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SUBJECT Private School – Non-profit organization

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Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA.

Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: Does the entity qualify as a non-profit organization pursuant to paragraph 149(1)(l) of the Act

POSITION: No

REASONS: The entity operates a private high school for the purpose of earning profit.

November 30, 2012

Specialty Audit Division IT Rulings Directorate

Small & Medium Enterprises Directorate A. Messore

Compliance Programs (613) 957-2747

Attention : Gilles Rochette

2012-045849

XXXXXXXXXX ("Academy")

This is in response to your email request dated August 10, 2012, in which you have asked us to review the audit file prepared by XXXXXXXXXX with a view to determining whether the Academy qualifies as a non-profit organization by virtue of paragraph 149(1)(l) of the Income Tax Act ("Act").

BACKGROUND

Based on the documentation enclosed with your request and information received during telephone and email conversations with XXXXXXXXXX, we understand the facts to be as follows:

HIGH SCHOOL:

1. XXXXXXXXXX ("High School") is a privately owned and operated independent high school located in the XXXXXXXXXX area. Founded in XXXXXXXXXX, the school currently has about XXXXXXXXXX students, XXXXXXXXXX % of whom are international students and the remaining XXXXXXXXXX % Canadian.
2. High School is a normal commercial enterprise with taxable income and tax payable on its income. In XXXXXXXXXX it had taxable income of \$XXXXXXXXXX and Part I tax payable of \$XXXXXXXXXX.
3. XXXXXXXXXX.
4. XXXXXXXXXX.
5. XXXXXXXXXX.
6. XXXXXXXXXX.

ACADEMY:

7. On XXXXXXXXXX, the Academy was incorporated as a non-profit organization under the XXXXXXXXXX.
8. XXXXXXXXXX.
9. XXXXXXXXXX.
10. XXXXXXXXXX.
11. XXXXXXXXXX.
12. XXXXXXXXXX.
13. XXXXXXXXXX.

14. XXXXXXXXXX.
15. XXXXXXXXXX.
16. In XXXXXXXXXX the Academy made a profit of approximately \$XXXXXXXXXX.
17. All of the Academy's earned profits are deposited and kept in an interest-bearing bank account. To date, the cumulative earned profits residing in the Academy's bank account amount to \$XXXXXXXXXX. There is no evidence of any specific plan for these reserve funds.

ANALYSIS

For an entity to qualify as a non-profit organization within the meaning of paragraph 149(1)(l) of the Act it must be operated exclusively for a purpose other than profit.

Where an entity realizes significant profits and accumulates surplus funds in excess of its current needs or where it engages in a trade or business that is not directly attributable to, or connected with, pursuing the non-profit goals and activities of the entity, we may consider that the entity is not operated exclusively for non-profit purposes.

Some of the characteristics that might indicate that an activity is a trade or business are as follows:

- 1) It is a trade or business in the ordinary meaning, that is, it is operated in a normal commercial manner;
- 2) Its goods or services are not restricted to its members and their guests;
- 3) It is operated on a profit basis rather than a cost-recovery basis;
- 4) It is operated in competition with taxable entities carrying on the same trade or business.

In general, an entity will be considered to be operating a business in a normal commercial manner if it habitually engages in an activity that is capable of producing a profit. The Academy's operation of a school for a fee is an example of a business operating in a normal commercial manner.

The Academy does not restrict the supply of education services to members and their guests. Any student can be admitted to the Academy if he is accepted for admission to High School and meets the eligibility requirements for a XXXXXXXXXX.

The Academy is operating on a for-profit rather than cost-recovery basis. Its tuition fee structure is identical to High Schools, whose purpose in operating the school is clearly for-profit.

High School is a for-profit business which operates in competition with other private high schools. The same can be said of the Academy since it is likewise run by High School and in identical fashion.

The Academy is engaged solely in the for-profit business of providing education services for a fee. Furthermore, the Academy has accumulated profits in its bank account without any specific plan for their use. There is no indication either in the articles of incorporation or in the day-to-day activities of the Academy that its activities are attributable to, or connected with, any other non-profit or exempt purposes. The rationale for creating the Academy and XXXXXXXXXX.

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In our view, the Academy is not operated exclusively for a purpose other than profit. As a result, the Academy would not be considered a non-profit organization as defined in paragraph 149(1)(l) of the Act.

Further to the above comments, we refer you to Interpretation Bulletin IT-496R entitled "Non-profit organizations."

Please do not hesitate to contact Anna Messore at (613) 957-2747 if you require further assistance.

For your information, unless exempted, a copy of this memorandum will be severed using the Access to Information Act criteria and placed in the Canada Revenue Agency's electronic library. A severed copy will also be distributed to the commercial tax publishers for inclusion in their databases. The severing process will remove all material that is not subject to disclosure, including information that could disclose the identity of the taxpayer. Should the taxpayer request a copy of this memorandum, they may request a severed copy using the Privacy Act criteria, which does not remove taxpayer identity. Requests for this latter version should be made by you to Mrs. Celine Charbonneau at (613) 952-1361. In such cases, a copy will be sent to you for delivery to the taxpayer.

Yours truly,

Roberta Albert
Manager
Non-Profit Organizations and Aboriginal Issues
Financial Sector and Exempt Entities Division
Income Tax Rulings Directorate
Legislative Policy and Regulatory Affairs Branch