts are responsible for the assets of the charities they manage. They have a duty to manage the funds responsibly. This includes investing funds not immediately needed to carry out the charity's purpose. It is difficult to understand why the Organization thought it prudent that it invest almost all of the receipted funds in its first year of operation with GEMS Partnership. In addition, the *Trustee Act* of Ontario requires trustees to diversify "to an extent that is appropriate to the requirements of the trust and general economic and investment market conditions[11]." This means that the directors and trustees should consider investing in a number of different

[10] During the relevant periods, the Ciccones and their corporations would be deemed related persons by virtue of 251(2)(a), 251(2)(b)(i), 251(b)(iii) and 251(2)(c)(ii). Additionally, Mr. Domenicucci and his corporation would be deemed related persons by virtue of 251(2)(b)(i). Also, given that these three individuals represent 50% of the Organization's Board of Directors at the time the relevant investing decisions would have been made, we remain of the position this group had significant influence on the operations of the Organization.

[11] Subsection 27(1) of the *Trustee Act of Ontario*

institutions and a number of different types of investments. Such practice thereby reduces the risk to the charity. More specifically, the *Trustee Act* outlines seven factors a trustee must consider when making investments on behalf of a charity. They are:

- general economic conditions;
- the possible effects of inflation or deflation;
- the expected tax consequences of the investment decisions or strategies;
- the role each investment or course of action plays within the charity's overall portfolio;
- the expected total return from income and growth of capital;
- needs of the charity for liquidity, regularity of income and preservation or appreciation of capital. The need to produce sufficient income to allow the charity to carry out its purposes must be balanced against the need to maintain and, if possible, increase the capital for the future; and
- an asset's special relationship or special value, if any, to the purposes of the charity or to its beneficiaries[12].

During the audit or in any other representations, the Organization failed to provide any documentation that contained discussions concerning the potential investment of its funds, covering the seven criteria outlined above, or why the decision to invest only in GEMS was a prudent one. The Organization failed to demonstrate that it fulfilled its obligations surrounding the investments of its funds as outlined in the *Trustee Act* and stipulated in its letters patent. Further, it is our opinion that it is probable that, while Mr. Ciccone and Mr. Domenicucci may have abstained from the voting, they did not abstain from offering input regarding how and where the Organization should make investments prior to voting.

Our review of the information provided during the audit indicates there has not been sufficient separation between the directors' affairs and the financial and business interests of the individuals responsible for administration and management of the Organization's programs. It appears that the Organization's programs have been operated in such a way as to benefit those interests. CRA remains of the opinion that the Organization was operated for the personal benefit and/or financial gain of its directors.

Gifts to Non-Qualified Donees

Your representations make the following statement: "the [Organization] is a charitable foundation and not a charitable organization. Therefore the requirement that all of its resources be devoted to charitable activities "carried on by the organization itself" has no application." We disagree. Charitable foundations must be established and operated for exclusively charitable purposes. The position of the CRA is that this requires the Organization to devote all of its resources to charitable activities carried on by it or by way of gifts to qualified donees[13].

---

[12] Subsection 27(5) of the *Trustee Act of Ontario*

[13] Legislation *clarifying* this position is contained in the October 2012, Notice of Ways And Means Motion To Amend The Income Tax Act, and is applicable to transactions made after December 20, 2002. See http://www.fin.gc.ca/drleg-apl/nwmm-amvm-1012-eng.asp

The CRA acknowledges that it is not always practical for a registered charity to become directly involved in charitable activities because of limited financial resources, the size of the project or because the charity lacks the necessary expertise to operate effectively in a particular area of interest. Accordingly, the CRA will consider a registered charity to be involved in its own charitable activities if the charity demonstrates that it maintains the same degree of control and responsibility over the use of its resources by another entity operating on its behalf as it would if its activities were conducted by the charity itself. The receipt and distribution of pharmaceuticals may be considered a charitable activity if undertaken by the charity itself. However, the charity must exercise direction and control over the pharmaceuticals, their use and their distribution at all times.

While the Organization does have agency agreements in place that purportedly cover the distribution of pharmaceuticals, it remains the CRA's position that the agreements were not adhered to. In order for a charity to meet the own activities test, the charity must effectively demonstrate a real, ongoing, active relationship with an intermediary which means more than merely signing an agreement. Specifically, item 4 of the agency agreement stipulates, among other things, that "[the Organization] shall designate, at its sole discretion, a list of qualified health care organizations, institutions or professionals that provide services worthy of its support." Our audit revealed that the Organization relied on the recipient organizations to distribute the pharmaceuticals to the areas that they determined to be in greatest need. Your representations also restated the above fact.

Additionally, we acknowledge that the Organization provided its criteria for selecting prospective agents; however, it failed to provide documentary evidence as to how a particular agent met the criteria or made any note in the board minutes as to how the implementation of the selection criteria was monitored, evaluated or reviewed. Further the Organization failed to provide any documentary evidence to support that the agent purportedly acting on its behalf carried out the program as directed by the Organization via formalized reports, receipts or correspondence.

With respect to the $133,070 gifted to a non-qualified donee in 2009, your representations do not address our findings. As such, we conclude that the Organization transferred $133,070 to an American organization that does not meet the definition of a qualified donee per subsection 149.1(1) of the Act.

As such, for these reasons and those outlined in our previous letter, the Organization has failed to demonstrate that it maintained direction and control over its resources at all times. It remains our opinion that the Organization's gifts of pharmaceuticals made to third parties overseas are considered gifts to non-qualified donees and are not its own charitable activities.

Fundraising Activities

CRA's position has not changed with respect to fundraising activities carried on by the Organization as outlined in our previous letter. Our audit findings reveal that the Organization devotes a substantial portion of its actual cash contributions to fundraising activities. Although

the Organization has made it very clear in its representations that it feels that fundraising is a necessary activity for it to participate in, fundraising is not a charitable purpose in and of itself. While charities are permitted to engage in a limited amount of fundraising activity to fund their charitable pursuits, they must respect reasonable limits to prevent fundraising from becoming a collateral purpose and to avoid conferring an undue benefit on the fundraiser. It is our position that by virtue of the substantial amount of resources devoted to fundraising, it has become a collateral non-charitable purpose of the Organization. Consequently, it has failed to demonstrate that it meets the test for continued registration under 149.1(1) as a charitable foundation established and operated exclusively for charitable purposes.

In your representations, you specifically indicate that the Organization wished to make comments with respect to its fundraising practice using the most recent version of CRA's guidance, specifically *CG-013, Fundraising by Registered Charities.* As such, we offer the following comments concerning the guidance, the Organization's fundraising practices and the CRA's opinion thereof.

When evaluating a charity's fundraising activities, the CRA will consider a range of indicators and factors as outlined in the guidance. The guidance states that "a registered charity that engages in unacceptable fundraising is liable to sanctions or the revocation of its registration." The guidance also helps clarify what is considered unacceptable fundraising activities. Any activity that:

- is a purpose of the charity (a collateral non-charitable purpose);
- delivers a more than incidental private benefit (a benefit that is not necessary, reasonable, or proportionate in relation to the resulting public benefit);
- is illegal or contrary to public policy;
- is deceptive; or
- is an unrelated business.

Section G of the guidance discusses in great detail how the CRA will evaluate the fundraising activities of a charity to help in its determination as to whether or not the activity is acceptable. It is with regard to this section that your representations seem to show greatest focus; therefore, our discussions will begin here. Although the guidance discusses several factors that are indicators of an unacceptable fundraising activity, your representations appear to focus on two indicators in particular: resources devoted to fundraising are disproportionate to resources devoted to charitable activities and high fundraising expense ratio.

Under the discussion surrounding devotion of resources, merely showing that the costs of fundraising are at reasonable or at market rates will not alleviate our concerns. Regardless of the cost of fundraising, a registered charity must devote substantially all of its resources to charitable activities. If a charity's total resources devoted to fundraising exceed those devoted to charitable activities, it is unlikely that this legal requirement will be met. As we discussed in our previous letter and above, the CRA is of the position that the Organization fails to meet the devotion of resources test.

During our audit and based on the amounts reported on the T3010 for 2010, we calculated that the Organization had total cash expenses of $983,827[14]. The reported loss on investment is not considered an expense for the purposes of this calculation. In fact, as the amount was actually paid to respective investors prior to the 2010 period, one cannot even argue that the actual cash generated from fundraising during 2010 was used to make this investment. Also, we have deducted the non-cash expense of the pharmaceuticals allegedly gifted and added back the underreported fundraising fees paid.

After revising the amount of total expenditures to reflect a more accurate total of funds available for use in charitable programming, a comparison is drawn between the amounts spent on fundraising in direct proportion to the total amount actually spent. Using the revised total cash expenditures figure of $983,827 for a truer reflection of how the Organization devotes its resources, it appears that over 88% of the Organization's cash expenditures related to fundraising[15]. It is our opinion that this amount is disproportionate to the amount actually spent on charitable programming.

With respect to the calculation of the high fundraising expense ratios we would like to offer the following discussion. The fundraising ratio is a global calculation for a fiscal period, determined by dividing fundraising expenditures by fundraising revenue using the entries from the charity's T3010.

To calculate the ratio:

- add the revenue amounts from lines 4500 (receipted donations) and 4630 (fundraising revenue not reported in 4500); and,
- divide the total expenditure amount on line 5020 (fundraising expenses) by the sum of lines 4500 and 4630.

Note that the total amount reported on line 4500 is to be included, whether or not these amounts can be traced to a fundraising activity. All amounts for which a tax receipt is not issued, and that were generated as a direct result of fundraising expenses are reported on line 4630. It should also be noted that an Organization's fundraising ratio should be calculated on an annual basis; therefore, this calculation would need to be completed every year[16].

In your representations, you acknowledge that your participation in a registered tax shelter was necessary to ***raise funds*** to allow the Organization to carry on its charitable purposes and activities. In essence, in order to continue to receive cash donations and donations of

---

[14] Calculated as total Expenses before gifts to qualified donees $8,019,721 less loss on investment $6,505,914 less purported value of pharmaceuticals gifted to Diocese of Kakamega $1,397,440 plus unreported portion of fundraising fees paid to Mission Life $867,460.

[15] A review of the 2011 T3010 reveals fundraising expenses reported at line 5030 represent 45% of the Organization's total expenditures reported at line 4950.

[16] Your representations included a multiple year calculation (2008 to 2010) and also appears to omit the non-receipted portion (80% of the 3% of the pharmaceuticals purported FMV) of the Mission Life participant's cash contribution to the Organization. The Organization cites $65,048 as the residual of the Mission Life donations; however, by our calculations, 80% of the $1.13 million in cash contributions received is not $65,048.

pharmaceuticals, the Organization was required to pay a fee totaling 77% of total cash received. While the Organization indicates this amount is to be considered administrative costs, it is the CRA's view that these costs were, in fact, fundraising costs. Regardless of the classification of the expense between fundraising or administrative, expenditures of this nature are not considered expenditures on charitable programming and therefore are not charitable in nature.

Our calculation of the ratio is as follows for the 2010 fiscal period:

Line 4500 (adjusted see footnote)	$2,452,988[17]
Mission Life Fees (not reported on Line 5460 or 5020)	$867,460
Fundraising Costs (reported at Line 5460 but not reported on line 5020)	$ 694,501
Total Fundraising Costs	$1,561,961
Fundraising Ratio (Overall)	63%

By using the CRA's deemed value of the pharmaceuticals, we have otherwise determined that the Organization's fundraising ratio is quite high. By using the values provided by the tax shelter promoter, the Organization was able to report a fundraising ratio of only 9% yet as we have discussed in this and in our previous letter, the fact remains that the Organization has devoted a significant portion of its cash income to fundraising fees[18]. As such, the CRA has determined that the fundraising practices of the Organization are unacceptable and formed a collateral non-charitable purpose of the Organization. For this reason, and those outlined in our previous letter, our position regarding the unacceptable fundraising practice of the Organization remains unchanged.

It is our position that by pursuing the above-specified non-charitable purposes, whether considered in combination or independently of each other, the Organization has failed to demonstrate it meets the test for continued registration under 149.1(1) as a private foundation that "operated exclusively for charitable purposes." Under paragraph 168(1)(b) of the Act, the Minister may, by registered mail, give notice to the Organization that the Minister proposes to revoke its registration because it ceases to comply with the requirements of the Act related to its registration as such. For this reason alone there are grounds for revocation of the Organization's registered charity status under paragraph 168(1)(b) of the Act.

---

[17] Line 4500 includes the value of the pharmaceuticals as used by the Organization, $16,576,080. For our purposes, we have calculated line 4500 to be $2,452,988 (138,134 treatment units multiplied by CRA's deemed value of $5.91/treatment unit or $816,372) plus $1,636,617 in other tax-receipted revenues.

[18] In the Mission Life tax shelter, the Organization paid 77% of total cash contributions received as fundraising fees to the promoter and for the third party fundraising contract utilized by Show Kids You Care, it paid 55% of the total fundraising revenues received to the fundraiser.

2. Failure to Issue Receipts in Accordance with the Act

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

It remains our position that the Organization has contravened the Act by issuing receipts for transactions that do not qualify as gifts. The Organization has issued tax receipts exceeding $17.13 million received as a result of its participation in the Mission Life tax shelter and the Canadians Care donation arrangement. We maintain that the property for which the tax receipts were issued were not gifts at law and the receipted values were grossly inflated.

No *Animus Donandi*

Your representations ask the CRA to consider the Federal Court of Appeal decision in *The Queen v. Friedberg,* 92 D.T.C. 6031, as well as other cases wherein the courts held that a substantial economic advantage derived from the amount of a tax credit from a charitable donation did not nullify the existence of a gift. We agree that the charitable tax credit available with respect to a donation is not usually an advantage or benefit that would affect whether a gift is made[19]. We also note that, in rare and unusual circumstances, a taxpayer might be able to acquire valuable property at a bargain price and donate said property at its factual increased value and the transaction may still be validly viewed as a gift.

However, it is our position that mass-marketed donation arrangements promising participants that they will be able to claim tax credits for charitable donations far in excess of the expenditures actually made (i.e. the actual cash outlay and subsequent reduction in the participants' net worth) lack the requisite *animus donandi* for the transactions to be considered gifts. At law, a gift is a voluntary transfer of property made without an expectation of consideration in return. Moreover, the courts have agreed that an element of charitable intent or *animus donandi* must be present, wherein the donor seeks to enrich the donee and grow poorer as a result. Therefore, we do not agree with your representations that the participants in the donation arrangements made these donations with charitable intent or *animus donandi*, as they solely made donations to the Organization as a result of their participation in the donation arrangements with an intention to profit from the scheme.

In a recent tax court case Justice Archibald remarked on the subject of gifting tax shelters:

> "The technique in all these tax shelters is the same: you write off more than the amount you have paid or are liable to pay. In this fashion, you make a profit with the tax benefit alone, so no one cares how the money is being spent[20]."

---

[19] *The Queen v. Friedberg*, 92 DTC 6031 (F.C.A.) at 6032
[20] *Patricia Norton v Her Majesty The Queen* 2008 TCC 91

Consequently, the CRA remains of the opinion that the transactions are not such that the participants give of themselves to enrich a charity, but through a series of artificial transactions and a minimal monetary investment, to enrich themselves with comparatively insignificant amounts actually being devoted to charity. In our opinion, the Organization was fully aware of the donation arrangements in which it participated and for which it solicited donations. Therefore our position remains that the donations made to the Organization with respect to the donation arrangements were made with an expectation of a profit in return and lacked donative intent. As such, it is our position these transactions were not gifts at law, and the Organization was therefore not entitled to issue tax receipts for them. As a result, its registration may be revoked under paragraph 168(1)(d) for failure to receipt in accordance with the provisions of the Act.

Transfers not gifts – Benefit Received and Application of the Proposed Legislation

The Department of Finance has proposed new legislation with respect to charitable donations and advantages, applicable in respect of gifts made after December 20, 2002. These rules would allow a taxpayer to make a gift to a charity and receive some advantage in return; however, the value recorded on the receipt must reflect the eligible amount of the gift made (i.e., the value of the gift made less any advantage received by the donor)[21].

We are of the opinion that the tax shelter participants received consideration for their cash contribution in the form of a benefit or an advantage as defined by proposed subsection 248(32) of the Act and this benefit or advantage was directly linked to and flowed from pre-arranged conditions. It is not the CRA's contention that the donation receipt was the sole benefit received by a participant in the tax shelter. It is our position that the participants also benefited from the financing arrangements whereby they acquire treatment units by way of promissory notes (with generous terms for repayment). In our view, this type of arrangement is a benefit which must be taken into consideration when determining whether consideration flowed to the participant in return for a gift made to a charity[22].

The Organization states it prepared its receipts in accordance with proposed paragraph 248(35)(a) of the Act as the fair market value was determined by Corporate Valuation Services Limited (CVS) for Mission Life to be $120/treatment unit. We disagree with this statement. It is our position the fair market value otherwise determined was approximately $5.91/treatment unit[23]. Further, it is our view that the purpose of these transactions (acquiring pharmaceuticals with a promissory note and discharging the note through a subsequent acquisition of pharmaceuticals) was an attempt to avoid the application of proposed subsection 248(35). As such, proposed subsection 248(38) applies to these transactions and the eligible amount of the gift is deemed to be nil.

---

[21] *Supra* note 12.

[22] *F. Max E. Marechaux v. HMQ* 2009 TCC 587

[23] We acknowledge that CRA's original valuation concluded the treatment units to have a fair market value of $9.69/treatment unit; however, an error in the calculations was discussed and the revised fair market value per treatment unit is $5.91/treatment unit. We recognize this materially affects the value of the treatment units; however, in all instances, we conclude that the factual fair market value of the treatment units remains significantly less than the amount quoted by CVS for Mission Life.

The donation of the pharmaceuticals was a separate step in the tax shelter program, as represented on the tax shelter promoter's Web site and in promotional brochures and presentations. Accordingly, the fair market value of the subsequent gift of that property, the pharmaceuticals, to the Organization is deemed, by virtue of proposed subsection 248(32) of the Act, to be the advantage. Proposed subsection 248(35) of the Act deems this gift to be no more than the amount of the cash contribution. Consequently the amount that the Organization was required under the Act to record on its official donation receipts as the pharmaceutical's deemed fair market value is significantly lower than what was actually recorded by the Organization.

We remain of the position that the representations made with respect to the Mission Life tax shelter are simply not credible. The Organization represents it is "unclear" as to how it participated in an arrangement designed to avoid the application of proposed subsection 248(35) yet omits any discussion or acknowledgement of the predisposed fact that a clear and distinct link lies between a participant's eligibility to receive property and their cash contributions. This is despite the fact that participants have little to no knowledge or connection to the Organization and that there is a clear and pre-advertised correlation between how much participants contribute out of pocket and how much they receive.

Finally, the Organization failed to submit any representations with respect to the application of proposed subsection 248(34) of the Act wherein the Organization was not entitled to issue official donation receipts of the full value of the loans participants received by participating in the Canadians Care donation arrangement.

For the reasons expressed above, it is our position that these transactions do not qualify as gifts. The Organization is aware, or ought to have been aware, that participants are fully knowledgeable that they will receive, and did receive, a benefit from participating in the donation arrangements and that this financial benefit is realized upon "donating" the treatment units and loan proceeds to the Organization.

Fair Market Value

It remains our position that the fair market value (FMV) expressed on the donation receipts issued for the pharmaceuticals purportedly received does not accurately reflect the factual FMV, even without reference to the proposed legislation. The courts have repeatedly opined that the valuation of property must be reflective of the asset being valued and in the applicable market[24]. Additionally, a valuation report commissioned by and for one party's purposes, for example Mission Life, cannot be wholly relied upon by another party, namely the Organization, simply because the facts and assumptions contained within the report differ.

Rather than use the income approach to value the pharmaceuticals, CRA used the cost approach. We determined that the income approach was not appropriate because the participants did not acquire the pharmaceuticals for the purposes of resale with generation of

[24] *Russell v. The Queen* 2009 TCC 548; *AG (Canada) v Tolley et al* 2005 FCA 386; *Klotz v The Queen* 2004 TCC 147

future benefits in the form of business income. Specifically, the pharmaceuticals were not acquired for retail purposes. We also chose not to use the Canadian or American published prices such as the Ontario Drug Benefit Formulary/Comparative Drug Index (Formulary), as an appropriate indication of fair market value for the following reasons:

- These published prices reflect individual product units. There was no indication the pharmaceuticals were purchased individually;
- The pharmaceuticals were not purchased for consumption domestically, either in Canada or the United States. Prices contained in publications such as the Formulary reflect the cost associated with both the regulatory and licensing requirements associated with a domestic consumption;
- The application of necessary discounts applicable to the published prices would have been more subjective than using the international prices. Discounts would have been applied to account for the lack of requirements to meet domestic regulatory and licensing requirements, and advantages associated with bulk purchases and the multi-packaging of the pharmaceuticals. Discounts would also be applied to reflect the fact that the participants and the promoter were not able to take physical possession of the pharmaceuticals and they are not able to be sold in a retail market.

The pharmaceuticals themselves were produced by Hetero Labs in India. It is not clear why Mission Life would not have obtained purchase invoices from Hetero Labs identifying an actual cost of the pharmaceuticals, prior to obtaining a valuation.

It is the CRA's position that the $120 million receipted by the Organization, according to your representations, do not reflect the actual FMV of the pharmaceuticals. It is our position that the Organization issued official donation receipts at the value constructed by the tax shelter promoters.

It is also our position that the resulting FMV recorded on the official donations receipts remains overstated for the reasons above and per our letter of April 10, 2012. As such, we are of the position the Organization received and relied upon a valuation based on an analysis of the wrong market.

As such, for the reasons set out herein and in our letter of April 10, 2012, it remains our position that the appraised values relied upon by the Organization are not accurate reflections of the FMV of the property. Accordingly, it remains the CRA's position that the Organization issued receipts for transactions that do not qualify as gifts at law and breached Regulation 3501. For this reason alone, as well as other reasons stated above, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

Due Diligence

Your representations have failed to provide any new information that would change our position regarding the Organization's due diligence prior to or during its involvement with the donation arrangements. We concur with your statement that it "was both reasonable and

proper...to rely on arm's length parties...when it came to matters outside the [Organization's] expertise" but reiterate that a charity must ensure it has performed its own due diligence and continues to monitor the actions and services provided by the persons retained by it. A charity cannot simply relinquish all control and responsibility to a third party. By your own admission, you cite the President's report wherein it states that by participating in the Mission Life tax shelter, the Organization will face increased scrutiny by CRA. For that very reason alone, it is our position that the Organization should not have relied solely on information provided by Mission Life and its valuators. By failing to demonstrate its due diligence in verifying the legitimacy of the Mission Life tax shelter, the Organization has allowed official donation receipts to be issued based on the information provided by Mission Life for transactions that are not valid gifts. This was also true for the Canadians Care donation arrangement. The Organization has demonstrated that it had no regard for the receipting privileges granted to it under the Act and we therefore conclude that the Organization's lack of due diligence reinforces our earlier assertion that your primary focus has become the facilitation of these donation arrangements.

The representations of July 27, 2012, do not alter our findings and our position that the official donation receipts issued by the Organization to acknowledge the property received from participants in the Mission Life and Canadians Care donation arrangements were not valid gifts under section 118.1 of the Act. We have fully discussed our position on this subject above.

Accordingly, it is the CRA's position that the Organization issued receipts for transactions that do not qualify as gifts at law and breached Regulation 3501. Under paragraph 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its Regulations. Issuing a donation receipt where there is no donative intent, no gift or the information on the receipt is false is not in accordance with the Act. For this reason alone, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

3. <u>Failure to Maintain Adequate Books and Records</u>

Per our letter of April 10, 2012, we noted the records maintained by the Organization were inadequate to support the information reported on its T3010, *Registered Charity Information Return* and its financial statements.

Your representations indicate that "the [Organization] provided CRA with a binder of relevant information" including meeting minutes, financial statements, various CRA forms and agreements entered into for services rendered by the officers and directors of the Organization. The CRA acknowledges receipt of the binder, and we accordingly reviewed the meeting minutes, which were found to be incomplete. The minutes did not include information relative to important board decisions such as how the Organization became associated with organizations that have experience distributing similar pharmaceuticals; how it "believed that investing some funds with Ciccone Group Inc., was a prudent decision;" or identification of the

"group representing the [Organization who] visited the Diocese of Kakamega in order to see firsthand how the pharmaceuticals were being used."

With respect to the agreements for services, we reiterate there was no documentation provided during the audit to support the due diligence purportedly undertaken with respect to the tendering of contracts, or showing how the candidates chosen were the best for the job. If the Organization was able to track the hours of the President, it is prudent to assume the same requirement could have been imposed on the corporations contracted by the Organization to perform the services. While contracts were provided, there was no documentary evidence provided to demonstrate that the contracted services were actually performed or performed to the Organization's satisfaction.

In response to our concerns regarding the fact that the Organization did not retain supporting documentation or agreements between itself and the registered tax shelter to substantiate shipping fees, your representations indicate that "the [Organization] and Mission Life, being arm's length parties, came to a verbal agreement regarding various administrative fees." While it was a verbal agreement, the Organization should have documented this fact in the minutes. We reiterate that we find this behavior inconsistent with normal business practice.

In response to our specific concern that the Organization materially misstated certain financial information on the 2010 T3010 Return, we disagree with the representations that the error was unintentional. It is the CRA's view that the administration fees were deliberately netted against gross revenues so as to not show the actual cost of participating in the Mission Life tax shelter program. The Organization knew to report gross third party fundraising income and expenses at lines 5450 and 5460 of the T3010 for the third party fundraising utilized by Show Kids You Care; yet failed to report the same type of income and expenses for the Mission Life tax shelter.

Accordingly, 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 T3010 and financial statements. For this reason alone, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act.

4. Failure to File an Accurate T3010, *Registered Charity Information Return*

Our position remains unchanged regarding the inaccuracies reported on the T3010s filed. We accept your representations regarding the errors and omissions identified on the 2009 and 2010 T3010s; however, it remains a fact that these inaccuracies have not been corrected[25]. Also, we take exception to the value utilized by the Organization to value its inventory. It remains the CRA's position that, regardless of the valuation report utilized by the Organization, the FMV utilized by the Organization was not reflective of the factual fair market value. In addition, the value being represented as factual by the Organization was being directed by the tax shelter promoter.

[25] The Organization has not submitted any revised T3010 information returns to correct the errors and omissions identified during our audit.

Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because the charity fails to file a *Registered Charity Information Return* as and when required under the Act or a Regulation. For this reason, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(c) of the Act.

Appropriateness of Revocation:

Finally, we note that your letter concludes that the Organization believed, "that an association with some tax shelter and donation program was necessary to raise funds to enable it to carry on its charitable purposes and activities," that "it was also reasonable for it to rely on arm's length third parties" and despite making certain errors in the past that "these errors should not result in the revocation of its charitable status." We disagree with each of these submissions. First, the Organization has failed to demonstrate that it operates exclusively for charitable purposes; it has improperly issued receipts for over $24.9 million in transactions that do not qualify as gifts under the Act or common law and has breached numerous other requirements of the Act. It is the CRA's position that these are serious contraventions of the Act and that the "errors" were not inadvertent or immaterial hence warranting the revocation of the Organization's registered status. Secondly, we acknowledge that the Organization has terminated its relationship with Mission Life in 2011, yet is affiliated with another registered tax shelter. The CRA cannot accept your representations that the serious non-compliance identified will not be repeated. For all the reasons explained in our April 10, 2012 letter, and for each of these reasons alone, it is the position of the CRA that the Organization's registration should be revoked.

Section 149.1 Qualified Donees

149.1(2) Revocation of registration of charitable organization

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

(a) carries on a business that is not a related business of that charity; or

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the organization's disbursement quota for that year.

149.1(3) Revocation of registration of public foundation

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

(a) carries on a business that is not a related business of that charity;

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

(c) since June 1, 1950, acquired control of any corporation;

(d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or

(e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection (4), to revoke its registration as a private foundation.

149.1(4) Revocation of registration of private foundation

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

(a) carries on any business;

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

(c) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;

(d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

149.1(4.1) Revocation of registration of registered charity

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

(a) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;

(b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;

(c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;

(d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length; and

(e) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever.

Section 168:
Revocation of Registration of Certain Organizations and Associations

168(1) Notice of intention to revoke registration

Where a registered charity or a registered Canadian amateur athletic association

(a) applies to the Minister in writing for revocation of its registration,

(b) ceases to comply with the requirements of this Act for its registration as such,

(c) fails to file an information return as and when required under this Act or a regulation,

(d) issues a receipt for a gift or donation otherwise than in accordance with this Act and the regulations or that contains false information,

(e) fails to comply with or contravenes any of sections 230 to 231.5, or

(f) in the case of a registered Canadian amateur athletic association, accepts a gift or donation the granting of which was expressly or impliedly conditional on the association making a gift or donation to another person, club, society or association,

the Minister may, by registered mail, give notice to the registered charity or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.

168(2) Revocation of Registration
Where the Minister gives notice under subsection (1) to a registered charity or to a registered Canadian amateur athletic association,

(a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the *Canada Gazette*, and

(b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the *Canada Gazette*,

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

168(4) Objection to proposal or designation
A person may, on or before the day that is 90 days after the day on which the notice was mailed, serve on the Minister a written notice of objection in the manner authorized by the Minister, setting out the reasons for the objection and all the relevant facts, and the provisions of subsections 165(1), (1.1) and (3) to (7) and sections 166, 166.1 and 166.2 apply, with any modifications that the circumstances require, as if the notice were a notice of assessment made under section 152, if

(a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);

(b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or

(c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

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

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

(a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that

proposal, decision or designation within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,

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

(b) refuses to accept for registration for the purposes of this Act any retirement savings plan,

(c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,

(e) refuses to accept for registration for the purposes of this Act an education savings plan,

(e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,

(f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,

(f.1) refuses to accept an amendment to a registered pension plan, or

(g) refuses to accept for registration for the purposes of this Act any retirement income fund,

the person in a case described in paragraph (a), (a.1) or (a.2), the applicant in a case described in paragraph (b), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), the promoter in a case described in paragraph (e.1), or the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

180(1) Appeals to Federal Court of Appeal

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

(a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),

(c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),

(c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1), or

(d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

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

Section 188: Revocation tax

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

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

(a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;

(b) a new taxation year of the charity is deemed to begin immediately after that day; and

(c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

188(1.1) Revocation tax

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

$$A - B$$

where

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

(a) the fair market value of a property of the charity at the end of that taxation year,

(b) the amount of an appropriation (within the meaning assigned by subsection (2) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or

(c) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

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

(a) a debt of the charity that is outstanding at the end of that taxation year,

(b) an expenditure made by the charity during the winding-up period on charitable activities carried on by it, or

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

188(1.2) Winding-up period

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

(a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,

(b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and

(c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

188(1.3) Eligible donee

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

(a) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;

(b) that is not the subject of a suspension under subsection 188.2(1);

(c) that has no unpaid liabilities under this Act or under the Excise Tax Act;

(d) that has filed all information returns required by subsection 149.1(14); and

(e) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable.

188(2) Shared liability — revocation tax

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

188(2.1) Non-application of revocation tax
Subsections (1) and (1.1) do not apply to a charity in respect of a notice of intention to revoke given under any of subsections 149.1(2) to (4.1) and 168(1) if the Minister abandons the intention and so notifies the charity or if

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

188(3) Transfer of property tax
Where, as a result of a transaction or series of transactions, property owned by a registered charity that is a charitable foundation and having a net value greater than 50% of the net asset amount of the charitable foundation immediately before the transaction or series of transactions, as the case may be, is transferred before the end of a taxation year, directly or indirectly, to one or more charitable organizations and it may reasonably be considered that the main purpose of the transfer is to effect a reduction in the disbursement quota of the foundation, the foundation shall pay a tax under this Part for the year equal to the amount by which 25% of the net value of that property determined as of the day of its transfer exceeds the total of all amounts each of which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.

188(3.1) Non-application of subsection (3)
Subsection (3) does not apply to a transfer that is a gift to which subsection 188.1(11) or (12) applies

188(4) Transfer of property tax
Where property has been transferred to a charitable organization in circumstances described in subsection (3) and it may reasonably be considered that the organization acted in concert with a charitable foundation for the purpose of reducing the disbursement quota of the foundation, the organization is jointly and severally liable with the foundation for the tax imposed on the foundation by that subsection in an amount not exceeding the net value of the property.

188(5) Definitions
In this section,
"net asset amount" of a charitable foundation at any time means the amount determined by the formula

A - B

where
A is the fair market value at that time of all the property owned by the foundation at that time, and
B is the total of all amounts each of which is the amount of a debt owing by or any other obligation of the foundation at that time;

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

A - B

Where
A is the fair market value of the property on that day, and
B is the amount of any consideration given to the foundation for the transfer.

189(6) Taxpayer to file return and pay tax
Every taxpayer who is liable to pay tax under this Part (except a charity that is liable to pay tax under section 188(1)) for a taxation year shall, on or before the day on or before which the taxpayer is, or would be if tax were payable by the taxpayer under Part I for the year, required to file a return of income or an information return under Part I for the year,
(a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;
(b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and
(c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

189(6.1) Revoked charity to file returns
Every taxpayer who is liable to pay tax under subsection 188(1.1) for a taxation year shall, on or before the day that is one year from the end of the taxation year, and without notice or demand,
(a) file with the Minister
  (i) a return for the taxation year, in prescribed form and containing prescribed information, and
  (ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and
(b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and
(c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

189 (6.2) Reduction of revocation tax liability
If the Minister has, during the one-year period beginning immediately after the end of a taxation year of a person, assessed the person in respect of the person's liability for tax under subsection 188(1.1) for that taxation year, has not after that period reassessed the tax liability of the person, and that liability exceeds $1,000, that liability is, at any particular time, reduced by the total of
(a) the amount, if any, by which
  (i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was sent and ends at the end of the one-year period
  exceeds
  (ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and
(b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

189(6.3) Reduction of liability for penalties
If the Minister has assessed a particular person in respect of the particular person's liability for penalties under section 188.1 for a taxation year, and that liability exceeds $1,000, that liability is, at any particular time, reduced by the total of all amounts, each of which is an amount, in respect of a property transferred by the particular person after the day on which the Minister first assessed that liability and before the particular time to another person that was at the time of the transfer an eligible donee in respect of the particular person, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the total of
(a) the consideration given by the other person for the transfer, and
(b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

189 (7) Minister may assess
Without limiting the authority of the Minister to revoke the registration of a registered charity or registered Canadian amateur athletic association, the Minister may also at any time assess a taxpayer in respect of any amount that a taxpayer is liable to pay under this Part.