



**REGISTERED MAIL**

Africa We Care  
17806 107 Avenue NW  
Edmonton AB T5S 1J1

**JUN 26 2017**

BN: 860653930RR0001

Attention: Mr. Chukwuemeka Obiajunwa

File #: 3019611

**Subject: Notice of Intention to Revoke**  
**Africa We Care**

Dear Mr. Obiajunwa:

We are writing further to our letter dated March 17, 2016 (copy enclosed), in which you were invited to submit representations as to why the registration of Africa We Care (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act* (Act).

We have now reviewed and considered your written responses, both of which were undated. You submitted your first response addressing our concerns in person on July 25, 2016, and you submitted a draft memorandum of understanding on November 17, 2016. However, notwithstanding your replies, 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. The basis for our concerns is explained below.

**1. Failure to maintain adequate books and records**

As stated in our previous letter dated March 17, 2016, our audit findings revealed that the Organization has failed to maintain adequate books and records as required by subsection 230(2) of the Act, despite previously agreeing to take related corrective measures further to the Compliance Agreement it signed with the CRA on August 24, 2007 (copy enclosed).

In particular, our audit found:

- The Organization did not keep source documentation for \$158,917 of the \$165,417 in total expenses claimed. The only invoices noted in the books and records were invoices for two freight charges in 2010 amounting to \$6,500;

- The Organization does not have a board of directors that is active and responsible for establishing and maintaining an adequate internal control structure that minimizes the risks associated with potential misstatements in the financial reporting of the Organization, safeguards the Organization's assets, and prevents or detects material errors and fraud; and
- The Organization was unable to provide any loan agreements for loans made by board members to the Organization.

The Organization's July 25, 2016, representations claim it was "poorly served and mostly misled" by its previous accountant, but that in May 2016, it retained the services of a bookkeeper, [REDACTED], "a Consultant at a major Canadian financial institution," "now a committed and dedicated volunteer." The representations describe the bookkeeper's responsibilities as including establishing an internal ledger, and identifying omitted, forgotten, or neglected documents, and state the Organization's future intention to preserve documentation, including agendas, and itineraries of travel.

While we have provided the Organization additional opportunities to provide information and documentation to substantiate the proposed changes described in its response, the Organization has not produced any material demonstrating it has implemented or has the capacity to implement any of the required changes necessary for it to maintain adequate books and records in accordance with the Act.

It therefore remains the CRA's position that the Organization failed to maintain adequate books and records of account as per subsection 230(2), in contravention of paragraph 168(1)(e) of the Act, and that its charitable status under the Act should be revoked.

## **2. Failure to devote resources to charitable activities**

As stated in our previous letter dated March 17, 2016, our audit found that the Organization failed to demonstrate that it is operated exclusively for charitable purposes. We were unable to verify the expenses, charitable or otherwise, the Organization has purportedly incurred due to a lack of source documentation, despite previously agreeing to take related corrective measures further to the Compliance Agreement it signed with the CRA on August 24, 2007. In particular, our audit found that the Organization did not demonstrate direction and control over its resources, and it was unable to demonstrate its resources were devoted to its own charitable activities, or by way of gifts to qualified donees.

The representations state that the Organization's inadequate book/record keeping is what made it seem like its resources were not being channeled to charitable activities, and that with the implementation of better bookkeeping, this concern will be fixed. The representations further indicate that in the past, the Organization has supported "organizations in Africa that have presented themselves as ascribing to its aims and objectives," and that it was "scattering (its) meagre resources in many directions." The representations indicate the Organization will concentrate on one of two programs in the

future, however, it does not address how it will specifically restructure its future endeavours so as to comply with the requirements of the Act.

Again, the representations offer promises of change, but do not provide definitive action. While we have provided the Organization several opportunities to provide additional information and documentation, the Organization has not produced any material substantiating it will devote its resources to its own charitable activities, or by way of gifts to qualified donees in accordance with the Act.

It therefore remains our position that the Organization has failed to meet the requirements of subsection 149.1(1) of the Act, that it devote substantially all its resources to charitable activities carried on by the Organization itself, and its charitable registration should be revoked in accordance with paragraph 168(1)(b) of the Act.

### **3. Lack of direction and control over resources inside and outside of Canada**

As indicated in our letter dated March 17, 2016, when a registered charity merely transfers its resources to another entity without maintaining direction and control over the use of its resources, the result is the same as making a gift to a non-qualified donee, which is not a charitable activity. Our audit found that where its foreign activities were purportedly carried out through intermediaries, the Organization did not engage in written agreements with its intermediaries, nor did it keep any books and records concerning their use of its resources, despite previously agreeing to take related corrective measures further to the Compliance Agreement it signed with the CRA on August 24, 2007.

Your representations state that the Organization is taking measures to ensure that the entities it deals with in Africa are registered and accredited entities; to enter into contractual agreements with "community based local organization;" to "record and document their activities that are being funded;" it is "setting up a monitoring mechanism to ensure an effective and efficient operation;" and it will concentrate on one or two projects.

On November 17, 2016, you delivered a draft memorandum of understanding to us. However, the memorandum did not show that the Organization would maintain direction and control of the funds it proposes to send to the [REDACTED], and does not include the signatures or acknowledgement of any officials on behalf of the [REDACTED] including use of non-monetary resources provided by the Organization. While you stated you would follow up with a formal agency agreement sometime in the early part of 2017, it was not provided.

While we have provided the Organization several opportunities to provide additional information and documentation, the Organization has not provided any materials to alleviate our concerns over the direction and control of its foreign activities.

It therefore remains our position that the Organization does not exercise the required degree of direction and control over the use of its funds, and/or over the activities to be conducted with those funds, to establish that it is carrying out its own charitable activities in accordance with the provisions of the Act. Accordingly, the Organization has failed to meet the requirements of subsection 149.1(1) of the Act, that it devote substantially all its resources to charitable activities carried on by the Organization itself, and its charitable registration should be revoked in accordance with paragraph 168(1)(b) of the Act.

#### **4. Issuing receipts not in accordance with the Act**

As stated in our letter dated March 17, 2016, the official donations receipts issued by the Organization did not comply with the requirements of Regulation 3501 of the Act, including by omitting required information from receipts, failing to maintain source documentation establishing the fair market value of the amount reflected on receipts issued for gifts-in-kind, failing to track dates of donations and donor information, and failing to maintain documentation verifying receipted amounts represented true gifts, including examples where such amounts could not be traced through the bank and general ledger.

Your representations state that the bookkeeper will now be in charge of issuing all receipts, be made aware of all monetary donations, do the bank deposits where possible, and be the second signatory to the cheques issued. All gifts-in-kind will be properly valued before receipts are issued. However, the Organization has provided no documentation substantiating that it has implemented any related changes to date. We also note that all of the proposed changes relate to the bookkeeper that has not yet started with the Organization. Accordingly, the representations provided do not alleviate our concerns about the issuance of official donation receipts.

We therefore maintain that the Organization has failed to comply with paragraph 230(2)(b) of the Act and subsection 3501(1) of the Regulations, and its charitable registration should be revoked in accordance with paragraph 168(1)(d) of the Act.

#### **5. Failure to prepare proper documentation for payments to an employee/director**

As stated in our letter dated March 17, 2016, where salaries or wages are paid, the Act requires annual T4 Statements of Remuneration Paid and T4 Summaries be prepared by the employer. Further, where payments are made for fees, commissions or other amounts for services to a person who is not an employee, a T4A slip and a T4A Summary must be prepared. Our audit found that the Organization did not provide any source documentation for the audit, including whether T4As should have been issued for casual labour. Our audit review found an amount identified by the Organization to pay its summer student, including amounts to be withheld for CPP, EI and income tax, however, the Organization did not pay the source deductions nor did it have an active payroll account during the audit period.

Your representations did not address these concerns; however, they addressed a related concern that had not been identified in the letter. In this regard, the representations claim that whatever money the executive director took from the Organization could be considered as repayment for his personal financing of the Organization, and it was not understood that this would be regarded as payment or salary. No additional documentation was provided surrounding this arrangement.

Therefore, it remains our position that the Organization has failed to comply with subsection 200(1) of the Regulations and its charitable registration should be revoked in accordance with subsection 149.1(2) and paragraph 168(1)(b) of the Act.

### **Conclusion**

A previous audit was conducted by the Canada Revenue Agency (CRA) for the fiscal period of January 1, 2003 to December 31, 2004. This audit revealed that the Foundation failed to maintain adequate books and records, failed to retain direction and control over activities outside of Canada, and provided personal benefits to the directors.

The current audit by the CRA has revealed that the Organization has continued to fail to comply with the requirements set out in Act. In particular, it was found that the Organization failed to maintain adequate books and records, failed to devote its resources to charitable activities, failed to retain direction and control over its activities inside and outside Canada, issued receipts not in accordance with the Act, and failed to prepare proper documentation for payments to an employee/director. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements necessary for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letter dated March 17, 2016, we wish to advise you that, pursuant to subsection 168(1) and 149.1(2) of the Act, we 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 subsection 149.1(2), 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**  
860653930RR0001

**Name**  
Africa We Care  
Edmonton AB

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

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

A copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of 90 days from the date this letter was mailed. The Organization's registration will be revoked on the date of publication, unless the CRA receives an objection to this notice of intention to revoke within this timeframe.

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 "A", 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 T2046, *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. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix "A". Form T2046 and the related Guide RC4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our Web site at [cra.gc.ca/charities](http://cra.gc.ca/charities);
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act*. As a result, the Organization may be subject to obligations and entitlements under the *Excise Tax Act* that

apply to organizations other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

Finally, we wish to advise that subsection 150(1) of the *Income Tax 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,



Tony Manconi  
Director General  
Charities Directorate

Attachments:

- Compliance Agreement, signed August 24, 2007, and cover letter dated June 15, 2007
- CRA letter dated March 17, 2016
- Response submitted on July 25, 2016, and November 17, 2016
- Appendix "A", Relevant provisions of the Act

Place de Ville, Tower A  
320 Queen Street, 5th Floor  
Ottawa ON K1A 0L5



As a part of book/record keeping, Africa We Care is undertaking to assiduously preserve all information that are relevant and central in relation to its activities, which will include my agendas and itineraries of travel (in Canada and outside Canada), as I am the one directly involved in the administration of the organization's projects, programs, correspondences, minutes of meetings.

### Devotion of Resources to Charitable Activities

I would grant that our inadequate book/record keeping is what has made it seem like our meagre resources are not being channeled to charitable activities. I am sure that with proper and adequate book and record keeping now being implemented will effectively take care of this anomaly, and "provide the necessary detail(s)" as to "the outlay, the description of the service(s) or product(s) acquired", as well as "verify the expenses as being incurred for charitable purposes".

### Control of Activities Outside Canada and Gifts to Non-Qualified Donees

In as much as Africa We Care in the past has tended to support organizations in Africa that have presented themselves as ascribing to its aims and objectives,

- 1.) We are taking measures now to make sure that those charitable organizations are registered and accredited entities, first and foremost.
- 2.) Africa We Care is also taking measures to enter into a contractual agreement with those community based local organization ; record and document their activities that are being funded by us, and obtain relevant receipts; and make sure that the funds go to where they are intended to.
- 3.) We are in the process of setting up a monitoring mechanism to ensure an effective and efficient operation.
- 4.) Selfsame due diligence will also apply to individuals, families, or groups in Canada who have donated funds for some specific humanitarian projects undertakings.

### Lack of Direction

Yes, this issue used to be a big problem. And because of the monumental and intractable state of suffering in Africa, we have tended to be all things to all people – thereby scattering our meagre resources in many directions. We have realised that we cannot solve the many problems that beset Africa. It is better to concentrate on one or two projects or programs and do it well.



## Corrective Actions

Africa We Care has undertaken to implement the corrective measures to enable it "to maintain adequate books and records"; show that resources are devoted to charitable activities, and ensure that these activities are being carried out; and thereby become compliant.

## Books and Records

In May 2016 Africa We Care retained the services of a books and records keeper, [REDACTED], a Consultant at a major Canadian financial institution. She is now a committed and dedicated volunteer at Africa We Care.

Together, we have gone over the audit report. It has been abundantly inculcated into me, the paramount importance of adequate and efficient record keeping – as it were, the rocket fuel of every enterprise and governance, be it non-profit, for-profit, or governmental organization.

At Africa We Care, our hearts may be in the right place trying to tackle and alleviate the myriads of suffering in Africa, I have come to the realization that the lack of adequate record keeping is at the fore front of the challenges we have faced in generating funds for our projects and programs in Africa; which otherwise and in themselves are deemed noble and worthy causes.

In the past the charity had engaged the services of a chartered accountant that we could ill-afford, given their exorbitant fees; and yet ended up being poorly served and mostly misled.

The book / record keeper now has the responsibility of:

- 1.) Establishing (and has established) an internal ledger, which hitherto we did not have;
- 2.) Keeping the ledger up to date on weekly basis with receipts, not only of the most recent transaction, but also,
  - a.) Combing through our documents to identify past documents, transactional receipts that were omitted, forgotten, or neglected. As a matter of fact, paperwork will no longer be allowed to pile up and procrastinated upon.
  - b.) I have now set aside one day a week – Sundays – to gather all my documents and receipt of the week to submit to the book / record keeper.



Right now in the past two years, Africa We Care has embarked on addressing this intractable healthcare issue in Africa – Nigeria, to be precise – the deplorable conditions of which is at the root causes of the rampant and reoccurrence of all the epidemics and pandemics. To this effect, Africa We Care is dedicated to adequately equip, revamp, and renovate [REDACTED] with medical equipment, furnishings, and medicines it has received and continues to receive in donations.

Since it continues to receive many books and supplies in donations as well, Africa We Care intends to continue with its Books for Africa program.

Used articles of clothing has always been intended as partly revenue generating for Africa We Care, and partly to be used in a quasi-micro economic activity to enhance or start African women in business. In spite of the fact that we have not generated any revenue from our supposed sales of used articles of clothing, Africa being what it is; Africa We Care has helped a lot of Africans. Nevertheless, we have got plans in place to make the revenue generating aspect of this program successful.

### Issuing Receipts

From now on, the book/records keeper shall:

- 1.) Be in charge of issuing all receipts;
- 2.) Be made aware of the monetary donations, and where possible do the bank deposits;
- 3.) Be the second signatory to the cheques issued.

All donations in-kind if deemed appropriate for our use and purposes, shall be properly valued and evaluated for their worth and value before receipts are issued.

We shall undertake to take proper and adequate inventory of the non-receiptable items we receive in donations, for example, used articles of clothing, etc.

### Failure to Prepare Proper Documentation for Payments to Employee/Director

It is a fact that I have re-mortgaged my house three or four times in the past ten or fourteen years to finance Africa We Care, because the cause is what I firmly and unshakably believe. I was erroneously led to believe that whatever money I took from Africa We Care, whenever it was possible, and I needed it, was to be construed as repayment to me. I was not made to understand that it would be regarded as payment or salary to me.



# "Africa We Care"

*Dedicated to the alleviation of suffering in Africa*

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Now I know better. And I am taking the necessary steps that will lead to calling a spade a spade.

Chukwuemeka Obiajunwa  
Executive Director

A Draft MEMORANDUM OF UNDERSTANDING (which will be developed into an Agency Agreement or a Joint Venture Agreement)

Between: AFRICA WE CARE a Canadian Charitable Organization located in Edmonton, Alberta, Canada; (Hereafter referred to as "AWC");

And: [REDACTED]

(Hereafter referred to as [REDACTED])

Whereas AWC, in the person of its Executive Director, Chukwuemeka Obajunwa, has had several discussions with [REDACTED]

Whereas I, Chukwuemeka Obajunwa have come to know [REDACTED]

Whereas I, Chukwuemeka Obajunwa, being of African origin, and fully aware of the fact that the very deplorable healthcare and sanitary conditions are the root causes of the rampant and frequent occurrences / outbreaks of pandemics and epidemics like Ebola, polio, typhoid, and malaria that continues to ravage the continent of Africa, vis-à-vis, Nigeria, in this day and age.

Whereas Africa We Care dedicated to the alleviation of suffering in Africa, has embarked on addressing this intractable healthcare issue;

Whereas AWC has identified [REDACTED], where a team of dedicated

[REDACTED] if only they had the right medical equipment, instruments, and supplies to aid them.

Now therefore, in consideration of the mutual covenants and compassion to save lives that are apparent in, and to both parties hereto, AWC [REDACTED], have virtually agreed to the following:

I

Responsibilities of AWC:

- 1.) A commitment to the endeavour to renovate, revamp, and re-equip the [REDACTED]
  - A.) It will solicit in donations from hospitals, medical clinics, and centers here in Canada medical equipment, instruments, and furnishings that would otherwise go to the landfills after upgrades;
  - B.) It will solicit in donations from doctors, pharmacies, and communities for over-the-counter medicines and drugs. Some of these perhaps might be nearing expiration, but still would have life-saving potencies in them;
- 2.) Routinely, AWC gets inquiries from newly qualified and retiring nurses and doctors about the possibility of going to volunteer their professional expertise under the auspices of Africa We Care. [REDACTED] would provide such a wonderful opportunity for Canadians, and be of immense benefit to Africans – doctors, nurses and patients;
- 3.) Routinely, AWC will hold various forms of fundraising events here in Canada, and by social media and crowdfunding to reach many parts of the world, to raise funds expressly for the smooth running and operation of the [REDACTED]

Responsibilities of [REDACTED]

- 1.) A commitment to diligent and dedicated medical practices that adheres to the Hippocratic Oath – which in the main lacks in most Nigerian doctors;
  - a.) It will attend to all patients who show up at their door: rich or poor;
  - b.) The poor, children, school children will be treated free of charge; but
  - c.) The well-to-do will be charged in accordance to their means and ability to pay.

### Controls:

- 1.) Properly equipped by AWC, [REDACTED] will be able to deliver a world class healthcare to all the people – hitherto lacking in Nigeria. Hence the well-to-do go to Europe even for routine medical check-up;
- 2.) It is said that he who pays the piper dictates the tune. In this case, AWC will be the party that pays the piper, and understood as to have full control. And the doctors, [REDACTED] have acceded to AWC having full control of [REDACTED]
- 3.) AWC has already initiated the process of registering a branch of Africa We Care in Nigeria.
- 4.) A management board that will include the two doctors, of course, will manage the affairs of the clinic.

3

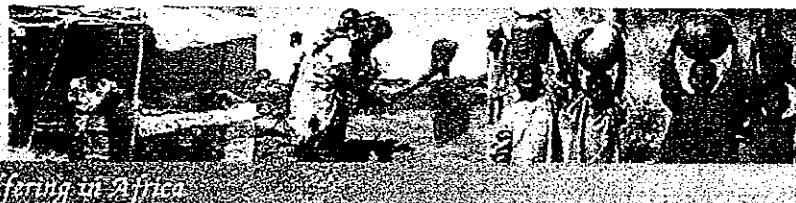
104-3

*...Opportunities Rather Than Charity  
They can do it... You can help*



**Africa We Care**

*Dedicated to the alleviation of suffering in Africa*



My dear friends:

**Please Support Africa We Care Raise Funds to Ship Medical Equipment & Supplies to Africa**

My name is Chukwuemeka Obiajunwa. I am the Executive Director of Africa We Care. I am reaching out to you to ask for your financial support to enable us ship some medical equipment and supplies to Nigeria.

You see, in Africa today, very deplorable health and sanitary conditions are the root causes of the rampant and frequent occurrences of pandemics and epidemics like Ebola, polio, typhoid, and malaria that continue to ravage the continent in this day and age.

It is one of the tragedies of our time that in almost all of the African countries, healthcare facilities are destitute and indigent, at best. At worst and in many of the countries, the most rudimentary of healthcare facilities is completely lacking. Routinely and needlessly, men, women, and children die of the most easily preventable and curable of illnesses and diseases like fever, headache, and diarrhea.



*Left: A group of people, including children, gathered in a dark, possibly indoor or shaded area. Right: A person, possibly a medical professional, in a dark setting, possibly a vehicle or a simple clinic.*

In Africa today, one in 4 children still die before their first birthday; one in 5 women still die in child-birth. The average life span of Africans is still miserably at 47 years. The ugly statistics go on and on.

It is mind-boggling and stomach-churning to hear these numbers on the evening news, to watch the effects of the preventable illnesses on the television, or to read about the increasing death tolls.

Africa We Care, dedicated to the alleviation of suffering in Africa, has embarked on addressing this intractable healthcare issue.



Recently, Africa We Care identified [REDACTED]

To this effect, Africa We Care made a commitment to renovate, revamp, and re-equip the clinic.

Opportunity Knocking...  
They can do it... You can help.



**Africa We Care**

*Dedicated to the alleviation of suffering in Africa*



(The hospital and medical equipment are being loaded onto sea can containers for shipment to Africa.)



Here in Canada, Africa We Care has received a lot of medical equipment, furnishings, and medicines in donations, mostly from [REDACTED], to fill several sea can containers. These containers, filled with life-saving supplies, are ready to be shipped.

I am appealing to you, my friends, for some financial assistance to enable Africa We Care defray the estimated \$30,000 in the shipping costs of these medical equipment and supplies [REDACTED]

We need your support. No amount is too small, but will go a long way in alleviating suffering in Africa.

You can conveniently and securely donate online through our PayPal account. Go to: [www.africawecare.org](http://www.africawecare.org). Click on DONATE NOW.

Or, you can donate by cheque to Africa We Care (medical), and mail to:  
Africa We Care  
17806 – 107<sup>th</sup> Avenue  
Edmonton, Alberta T5S 1J1.

No amount is too small, and will be receipted for Income Tax purposes.  
Your support will go a long way in helping to alleviate suffering in Africa.

*I thank the [REDACTED] who  
donated most of the hospital and medical  
equipment to Africa We Care.*



Thank you very kindly.

Chukwuemeka Obiajunwa  
Executive Director  
Telephone: 780-486-5552  
Email: [cobiajunwa@africawecare.org](mailto:cobiajunwa@africawecare.org).

## Please Support Africa We Care Raise Fund to Ship Medical Equipment and Supplies to Africa

Having babies is most natural and God-mandated. Yet for most women in Africa it is most hazardous. And very often they lose their lives in the process.



These pregnant women are in labour. We have got the equipment, instruments and supplies that would ease their pain, and make it possible for them to deliver their babies safely. Don't allow them to be part of the ugly statistics - one in 5 women die in childbirth. I am appealing to you, my friends, to help make this mission to save lives in Africa a reality.

Please make it possible for Africa We Care, "To Ship Medical Equipment and Supplies to Africa".



Help ease their labour pain! Make it possible so that other African women like them to deliver their babies safely, and not lose their lives in the process. I am appealing to you, my friends, to help Africa We Care raise the \$30,000 it will cost "To Ship Medical Equipment and Supplies to Africa".



Please help save the lives of mothers and children. Make your **tax deductible** donation today: "To Ship Medical Equipment and Supplies to Africa".

**Africa We Care**  
17806 – 107<sup>th</sup> Avenue  
Edmonton, Alberta T5S 1J1

**Please Support Africa We Care Raise Fund to Ship Medical Equipment and Supplies to Africa**

Very deplorable healthcare facilities and sanitary conditions are the main reasons why pandemics and epidemics like Ebola, polio, typhoid, and malaria spread like wildfire in Africa.



These patients are lying on the hospital ward floor. We have got the beds to lift these patients off the floor. But we need to get them there. I am appealing to you, my friends, to help make this mission to save lives in Africa a reality. Please make it possible for **Africa We Care**, "To Ship Medical Equipment and Supplies to Africa".



You can help ease this ugly sight in at the Clinic. I am appealing to you, my friends, to help **Africa We Care** raise the \$30,000 it will cost "To Ship Medical Equipment and Supplies to Africa".



Believe it or not, this is hospital ward.  
You can help ease this overcrowding.

Make your **tax deductible** donation today:  
**"To Ship Medical Equipment and Supplies to Africa"**.

**Africa We Care**  
17806 – 107<sup>th</sup> Avenue  
Edmonton, Alberta T5S 1J1



“Compliance Agreement”

*Your file Votre référence*

Between:

*Our file Notre référence*

*AFRICA WE CARE  
17806-107 AVE.  
EDMONTON, AB T5S 1J1  
BN# 86065 3930RR0001  
(hereinafter called the “Charity”)*

And

*CANADA REVENUE AGENCY (hereinafter called the “CRA”)*

During an audit of the Charity's books and records of account, the following areas of non-compliance with the provisions of the *Income Tax Act* (hereinafter, the *Act*) were identified.

Issues

**Foreign Activities**

The audit indicates that the charitable activities operating outside of Canada did not comply with the requirements of the *Act*. Specifically, the Charity's lack of control and direction over its activities in Africa has lead to its failure to collect the revenues realized from the sales of donated clothing overseas. In addition, the Charity is paying for the direct costs of the water purification and bottling plant in Nigeria, which would not be considered a charitable activity since it is not the Charity's own activity nor are the payments made to a qualified donee.

Where a charity transfers funds to an individual (such as a missionary or field agent) it will meet the *Act's* requirements if the relationship between the charity and the individual is that of an employer/employee. Where this relationship does not exist, the charity must be able to substantiate, by documentary evidence, that it has arranged for the conduct of activities on its behalf and not simply made a gift to the individual.

The requirement in the *Act* is not met where a charitable organization transfers funds to individuals without a formally established arrangement (contract) under which those individuals are legally obliged to carry out certain specified activities on the charity's behalf. In other words, if the charitable organization does not actually direct the actions of the individuals to whom it is transferring funds, and has little, if any, control over or

accountability for the application of those funds, then it is not possible to view the activities performed by the individuals to be the charity's activities.

The CRA recognizes that a charity may wish to fund the programs and activities of an individual who is involved in work which the charity wishes to see accomplished because it is in line with the charity's own charitable objectives. However, it is not possible given the requirements of the *Act*, for a charity to transfer funds it receives and receipts merely on the basis that the individual receiving its monies will devote those resources to efforts that are bona fide and in line with the charity's own objectives.

These same restrictions apply when the recipient of the charity's funds is another organization (for example, a foreign charity, a foreign government, or an international aid agency) unless such a recipient organization is a "qualified donee". Under the *Act*, qualified donees are organizations that can issue official donation receipts for gifts that individuals and corporations make to them, and are specifically as follows:

- Registered charities;
- Registered Canadian amateur athletic associations;
- Registered national arts service organizations;
- Housing corporations resident in Canada constituted exclusively to provide low-cost housing for the aged;
- The United Nations and its agencies;
- Universities outside Canada listed in Schedule VIII of the *Income Tax Regulations*;
- Charitable organizations outside Canada to which Her Majesty in right of Canada (the federal government or its agents) has made a gift during the charity's fiscal period or in the 12 months immediately preceding the period;
- Municipalities in Canada; and
- Her Majesty in right of Canada or in right of a province (that is, the federal government, a provincial government, or their agents).

Accordingly, a charitable organization is not at liberty to transfer funds for the benefit of the work of a missionary or another organization (mission) unless the recipient is an employee of the charity, an agent of the charity under contract, or a qualified donee.

The law requires a charity to devote its resources to its own activities. Where a charity transfers funds or resources to contractors, agents or partners, the CRA is prepared to view the transfer as a devotion of the charity's resources to its own charitable activities, where:

- The charity retains reasonable assurance before funding/entering into the arrangement with the agent, partner or contractor that the agent, partner or contractor will be able to deliver the services required by the charity (by virtue of the other party's reputation, expertise, etc.);
- All expenditures are intended to further the Canadian charity's purposes;

- An adequate written agreement is in place (see requirements below) that is available for public release;
- The charity regularly monitors the progress of the project through adequate reports and records of expenditures received from the other party and makes periodic payments on the basis of this monitoring, maintaining the right to discontinue payments should the charity not be satisfied, and
- The charity provides satisfactory evidence that it has properly monitored the contract.

Where a charity's arrangements do not satisfy those guidelines, the charity must otherwise satisfy the CRA that it retains the degree of control required by law over the ultimate use of the resources passed to another party. An organization that cannot clearly demonstrate the necessary degree of control may be subject to loss of its charitable status.

### **Books and Records**

Mr. Obiajunwa is the sole person who deposits any cash or cheques and is the only individual who withdraws cash and signs the cheques. The liability account is largely due to payments made by Mr. Obiajunwa and is offset by withdrawals.

Section 230(2) of the *Act* requires every registered charity to maintain adequate books and records at a Canadian address recorded with the Minister. The purpose of this requirement is to enable the charity to accurately provide CRA with information required by the *Act* as well as enable CRA to verify the accuracy of reported information through conducting audits. Also, a charitable organization must devote all of its resources to charitable activities carried on by itself under 149.1(a) of the *Act*, which must be substantiated by the charity's books and records. A charity is not meeting its requirement to maintain adequate books and records if it fails to exercise due care with respect to ensuring the accuracy thereof.

Our audit indicated that the Charity's books and records and internal controls were inadequate. As a result, the auditor was unable to confirm revenue and expenses as recorded, the accounting of receipts, and the charitable nature of expenditures as reported on the Information Return. Substantial gaps in the information contained in the Charity's books and records were as follows:

1. The Charity was unable to provide original source documentation to support accounts payable transactions listed in our query (i.e. the executive director's personal [REDACTED] statements, payable transactions to third parties and cash loans from third parties);

2. The Organization does not maintain adequate documentation to support its travel expenses, such as original invoices to show the names of persons who travelled, the dates of travel and the destinations. If the purpose of travel was for a meeting or conference, the Organization should also be able to substantiate the purpose through its meeting minutes, agendas speaking notes and/or itineraries.
3. The Charity appears to deal periodically with cash transactions, without obtaining proper documentation to verify the source of funds (for cash 'loaned' or given from an individual or entity) or the purpose of payment (for cash used to pay an individual or entity for a good or service). As a result, the Organization does not appear to be controlling the use of its resources toward charitable purposes. A Charity must maintain complete documentation to confirm the nature of its expenses and source of revenues.

A charity is not meeting its requirement to maintain adequate books and records if it fails to exercise due care with respect to ensuring the accuracy thereof.

### **Personal Benefits**

Under the definition of a charitable organization per subsection 149.1(1) of the *Act*, no part of a charity's income is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof. The CRA considers that meaning of the term "trustee" to include persons having general control and management of the administration of a charity, including directors and corporations established for charitable purposes.

During our audit, we discovered two situations where the Charity did not adequately safeguard its assets, thereby lending itself to providing personal benefits to its directors.

1. The Charity paid for some of Mr. Obiajunwa's personal expenditures ( [REDACTED] bills, travel to [REDACTED] telephone charges, etc.).
2. The Charity's lack of control over its clothing sales in Africa resulted in the misappropriation of funds collected by one of its' now-former directors, Mr. Jean-Paul Nkunzi.

The absence of sufficient supporting documentation restricts the Charity from proving to the CRA that any payments were for reimbursements of expenses incurred on behalf of the Charity and that any of its Board members did not receive any personal benefits.

It is the Charity's responsibility to safeguard its assets and properties and to ensure that its resources are being used for charitable purposes only.

## Corrective Actions

Given that the Charity wishes to remain voluntarily compliant and that the CRA wishes to resolve the issues between itself and the Charity, both parties have come to an agreement for the issues noted above.

The Charity undertakes to implement the following corrective actions by the following dates:

Foreign Activities	December 31, 2007
Books and Records	August 31, 2007
Personal Benefits	August 31, 2007

### **Foreign Activities**

In order for the Charity to demonstrate that it retains the degree of control required by law over the ultimate use of the resources passed to another party, the Charity must draft written agreements with each third party and should include **at least** the following information:

- Names and addresses of all parties;
- The duration of the agreement or deadline for the project to be completed;
- A description of the specific activities for which funds have been transferred, in sufficient detail to enable the recipient to determine the extent of his authority;
- Provision of written progress reports (or other written documentation from the funding recipient or through an on-site visit, minutes of meetings, etc.) as to how that funds have been spent/disbursed and/or provision for the Canadian charity to inspect the project on a reasonable basis;
- Provision for periodic payments on evidence of reasonable progress (Board meetings, letters, reports, visits, etc.) that demonstrates that the funds are being applied for the specific activities outlined in the agreement;
- Provision for the Canadian charity's discretion in withdrawing funds and controlling the use of its funds at the Canadian charity's discretion;
- Provision for the maintenance of adequate records at the charity's address in Canada;
- For agency agreements, provision for the charity's funds to be segregated from those of the agent and for the agent to keep separate books and records, and
- The signatures of both parties/dates.

It is the CRA's view that this type of reporting mechanism is necessary for the Charity to clearly demonstrate that it maintains an adequate level of control and accountability over the use of its funds.

### **Books and Records**

The Charity must keep information that can be used to determine whether its activities continue to be charitable. This information will vary from charity to charity, but could include, for example, agendas or itineraries of those individuals involved in the direct administration of the charities programs, correspondence, minutes of meetings, etc. The onus is on the charity to demonstrate that it maintains an adequate level of control and accountability over the use of its funds.

### **Personal Benefits**

In addition to ensuring that the Charity safeguards' its assets and properties for charitable use only, the Charity must include into income, the total of all remuneration and personal benefits conferred on any employee in the year, and report the total amount on the proper Statement of Remuneration.

### **Conclusion**

By signing below, the parties certify that they have read and agree to the terms of this agreement.

**For the Charity:**

Chukwuemeka Obiajumwa  
Name & title Executive Director

Signature

Date

August 24<sup>th</sup> 2007

**For the CRA:**

SHANE MENEN, AUDITOR  
Name & title

Signature

Date

August 24, 2007



Canada Customs  
and Revenue Agency

Agence des douanes  
et du revenu du Canada

June 15, 2007

AFRICA WE CARE  
17806-107 AVE.  
EDMONTON AB T5S 1J1

Your file / Votre référence

3019611

Attention: CHUKWUEMEKA OBI AJUNWA

**Re: BN 86065 3930RR0001**  
**Audit of Books and Records for the Period 2003-01-01 to 2004-12-31**

Dear Sir:

We are writing further to an audit of the books and records of the account of Africa We Care (the "Charity") conducted by a representative of the Canada Revenue Agency (CRA). The audit focused primarily on the Charity's fiscal periods ending 2003 and 2004. Upon completion of the audit, specific areas of non-compliance with, and contraventions of, the *Income Tax Act* (the "Act") were identified. These issues, together with negotiated corrective actions, are described in the attached Compliance Agreement.

Please sign and date the enclosed agreement and return it to our office within thirty (30) days from the date of this letter, and forward it to the undersigned at the address below.

It is important to note that the *Act* contains provisions for penalties and/or suspension of qualified donee status under section 188.1 and/or 188.2 that may have been relevant for some or all of the issues contained in the agreement. However, the CRA has chosen to allow the Charity time to rectify the issues. If, on future review, the Charity is found not to have implemented the agreed upon corrective action, the result could be application of penalties and/or suspension as noted in the *Act*.

The following issues of non-compliance were also identified during the audit but are not included in the Compliance Agreement:

#### **T3010A Information Return**

##### Late filing

The 2005 Information Return (form T3010A) was not filed within six months of the Charity's fiscal year end. The deadline to file the 2006 T3010A is also approaching and, according to our system, has not been received. Pursuant to subsection 149.1(14) of the Act:

**Canada**



“every registered charity shall, within six months from the end each taxation year of the charity, file with the Minister both an information return and a public information return for the year, each in prescribed form and containing prescribed information, without notice or demand”.

Failure to file, as set out, may result in revocation of registration.

Incomplete/Incorrect Information

Every registered charity is required by subsection 149.1(14) of the Act to file a *Registered Charity Information Return* with applicable schedules for each taxation year of the charity.

During the audit, it came to our attention that amounts were incorrectly reported on the Charity’s 2004 return as follows:

- Line 4500, total tax-receipted gifts, was understated by \$20,041 (reported \$1,200 but should be \$21,241);
- Line 4890, donated and purchased supplies and assets, should be zero;
- Line 4900, amortization of capitalized assets should be \$2,193;
- Line 4920, other expenditures, should be \$51,432;
- Line 4910. Research grants and scholarships, should be zero;
- Line 4880, salaries, wages, benefits and honoraria, should be \$7,832;
- Line 5010, total management and administration expenditures, should be \$28,246 to reduce the amount by fundraising costs included of \$2,220 that was reported on line 5020.

As a result of the aforementioned errors the disbursement quota was not properly calculated.

To remedy the situation, it is recommended that the Charity submit the form T1240, *Registered Charity Adjustment Request*, with the amendments to all of the lines erroneously reported above. The form is available on our web site [www.cra-arc.gc.ca](http://www.cra-arc.gc.ca). The document T4033A entitled, “*Completing the Registered Charity Information Return*” can also be accessed for additional information.

A charity is not properly meeting its information return filing requirements when it fails to exercise due care with respect to insuring the accuracy thereof. It is the Charity’s responsibility to ensure that the information provided on its’ return are complete and accurate in order that CRA can review and determine the extent of its activities in accordance with the Act.



## Official Donation Receipts

The audit indicates that the donation receipts issued by the Charity did not comply with the requirements of Regulation 3501 of the Act and Interpretation Bulletin, IT-110R3, entitled "Gifts and Official Donation Receipts" as follows:

- Official donation receipts issued for non-cash gifts did not contain the information as required for gift-in-kind such as the date of receipt of the property, a description of the property donated, the name and address of the appraiser and the appraised (fair market) value of the property. In addition, the Charity should not issue donation receipts without securing proper valuation documents explicitly stating the value of the property. In the absence of an invoice or independent appraisal, the Charity should demonstrate that it has exercised diligence in ensuring the fair market value of the gift (e.g. researching values of same or similar properties from at least three different, independent sources).
- Official donation receipts were issued for services rendered. The donation of services (such as time and effort) is not a transfer of property and consequently do not fall within the definition of a "gift". Therefore, official receipts cannot be issued for their donation. However, it should be noted that it would be acceptable to issue a donation receipt to a person who has been paid for services rendered who in turn makes a donation back to the Charity, provided the donation is made voluntarily. The donor must, in such an arrangement, account for the taxable income that would be realized either as remuneration (in which case the Charity may be obligated to issue an information slip) or as business income.
- Official donation receipts were issued for purchases of goods. The purchase of goods from a charity may not be acknowledged by issue of an official receipt for all or any part of a payment for such a purchase. This rule applies even when the buyer pays an amount in excess of fair market value to enhance the profit of the charity. However, the rule does not apply if the purchase can be viewed as a donation because the goods or services purchased have only nominal value in relationship to the amount paid.

## Control Over Official Donation Receipts

The audit reveals that there is inadequate control over the official donation receipts. In particular, we found the duplication of receipt numbers. This is likely attributed to the absence of a receipt registrar or listing, the manner in which receipts are issued (i.e. using [redacted] versus receipt software or a manual receipt book), and the Charity's propensity to accept cash contributions without properly documenting the transaction (such as issuing a cash receipt to the donor, having a cheque only policy, or depositing the cash directly into the bank to confirm its' existence)



Charities are responsible for controlling the use of its receipts to guard against any unauthorized use of official donation receipts. Also, paragraph 230(2)(b) of the Act states 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. This enables the CRA to verify the accuracy of reported information. Therefore, the Charity is required to retain copies of all donation receipts.

### **Governing Documents**

In the course of conducting audits of registered charities, we often look to the charity's governing documents as filed with CRA to ensure that its' stated objects are consistent with the activities observed during the audit. As per the Charity's Memorandum of Association, its' objective is to help alleviate the sufferings and hardship of the poor and children of Africa by promoting education and health for the poor and children of Africa. This was to have been accomplished by providing books and stationary, meals, furnishing classrooms, providing drugs and medicines, vitamins, food supplements, access to hospitals etc.).

During our audit we found that the Charity was primarily involved in the following activities:

1. Collecting donated clothing, which were sorted and baled in Canada, for shipment to Africa for re-sale; and
2. Assisting in the construction of a water purification and bottling plant.

These activities do not appear in line with the objects in which the Charity obtained its registered status. However, they may be considered charitable under the fourth head of charity that cover various purposes beneficial to the community. Based on your explanation of the Charity's activities of selling used goods and building a water treatment plant, the concept of these activities is actually to create microeconomic communities in Africa to empower the local communities and promote entrepreneurial spirit.

Please be advised that a charity that wants to undertake programs and activities that are different from those previously described to us should make sure that they are within the scope of the charity's stated purposes. If the programs or activities differ from those we reviewed, they may not be charitable. Where an organization introduces objects that do not qualify as charitable, it is placing its status as a registered charity in danger.

The Charity must consult with the CRA before formally amending its governing documents. If the purpose, character or method of operation is changed, copies of the revised governing documents must be provided to the Charities Division so that the CRA may consider the effect of these changes on the registered status of the organization.



Canada Customs  
and Revenue Agency

Agence des douanes  
et du revenu du Canada

Once the Corporate Registry has approved the documents, the Charity must submit a formal copy of the governing document.

### Conclusion

Although these issues do not form part of the Compliance Agreement, we remind you that a registered charity must comply with all provisions of the Act, and these could be reviewed at a future date. We strongly suggest that the Charity take action to remedy these issues.

As I will be away for an extended period, your file has been reassigned to Shane Menen. Should you have any questions regarding this agreement or if you feel we have misinterpreted any of the agreed upon terms as set out in this document, please contact Mr. Menen at 495-8000.

Please indicate the Charity's business number on all correspondence.

Yours truly,

Jennifer Sanchez, CMA  
Verification and Enforcement Division

Telephone: (780) 495-6277  
Fax: (780) 495-4243  
Website: [www.cra-adrc.gc.ca/charities](http://www.cra-adrc.gc.ca/charities)  
Address: 9700 Jasper Avenue  
Edmonton AB T5J 4C8

Toll free: 1-800-959-8281 (Individual)  
1-800-959-5525 (Business)  
Internet: [www.cra-adrc.gc.ca](http://www.cra-adrc.gc.ca)

Enclosure



Africa We Care  
17806 – 107 Avenue  
Edmonton AB T5S 1J1

BN: 860653930RR0001

Attention: Chukwuemeka Obiajunwa

File #:3019611

March 17, 2016

Subject: Audit of Africa We Care

Dear Mr. Obiajunwa:

**Re: Charity Audit for the period January 1, 2010 to December 31, 2011**

This letter is further to the audit of the books and records of the Africa We Care (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2010 to December 31, 2012.

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Failure to maintain adequate books and records	149.1(2), 230(2), 168(1)(b), 168(1)(e)
2.	Failure to devote resources to charitable activities	149.1(2), 168(1)(b)
3.	Lack of direction and control over the use of the Charity's resources inside and outside of Canada / Failure to carry out its own charitable activities	149.1(1), 168(1)(b)
4.	Issuing receipts not in accordance with the Act	149.1(2), 168(1)(d), Regulations 3500, 3501(1), 3501(1.1)
5.	Failure to prepare proper documentation for payments to an employee/director	153(1)(g), 168(1)(c), Reg. 105 149.1(2), 168(1)(b)

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

additional representations or present additional information. A registered charity must comply with the law, failing which a charity's registered status may be revoked in the manner described in section 168 of the Act.

We refer also to the Compliance Agreement signed upon August 24, 2007. In this agreement, the Organization has agreed upon several corrective actions. This Compliance Agreement stemmed from a prior audit. A copy is attached.

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

#### **Identified Areas of Non-Compliance**

##### **1. Failure to maintain adequate books and records**

###### **Legislation:**

Pursuant to subsection 230(2) of the Act, 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:

- (a) Information in such form as will enable the Minister to determine whether there are any grounds for revocation of its registration under the Act;
- (b) A duplicate of each receipt containing prescribed information for a donation received by it; and
- (c) 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 records and books of account shall retain

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

The policy of the CRA relating to the maintenance of books and records, and books of account, is based on several judicial determinations, which have held that:

- it is the responsibility of the registered charity to prove that its charitable status should not be revoked<sup>1</sup> ;
- a registered charity must maintain, and make available to the CRA *at the time of an audit*, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto<sup>2</sup>; and
- the failure to maintain proper books, records and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status<sup>3</sup>.

*Audit findings:*

According to the Compliance Agreement, the Organization stated it would have corrective actions in place for the issues related to the Books and Records by August 31, 2007. The Organization agreed to maintain and keep necessary documentation including but not limited to receipts for cash and other original source documents, agendas, itineraries, minutes of meetings, and correspondence. The Organization is also required to show that it maintains an adequate level of control and accountability over the use of its funds. To date, the Organization has failed to comply with any of the required measures.

The Organization did not keep source documentation for \$158,917 of the \$165,417 in total expenses claimed. The only invoices noted in the books and records were invoices for two freight charges in 2010 amounting to \$6,500.

In addition, our review found that the Organization does not have a board of directors that is active and responsible for establishing and maintaining an adequate internal control structure that minimizes the risks associated with potential misstatements in the financial reporting of the Organization, safeguards the Organization's assets, and prevents or detects material errors and fraud. The signing authority for disbursement cheques requires only one signature, that of the Executive Director, who is also responsible for disbursement decisions. Given the lack of board oversight and separation of duties within the Organization the internal controls were determined to be inadequate.

Furthermore, the Organization was unable to provide any loan agreements for loans made by board members to the Organization. An example of this was found in the lack of a loan agreement with [REDACTED], who was identified as the primary lender of a \$10,000 loan in 2011.

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<sup>1</sup> *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, 2002 FCA 72 (FCA)

<sup>2</sup> *Supra*, footnote 3; *The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada*, (2004) FCA 397

<sup>3</sup> *College Rabbinique de Montreal Oir Hachaim D'Tash v. Canada (Minister of the Customs and Revenue Agency)*, (2004) FCA 101; Act subsection 168(1)

Conclusion:

It is our view that the Organization's books and records are not sufficient to support the Organization's actual activities or to demonstrate that the Organization is involved in charitable activities for all the reasons noted above. This is in spite of the agreed upon corrections stated in the Compliance Agreement dated August 24, 2007. Therefore, it is determined that the Organization has failed to maintain an adequate set of books and records as required under subsection 230(2) of the Act. Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to a charity to propose to revoke its registration because it fails to comply with or contravenes any of sections 230 to 231.5 of the Act. For this reason alone, there are grounds for revocation of the Organization's registered status.

**2. Failure to Devote Resources to Charitable Activities**

Legislation:

The Act permits that the resources of a Canadian registered charity may only be properly applied in the following two ways:

- The first way is by disbursements made on charitable activities undertaken by the charity itself, that is to say on its own charitable activities (those which are administered directly under the charity's control and supervision and for which it is able to render itself fully accountable for the funds expended).
- The second way in which a charity may properly apply its resources is by making disbursements to "qualified donees".

Audit findings:

We are unable to verify the expenses, charitable or otherwise, the Organization has purportedly incurred due to a lack of source documentation. Invoices, receipts and similar documentation generally provide the necessary detail to verify who made the outlay, the description of the service or product acquired, and enough additional detail to verify the expenses as being incurred for charitable purposes. Please note corrective actions for Books and Records was to be implemented by August 31, 2007 as per the signed Compliance Agreement. For this reason, it is our position that the amount being spent on charitable purposes, reported on line 5000 of the Registered Charity Information Return (the "T3010"), should be nil for both 2010 and 2011. The lack of source documentation relates to the findings of the failure to maintain proper books and records as discussed above.

Conclusion:

We have concluded that the Organization has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) of the Act as a charitable organization that is

operated exclusively for charitable purposes. During our audit, the Organization did not provide any documents demonstrating that it has taken all necessary measures to direct and control the use of its resources when carrying out activities either through an intermediary or on its own. In addition, the Organization could neither demonstrate to CRA that all of its resources were devoted to its own activities, or devoted by way of gifts to qualified donees, as is required by the Organization.

As the Organization has failed to provide the source documentation needed to substantiate the expenses incurred were in fact charitable, it is our position that the Organization has not devoted all of its resources to charitable activities. Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to a charity to propose to revoke its registration because it fails to comply with or contravenes the requirements of the Act for its registration. For this reason alone there are grounds for revocation of the Organization's registered status.

### **3. Control of Activities Outside Canada and Gifts to Non-Qualified Donees:**

#### *Legislation:*

The Act permits a registered charity to carry out its charitable purposes both inside and outside Canada, in only two ways:

- It can make gifts to other organizations that are on the list of qualified donees set out in the Act. Qualified donees include Canadian registered charities, certain universities outside Canada, the United Nations and its agencies and a few foreign charities.
- It can carry on its own activities. In contrast to the relatively passive transfer of money or other resources involved in making gifts to qualified donees, carrying on one's own activities implies that the Canadian charity is an active and controlling participant in a program or project that directly achieves a charitable purpose.

We refer to the comment of the Federal Court of Appeal in The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen<sup>4</sup>:

"Pursuant to subsection 149.1(1) of the [Income Tax Act], a charity must devote all its resources to charitable activities carried on by the charity itself. While a Charity may carry on its charitable activities through an agent, the Charity must be prepared to satisfy the

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<sup>4</sup> The Canadian Committee for the Tel Aviv Foundation vs. Her majesty the Queen, 2002 FCA 72 (FCA) at paragraphs 40 and 30 respectively

Minister that it is at all times both in control of the agent, and in a position to report on the agent's activities..."

As re-iterated by the Federal Court of Appeal in *Bayit Lepletot v. Minister of National Revenue*<sup>5</sup>, it is not enough for an organization to fund an agent that carries on certain activities. The Act requires that the agent actually conduct those activities on the charity's behalf. Where the agent has full authority to expend the principal's funds without any appropriate ongoing regulation/approval by the principal, there is no assurance that the agent is, at all times, acting on behalf of the principal. In such a case, it is not clear that the principal is exercising ongoing and substantive direction and control. Activities carried out in this manner are not in compliance with the requirements of the Act.

In order to give meaning and effect to the Act, a charity must continue to meet all of its obligations whether the activities are undertaken directly, through agency agreements or through any other arrangements. While we have never insisted on the absolute need for a written instrument, we recommend it as a means of meeting the requirements of the Act. Notwithstanding the manner by which a charity chooses to meet its obligations, it must provide documentation or other tangible evidence to substantiate that it met the requirements of the Act with respect to the direction and control of its resources.

Since the Act requires a charity to show that it effectively directs and actually controls its own activities, the agency agreement that a charity puts in place and the manner that the charity implements that agreement must allow the charity to discharge its statutory obligations.

From time to time the Charities Directorate has suggested certain guidelines for agency agreements in order to help charities understand all the requirements of the Act. For a number of years, we discussed these guidelines with individual charities on a case-by-case basis. As we identified a growing need in the charities sector for more information on this subject, guidelines have been made available to the public and the sector as a whole through our Internet site.

By observing these guidelines and by keeping proper books and records, a charity should be able to discharge its evidentiary burden of establishing that its principal-agent relationship existed in fact, and that it maintained effective direction and actual control over its resources at all times. In the final analysis, the true test of whether a charity was responsible in a direct, effectual, and constant manner over its resources and activities is not shown by how well it has crafted an agreement but rather, how well it has implemented it through time. Therefore, it is incumbent upon the charity to show that it has properly implemented any agreement it claims is in place.

The existence of either a written or verbal agency agreement is only one example of evidence required to show that a sufficient principal-agent relationship truly exists. The charity through documented evidence, must demonstrate that actual events transpired which prove the continued existence of the principal-agent relationship. Thus, the charity must provide the CRA with a

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<sup>5</sup> *Bayit Lepletot v. Minister of National Revenue*, 2006 FCA 128

means of examining the internal decision making mechanisms within the charity's own structure through records, such as: minutes of board meetings; internal communications and memoranda; as well as, policies and procedures that show that the charity, by directing and controlling each of its activities, acted as the guiding-mind in the principal-agent relationship. In addition, the charity must provide source documentation, reports, and the various other instruments it received from its agent showing that throughout the life of the principal-agent relationship, the agent reported back to the principal in such a manner and frequency as to allow the principal to make informed decisions about the resources and projects for which the principal was responsible.

It is the CRA's view that this type of reporting mechanism is necessary for the charity to clearly demonstrate that it maintains an adequate level of control and accountability over the use of its funds. These reports would have to be kept with the charity's other records and books or account at the address recorded with the CRA.

For purposes of the Act, when a registered charity merely transfers its resources to another entity (assuming the entity is a non-qualified donee), but fails to maintain effective direction and actual control over those resources, the result is the same as a gift to a non-qualified donee. Allowing a non-qualified donee to take near total control of the resources of a registered charity nullifies the purpose and intent of the Act.

For more detailed information on charitable activities outside Canada, please refer to Guidance CG-002, Canadian Registered Charities Carrying Out Activities Outside Canada. This is available online through the CRA's Web site at [www.cra-arc.gc.ca/charities](http://www.cra-arc.gc.ca/charities). This includes a set of guidelines that we use to help us assess how much effective direction and actual control a registered Canadian charity exercises in greater detail.

Where an agreement exists only in verbal form, or where some of the elements outlined in the aforementioned guidelines are not explicitly expounded in a written agreement, the CRA will look at all supporting documentation as well as the conduct of both parties to ascertain whether or not the registered Canadian charity maintained effective direction and actual control through its relationship with the other organization. The registered Canadian charity must not only show that an appropriate agreement existed (written or otherwise), it must also show that the agreement was implemented in a manner that clearly demonstrates that the registered Canadian charity exercised direct, effectual, and constant responsibility for undertaking the charitable activities to which its resources were applied. In effect, the registered Canadian charity must show that it acted as the principal through the implementation of the agreement.

During our audit, the Organization did not provide any books and records to support that it established direction and control of its activities outside of Canada, such as:

- list of criteria for selection of beneficiaries or recipients;
- list of beneficiaries or recipients;

- written agreement signed between the Organization and each organization outside of Canada or an agent (intermediary);
- all deposits statement from the organizations outside of Canada which have received the funds of the Organization;
- all financial statement of the organizations outside of Canada or the agent;
- report from the organizations outside of Canada on how the transferred funds have been used, or have been given to the selected beneficiaries or recipients;
- all documents supporting the Organization's control and direction of its resources carrying out of Canada.

Whether a registered charity carries out its foreign activities through persons under its immediate control, or through intermediaries, the following measures should be put in place:

- providing to persons under its immediate control, or through intermediaries, clear and detailed directions concerning the activity, and how it is to be carried out;
- receiving reports from those persons or organizations that describe their activities and the use of resources; and
- monitoring and supervising the activities on an ongoing basis.

However, the Organization did not demonstrate that these measures were put in place. Please note corrective action for foreign activities (Activities outside of Canada) was to be implemented by December 31, 2007 as per the signed Compliance Agreement.

*Audit findings:*

The Organization signed a Compliance Agreement that stated it would have corrective actions in place for the issues related to their activities outside of Canada by December 31, 2007. While the Organization agreed to implement written agreements with each agent containing prescribed information, to date this has not happened. The Organization has not engaged in written agreements, nor has it kept any form of books and records relating to its foreign activities. The Organization purportedly engages in the following activities outside of Canada:

- Micro-credit finance for women traders in Nigeria;
- Sending medicines and money to a family of four in Zimbabwe;
- Water projects in Uganda and Kenya
- Shipping articles of clothing to Benin, Democratic Republic of Congo, Kenya, Uganda, Rwanda, Malawi and Ghana.

The lack of source documentation (emails, website updates, board minutes, airfare receipts/tickets, etc.) has made it impossible to prove that any direction or controls exist.

*Conclusion:*

Therefore, it is CRA's view that the Organization does not exercise the required degree of direction and control over the use of its funds, and/or over the activities to be conducted with those funds, to establish that it is carrying out its own charitable activities in accordance with the provisions of the Act. For this reason alone there are grounds for revocation of the Organization's registered status.

#### **4. Issuing receipts not in accordance with the Act**

##### Legislation:

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

##### Audit findings:

The official donation receipts (ODRs) issued by the Organization did not comply with the requirements of Regulation 3501 of the Act. The following issues were noted:

- ODRs were lacking the name, Canada Revenue Agency, and the website address [www.cra-arc.gc.ca/charities](http://www.cra-arc.gc.ca/charities);
- ODRs were lacking the date or the year during which the donation was received;
- ODRs were lacking a unique serial number;
- ODRs for gifts-in-kind ("GIK") were lacking sufficient detail to ascertain that the goods were for the benefit of the Organization. As an example \$6,000 was receipted to an individual for medical supplies however the only documentation provided was a copy of the ODR. Without sufficient source documentation to establish the fair market value ("FMV") of this GIK, it is our position that the FMV of the GIK, and therefore the eligible amount of this gift, is nil;
- ODR log does not keep record of dates of donations nor the address of the donors.
- Replacement ODRs do not have a notation to the effect that "This cancels and replaces receipt #";
- Many receipts did not provide adequate documentation to verify that the amounts represented a true gift to the Organization and/or that the resulting assets were employed for charitable purposes. In the instance of two receipts given to one individual in 2010 for \$18,000 and in 2011 for \$20,000, these amounts could not be traced through the bank and general ledger. Invoices, receipts and similar documentation should provide enough detail to verify who made the outlay, the description of the gift provided, and enough additional detail to verify that the asset is being used for charitable purposes.

Conclusion:

As the Organization has failed to issue receipts in accordance with the Act and the Regulations, there are grounds to revoke the registration of the Organization under paragraph 168(1)(d) of the Act.

**5. Failure to prepare proper documentation for payments to an employee/director**

Legislation:

Where salaries or wages are paid, the Act requires annual T4 Statements of Remuneration Paid and T4 Summaries be prepared by the employer. Further, where payments are made for fees, commissions or other amounts for services to a person who is not an employee, a T4A slip and a T4A Summary must be prepared. As such, a person making such payments for fees, commissions or other amounts for services described in paragraph 153(1)(g) of the Act, is required under subsection 200(1) of the Regulations to make an information return in prescribed form (T4A), even if no income tax has been withheld at source. However, if the amount of payment is less than \$500, the CRA generally waives the T4A reporting requirement unless income tax was withheld at source, in which case, a T4A must be issued.

Audit findings:

As the Organization did not provide any source documentation for the audit, we cannot verify if T4As should have been issued for the casual labour. Also, in 2011, the Organization budgeted for a summer student predicated on receiving a Canada Student Summer Job grant from the Federal government. After analyzing the bank deposits, it was determined that the Organization received a grant in the amount of \$3,615. The Organization maintained a spreadsheet showing the amount they were to pay out to the summer student, and niece to Executive Director, [REDACTED] [REDACTED] which included the amounts to be withheld for CPP, EI and income tax. However, the Organization did not pay the source deductions nor did it have an active payroll account during this timeframe as the Organization closed it effective May 7, 2009.

Conclusion:

The failure to prepare proper documentation for payments to an employee (in this case, the Student) is grounds for revocation under sections 149.1(2) and 168(1)(b) of the Income Tax 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;
- the application of penalties and/or suspensions provided for in sections 188.1 and/or 188.2 of the Act; or
- giving notice of its intention to revoke the registration of the Organization by issuing a notice of intention to revoke 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 me at the numbers indicated below. My team leader, Erin Carroll, may also be reached at (780)495-4325.

Yours sincerely,

Jared Hay  
Audit Division  
Edmonton TSO

cc march 16/16

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## 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;
- (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; or
- (c) makes a disbursement by way of a gift, other than a gift made
  - (i) in the course of charitable activities carried on by it, or
  - (ii) to a donee that is a qualified donee at the time of the gift.

### 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;
- (b. 1) makes a disbursement by way of a gift, other than a gift made
  - (i) in the course of charitable activities carried on by it, or
  - (ii) to a donee that is a qualified donee at the time of the gift;
- (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 149.1(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;
- (b. 1) makes a disbursement by way of a gift, other than a gift made
  - (i) in the course of charitable activities carried on by it, or
  - (ii) to a donee that is a qualified donee at the time of the gift;
- (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**

The Minister may, by registered mail, give notice to a person described in any of paragraphs (a) to (c) of the definition "qualified donee" in subsection 149.1(1) that the Minister proposes to revoke its registration if the person

- (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;
- (c) in the case of a registered charity or registered Canadian amateur athletic association, fails to file an information return as and when required under this Act or a regulation;
- (d) issues a receipt for a gift 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 the granting of which was expressly or implicitly conditional on the association making a gift to another person, club, society or association.

**168(2) Revocation of Registration**

Where the Minister gives notice under subsection 168(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,
- (d) [Repealed, 2011, c. 24, s. 54]
- (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,
- (g) refuses to accept for registration for the purposes of this Act any retirement income fund,
- (h) refuses to accept for registration for the purposes of this Act any pooled pension plan or gives notice under subsection 147.5(24) to the administrator of a pooled registered pension plan that the Minister proposes to revoke its registration, or
- (i) refuses to accept an amendment to a pooled registered pension plan,

the person 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), the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), or the administrator of the plan in a case described in paragraph (h) or (i), 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),
- (b) [Repealed, 2011, c. 24, s. 55]
- (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),
- (c.2) the mailing of notice to the administrator of the pooled registered pension plan under subsection 147.5(24), or

(d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan or pooled 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**

If 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, or solidarily, 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”

« *montant de l'actif net* »

“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”

« *valeur nette* »

“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.