



**REGISTERED MAIL**

Ms. Alicia Maniloff-Black  
Trustee & Treasurer  
Bayside United Baptist Church  
3564 Route 127  
Bayside NB E5B 2V2

BN:118800985RR0001  
File #: 0013680

**FEB 06 2018**

**Subject: Notice of intention to revoke  
Bayside United Baptist Church**

Dear Ms. Black:

We are writing following our letter dated June 28, 2017 (copy enclosed), in which the Bayside United Baptist Church (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA), and explain why the registration of the Organization should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

Prior to our letter dated June 28, 2017, we had attempted to rectify the non-compliance concerns identified during the audit through a Compliance Agreement (copy enclosed) which was sent to the Organization on February 28, 2017. The Organization was invited at that time to either agree to the terms, propose amendments to the terms, or reject the terms of the proposed agreement.

As of this date, we still have not received an adequate response to either of our letters. On August 3, 2017, we received a faxed copy of two letters sent by the Organization to [REDACTED]. In one of these letters, the Organization revoked the authorization for CRA to speak with any representatives of the [REDACTED] office. In the other letter, the Organization informed [REDACTED] that it would address some of the concerns that were raised in both of our letters.

We further attempted to contact the Organization by phone on August 15, 2017, and a voice message was left explaining that the letter copies that were provided were not sufficient as a response to either of our previous letters as they were not addressed to our office and the letters did not fully address how the Organization would be willing to rectify the non-compliance in order to become compliant with the Income Tax Act. The letters did not address the concern regarding the Organization operating without governing documents, such as letters patent, articles of incorporation, a trust or a constitution. Governing documents are required to include the purposes of the

**Canada**

Organization and a statement of activities it plans to engage in, in furtherance of the stated purposes.

A second attempt to contact the Organization was made by telephone on August 24, 2017, where a message was left with the individual watching Ms. Maniloff-Black's house. The house sitter had advised that she could contact Ms. Maniloff-Black; and a request was made that she call our offices immediately as the matter was extremely important and time sensitive. As of the date of this letter, no response has been received from Ms. Maniloff-Black or a representative of the Organization.

Our concerns with respect to the Organization's non-compliance with the requirements of the Act have not been alleviated. The basis for our concerns is explained below.

An audit was conducted by the CRA for the fiscal period of January 1, 2014, to December 31, 2015. The audit revealed that the Organization failed to maintain adequate books and records, failed to devote resources exclusively for charitable purposes and provided gifts to non-qualified donees. In order to address the non-compliance issues revealed by the audit, the CRA indicated that it wished to enter into a Compliance Agreement with the Organization; however, the Organization did not respond to this Compliance Agreement. An Administrative Fairness Letter (AFL) was issued on June 28, 2017, detailing the non-compliance issues and advising that the charitable registration of the Organization could be revoked.

Copies of the letters to [REDACTED] of August 3, 2017, did not alleviate our concerns and we maintain our position that the non-compliance issues identified during the audit represent a breach of the requirements of the Act. As a result of this non-compliance, the Organization's registration should be revoked. The reasons for revocation are described in greater detail below.

#### **1. Failure to devote resources to charitable purposes**

As stated in our AFL, the CRA assesses eligibility for registration as a charity under the Income Tax Act using a two-part test to determine whether an organization:

- is constituted for purposes (sometimes referred to as "objects") that are exclusively charitable and define the scope of activities that can be engaged in by the organization; and
- subject to limited exceptions, devotes its resources to charitable activities that further those purposes.

The AFL addressed the concerns that the Organization is operating without any legal purposes. Therefore, it is our position that due to its lack of formal charitable purposes and inability to provide detailed, credible plans for charitable activities to be carried out, the Organization is not complying with the requirements of charitable registration; specifically the requirement to devote resources to charitable purposes.

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

As stated in our AFL, all registered charities are required, under subsection 230(2) of the Act, to maintain adequate books and records to demonstrate that they engaged in charitable activities in furtherance of their charitable purposes. Our previous correspondence, most recently our AFL, explained that the books and records supplied by the Organization were not sufficient to meet this requirement of the Act.

The audit revealed that the Organization had not maintained documentation to support board level communications and approval. It was evident that board meetings were not being conducted and no meeting minutes were available for the period under review. Therefore, the Organization failed to maintain documentation to support board governance.

Source documentation was not maintained to substantiate the disbursements and purpose of the "Christmas Gifts" to individuals in the community. Information obtained verbally suggests that some of the gifts may have been provided as a thank you to individuals whom provided assistance to the Organization in the fiscal period, while other gifts were provided to assist families in financial need at Christmas time. Accordingly, it remains our position that the Organization has failed to maintain adequate books and records in accordance with subsection 230(2).

## **3. Gifting funds to non-qualified donees**

As stated in our AFL, and pursuant to subsection 149.1(1) of the Act, a registered charity is required to devote all of its funds to charitable purposes carried on by the organization. Providing funds to individuals without proper documentation to support that it was for a charitable purpose could be seen as a gift to a non-qualified donee. As outlined above, the Organization failed to maintain adequate books and records to illustrate that its provision of funds to four different families was in pursuit of a charitable purpose. As such, it is our position that the Organization has gifted the funds to non-qualified donees, which is a contravention of the Act.

## **Conclusion**

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization failed to

devote resources to charitable purposes, failed to maintain adequate books and records and provided gifts to non-qualified donees. 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 for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

For each of the reasons mentioned in our letter dated June 28, 2017, 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) and 168(1)(e), and subsection 149.1(2) of the Income Tax Act, that I propose to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration is effective on the date of publication of this notice in the Canada Gazette.*

**Business number**  
1188000895RR0001

**Name**  
Bayside United Baptist Church  
Bayside, New Brunswick

Should the Organization choose 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, with 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 intention 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 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 website at **[canada.ca/en/revenue-agency/services/forms-publications/publications/rc4424-completing-tax-return-where-registration-a-charity-revoked/completing-tax-return-where-registration-a-charity-revoked.html](http://canada.ca/en/revenue-agency/services/forms-publications/publications/rc4424-completing-tax-return-where-registration-a-charity-revoked/completing-tax-return-where-registration-a-charity-revoked.html)**;
- 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 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:

- CRA letter dated February 28, 2017
- CRA letter dated June 28, 2017
- Appendix A, Relevant provisions of the Act

c.c.: Ms. Amy Greenlaw  
Congregation/Trustee



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



February 28, 2017

Mrs. Alicia Maniloff-Black  
Bayside United Baptist Church  
3564 Route 127  
Bayside, NB E5B 2V2

COPY

BN: 118800895RR0001  
File #:0013680

**Subject: Audit of the Bayside United Baptist Church**

Dear Mrs. Maniloff-Black:

This letter is further to the audit of the books and records of Bayside United Baptist Church (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period of January 1, 2014 to December 31, 2015.

Please be advised that the CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* and/or its *Regulations* in the following areas:

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to maintain adequate books and records	149.1(2), 168(1)(b), 168(e), 230(2), 188.2(2)
2.	Operating a Charitable Organization without the required documentation	149.1(2), 168(1)(c), 188.1(6)
3.	Failure to meet the requirements of the charitable designation	149.1(2), 168(1)(c)

The CRA is prepared to provide the Organization with an opportunity to resolve these issues through the implementation of a Compliance Agreement. A Compliance Agreement is an agreement reached through discussion with the Organization whereby the Organization agrees to take specified corrective measures to address each identified issue. However, should the Organization fail to put into effect the agreed upon corrective measures, the Minister of National Revenue (the Minister) may apply the penalties and suspensions provided for in sections 188.1 and/or 188.2 of the Act, which include suspension of the Organization's authority to issue official receipts and suspension of its status as a "qualified donee." The Minister may, by registered mail, also propose 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.

**The Organization's options:**

1. The Organization may respond to any of the identified areas of non-compliance, providing any additional information not previously provided for consideration, suggest alternative corrective measures, and/or suggest changes to the attached agreement. A response is required **within 30 days** from the date of this letter, directed to me at the address below.
2. The Organization may sign the Compliance Agreement, if it is in agreement with the content. Please return the signed agreement to me at the address below **within 30 days** from the date of this letter.
3. The Organization may choose not to enter into a Compliance Agreement. In that event, please contact me **within 30 days** of the date of this letter.

Other Issues of Non-compliance:

**Form T3010**

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

The audit revealed that the Form T3010s pertaining to the audit period have been filed on time, however there were some errors and omissions noted.

It is the responsibility of the Organization to ensure that the information that is provided in its information return, schedules and Financial Statements, is factual and complete in every respect.

A charity is not meeting its requirement to file an information return if it fails to exercise due care with respect to ensuring the accuracy thereof.

It was noted that there were some variances between what was reported on the Form T3010 and what was reported on the accompanying Financial Statements. The Financial Statements submitted with the Form T3010 must be reconcilable to the Form T3010 and the general ledger.

Specific items of note were;

**Schedule 6**

**1. Revenue**

Line 4500 (Receipted Donations) should be the total amount of all official receipted donations as recorded on the transaction report. It was noted that the donations provided during the fiscal period were not official donations and that only non-official receipts were provided. These donations should have been placed on line 4530 for non-receipted donations instead.

Line 4530 (Non-Receipted Donations) should be the total amount of non-receipted donations received.

## **2. Expenses (Part 1)**

Line 4850 (Occupancy Costs) should include the amount paid for insurance and any expenses incurred for maintenance of the property and utilities paid in the year.

Line 4891 (Purchased Supplies and Assets) was not completed, however this should have been the amount reported on the Financial Statements for the chairs and glass vase and any other expenses incurred as part of the renovation that included the purchase of an asset. It appears as though this amount was omitted from the Form T3010 completely.

Line 4920 (Other Expenses) should include all expenses related to the restoration/renovation of the church building, any miscellaneous expenses and any expenses related to gifts to individuals (not gifts to qualified donees). It appears as though some of the renovation/restoration expenses were included here, however about \$980 worth of these expenses were omitted from the Form T3010 completely. Furthermore, it appears as though the \$4,000 in 'Christmas gifts' to individuals were also omitted from the form completely.

All expenses incurred during the year must be reported on the Form T3010, unless otherwise indicated in the notes to the financial statements.

## **3. Expenses (Part 2)**

Line 5000 (Charitable Expenses) – Enter the part reported at line 4950 that represents all expenditures on charitable activities, except for gifts to qualified donees (other charities). This would be all expenses reported except for amounts reported on lines 5010, 5020 and 5050.

Line 5010 (Management and Administration) – Enter the part reported at line 4950 that represents management and administrative expenditures. Amounts reported on lines 4820, 4840 and 4860 would be considered expenses related to administration.

Line 5050 (Gifts to Charities) – Enter the total amount of donations made to Qualified Donees. In 2015, a total of \$3,500 was provided to a food bank, a school and a hospice organization. Only \$2,000 was reported on this line and the rest appears to have been omitted from the Form T3010. The amount reported on this line must match the total reported on the Qualified Donee Worksheet.

We refer to *Guide T4033E, Completing the Registered Charity Information Return* which is available on our website at: [www.cra-arc.gc.ca/chrts-qvng](http://www.cra-arc.gc.ca/chrts-qvng).

It was also noted that the Organization was not accurately completing the Directors/Trustees and Like Officials Worksheet as this sheet was missing one of the birthdates.

## **Segregation of Duties and Governance**

It was noted that the Organization has listed a board of directors. It was also noted that only one of the directors, Alicia Maniloff, was involved in all aspects of the day to day



financial transactions for the Organization. While it was evident that all source documentation could be provided to substantiate the revenues and expenses, it is highly recommended that the Organization implement stronger internal controls to mitigate financial risks.

Furthermore, it was noted that two of the board members were inactive in the decision-making and financial governance of the Organization in the period under review.

In order to strengthen the internal controls of the Organization, it is recommended that the entire board meet on a regular basis in order to discuss the activities of the Organization and ensure that more than one individual is controlling the decision-making activities. By providing regular reports to the board of the financial transactions conducted in the period, this would help to mitigate risk. Ideally, it is recommended that at least 2 signatures be required on cheques written for expenses incurred.

Although these issues do not form part of the Compliance Agreement, a registered charity must comply with all provisions of the ITA. The CRA would strongly suggest that the Charity take appropriate action to remedy these concerns, which may be subject to future review.

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, Belinda Hatton may also be reached at [REDACTED]

Yours sincerely

[REDACTED]  
Shaunessy Fawthrop  
Audit Division-Charities Section  
Nova Scotia TSO - Halifax

Telephone: [REDACTED]  
Facsimile: (902) 450-8556  
Toll Free: 1-800-267-2384 (*Charities Directorate*)  
Address: PO Box 638, Halifax NS B3J 2T5  
Internet: [www.cra.gc.ca](http://www.cra.gc.ca)

Enclosure  
- Compliance Agreement

## **Compliance Agreement**

Between

**Bayside United Baptist Church (the Organization)**

BN: 118800895RR0001

3564 Route 127

Bayside, NB E5B 2V2

And

**Canada Revenue Agency (CRA)**

During an audit of the Organization's books and records for the period from January 1, 2014 to December 31, 2015, conducted by the CRA, the following areas of non-compliance with the provisions of the *Income Tax Act* (the Act) and/or its *Regulations* were identified.

### **Areas of non-compliance**

**A. Failure to Maintain Adequate Books and Records**

Subsection 230(2) of the Act states that a registered charity must keep adequate books and records in either English or French, for the prescribed time period, at an address in Canada that is on file with the Canada Revenue Agency (CRA). A charity's books and records must allow the Canada Revenue Agency (CRA) to:

- verify revenues, including all charitable donations received;
- verify that resources are spent on charitable programs; and
- verify that the charity's purposes and activities continue to be charitable.

**Books and records include:**

Governing documents (incorporating documents, constitution, trust document), bylaws, financial statements, copies of official donation receipts, copies of annual information returns (Form T3010, Registered Charity Information Return), written agreements, contracts, board and staff meeting minutes, annual reports, ledgers, bank statements, expense accounts, inventories, investment agreements, accountant's working papers, payroll records, promotional materials, and fundraising materials.

Books and records also include **source documents**. Source documents support the information in the books and records, and include items such as: invoices, vouchers, formal contracts, work orders, delivery slips, purchase orders, and bank deposit slips.

In this regard, the following areas of concern with the books and records were revealed during the audit:

i. Proof of Governance

The audit revealed that the Organization had not maintained documentation to support board level communications and approval. It was evident that board meetings were not being conducted and therefore no meeting minutes were available for the period under review. Therefore, the Organization failed to maintain documentation to support board governance in terms of email communications or documented phone calls.

ii. Source Documentation

The audit revealed that in the 2015 fiscal period the Organization provided the following 'Christmas Gifts':

- \$1,000 issued to [REDACTED]
- \$1,000 issued to [REDACTED]
- \$1,000 issued to [REDACTED]
- \$1,000 issued to [REDACTED]

Source documentation was not maintained to substantiate the disbursements and purpose of these gifts. Information obtained verbally suggests that some of the gifts may have been provided as a thank you to individuals whom provided assistance to the Organization in the fiscal period, while other gifts were provided to assist families in financial need at Christmas time.

Pursuant to subsection 149.1(1) of the Act, a registered charity is required to devote all of its funds to charitable purposes carried on by the organization. The *Income Tax Act* permits a registered charity to carry out its charitable purposes, both inside and outside of Canada, in **only** two ways.

- It can make gifts to other organizations that are on a list of **qualified donees** set out in the *Income Tax Act*.
- It can **carry on its own charitable 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.

Gifts made to individuals without proper documentation to support that it was for a charitable purpose could be seen as a non-qualifying gift that results in a personal or undue benefit.

In the case that a sum of money is dispersed to an individual for assisting the Organization in the fiscal period, the proper source documentation that must be maintained is a T4A.

In the case that a sum of money is dispersed to an individual for benevolence or for financial assistance, the Organization must prove that the individual or family is in financial need in order for the disbursement to be considered a charitable activity.

The Organization can maintain proper documentation for financial need in the following ways:

- Obtain a bank statement from the individual and letters of request for assistance.
- Avoid providing financial assistance by giving cash or cheque and instead purchase gift cards to the local grocery store, or department store, etc.
- Obtain copies of utility bills and pay the outstanding amounts directly to the utility.
- Purchase specific items required by the family and then maintain receipts to confirm purchase.

## **B. Operating a Charitable Organization without the proper documentation**

The Canada Revenue Agency (CRA) assesses eligibility for registration as a charity under the *Income Tax Act* using a two-part test to determine whether an organization:

- is constituted for purposes (sometimes referred to as "objects") that are exclusively charitable and define the scope of activities that can be engaged in by the organization; and
- subject to limited exceptions, devotes its resources to charitable activities that further those purposes.

The purposes of an organization are the objectives that it is created to achieve. Each of an organization's purposes must be clearly stated in its governing document, such as letters patent, articles of incorporation, trust, or constitution. If an organization's purposes are not exclusively charitable, it is not eligible for registration.

An organization's governing document must contain a clear statement of each of its purposes. If the wording is broad or vague, a purpose is not likely to meet the legal requirements for registration as a charity. To be eligible for registration under the *Income Tax Act*, a purpose should generally identify three elements either expressly or implicitly through its context:

- the charitable purpose category (relief of poverty, advancement of education, advancement of religion, or certain other purposes beneficial to the community in a way the law regards as charitable);
- the means of providing the charitable benefit; and
- the eligible beneficiary group.

The Organization was registered on January 1, 1967 under the governing document for the Convention of Atlantic Baptist Churches.

On December 3, 2012, the Convention of Atlantic Baptist Churches withdrew the membership of the Organization. This subsequently has resulted in the Organization operating since that time, without any governing documents.

In order to maintain charitable status, the Organization will have to obtain proper governing documents. This can be achieved in one of two ways:

- 1) Request for membership to be re-instated with the Convention of Atlantic Baptist Churches.
- 2) Create standalone governing documents that include objects and purposes and submit these to the Charities Directorate for review and approval.

### **C. Failure to meet the requirements of the charitable designation**

Subsection 149.1(2) indicates the requirements for an entity to maintain its Charitable Organization designation. In order to qualify as a Charitable Organization, the entity must meet the following criteria:

- it is established as a corporation, a trust, or under a constitution;
- it has only charitable purposes;
- it primarily carries on its own charitable activities;
- it has more than 50% of its directors, trustees, or like officials dealing with each other at arm's length; and
- it generally receives its funding from a variety of arm's length donors.

Due to the fact that two of the three Board of Directors are not dealing with each other at arm's length, the Organization does not qualify as a Charitable Organization.

During the audit, the Organization indicated that it wishes to rectify all identified areas of non-compliance on a voluntary basis and the CRA is prepared to provide the Organization with an opportunity to do so.

For this purpose, the parties agree that the Organization shall implement the following corrective measures. By signing this Compliance Agreement, the Organization agrees to take the corrective measures listed below to rectify the situation, and will not be subject to sanctions and/or revocation at this time.

### **Corrective measures**

1. The Organization will maintain documents to support board governance, which could include; minutes of meetings, email correspondence; and documented phone conversations. Furthermore, the Organization will maintain source documentation to support and justify any disbursements made to individuals for benevolence or as an honorarium (gift of thanks).

2. The Organization will obtain and submit to the Charities Directorate proper governing documents by either:

- Requesting that membership be re-instated with the Convention of Atlantic Baptist Churches; or
- By creating a standalone governing document that includes objects and purposes and submit these to the Charities Directorate for review and approval.



The address to send the governing Documents is:

Charities Directorate  
Canada Revenue Agency  
Ottawa, ON K1A 0L5

3. The Organization will seek to have more than 50% of its directors/trustees or like officials dealing with each other at arm's length.

**Date of implementation of all corrective measures**

The Organization shall implement all corrective measures by December 31, 2017.

By signing below, the parties certify that they have read, understood, and agree to, the terms of this Compliance Agreement. The Organization further acknowledges that should it fail to implement all corrective measures in accordance with the terms of this Compliance Agreement, the Minister of National Revenue (the Minister) may apply the penalties and suspensions provided for in sections 188.1 and/or 188.2 of the Act, which include suspension of the Organization's authority to issue official receipts and suspension of its status as a "qualified donee". The Minister may, by registered mail, also give notice that the Minister proposes 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.

This compliance agreement must be signed by two directors/trustees or like officials of the organization who have authority to sign on behalf of the organization.

Signature	1. _____	2. _____
Name (please print)	_____	_____
Title	_____	_____
Date signed	_____	_____

AND

Signature	_____
Name (please print)	_____
Title	Auditor, Shaunessy Fawthrop NS TSO Canada Revenue Agency
Date signed	_____



Ms. Alicia Maniloff-Black  
Trustee  
Bayside United Baptist Church  
3564 Route 127  
Bayside NB E5B 2V2

BN: 118800895RR0001  
File #:0013680

June 28, 2017

**Subject: Audit of the Bayside United Baptist Church**

Dear Ms. Maniloff-Black:

This letter is further to the audit of the books and records of the Bayside United Baptist Church (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2014, to December 31, 2015.

In the Compliance Agreement sent to you on February 28, 2017, you were advised that the CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* and/or its *Regulations* in the following areas.

AREAS OF NON-COMPLIANCE		
	Issue	Reference
A.	Failure to devote resources to charitable purposes	149.1(2), 168(1)(b)
B.	Failure to maintain adequate books and records	149.1(2), 168(1)(b), 168(e), 230(2), 188.2(2)(a)
C.	Gifting to non-qualified donees	149.1(2)(c)(ii), 168(1)(b), 188.1(4), 188.1(5)

The Compliance Agreement was not returned and attempts to contact the Organization have not been successful. Therefore, the purpose of this letter is to once again describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Organization with one more opportunity to make additional representations or present additional information. Registered charities must comply with the law, failing which the Organization's registered status may be revoked in the manner described in section 168 of the Act.

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

## **Identified areas of non-compliance**

### **A. Failure to devote resources to charitable purposes**

#### **Purposes:**

The Canada Revenue Agency (CRA) assesses eligibility for registration as a charity under the *Income Tax Act* using a two-part test to determine whether an organization:

- is constituted for purposes (sometimes referred to as "objects") that are exclusively charitable and define the scope of activities that can be engaged in by the organization; and
- subject to limited exceptions, devotes its resources to charitable activities that further those purposes.

The purposes of an organization are the objectives that it is created to achieve. Each of an organization's purposes must be clearly stated in its governing document, such as letters patent, articles of incorporation, trust, or constitution. If an organization's purposes are not exclusively charitable, it is not eligible for registration.

An organization's governing document must contain a clear statement of each of its purposes. If the wording is broad or vague, a purpose is not likely to meet the legal requirements for registration as a charity. To be eligible for registration under the *Income Tax Act*, a purpose should generally identify three elements either expressly or implicitly through its context:

- the charitable purpose category (relief of poverty, advancement of education, advancement of religion, or certain other purposes beneficial to the community in a way the law regards as charitable);
- the means of providing the charitable benefit; and
- the eligible beneficiary group.

The Organization was registered on January 1, 1967, under the governing document for the Convention of Atlantic Baptist Churches.

On December 3, 2012, the Convention of Atlantic Baptist Churches withdrew the membership of the Organization. This has resulted in the Organization operating since that time without any governing documents and therefore no formal charitable purposes.

Activities:

Another requirement of charitable registration is that an organization carry out activities in furtherance of its stated charitable purposes. However, the audit revealed that the Organization does not currently devote all of its resources to charitable purposes and has carried out minimal charitable activities since 2010. While the Organization has indicated it plans to begin activities sometime this year, it has been unable to provide any detail regarding what those activities will consist of and what charitable purposes they will be in support of. Please note that it is insufficient for the Organization to simply express its aspirations<sup>1</sup> regarding what charitable purposes it will be established for and what charitable activities it will carry out. The Organization must be able to provide detailed and credible plans for these activities. To date, we have not received sufficient information regarding these plans.

Therefore, it is our position that due to its lack of formal charitable purposes and inability to provide detailed, credible plans for charitable activities to be carried out, the Organization is not complying with the requirements of charitable registration; specifically the requirement to devote resources to charitable purposes. Under subsection 149.1(2) of the Act, the Minister may revoke the registration of the charitable organization in the manner as described at paragraph 168(1)(b) of the Act because the registered charity has failed to comply with the requirements of this Act for its registration.

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

Subsection 230(2) of the Act states that a registered charity must keep adequate books and records, for the prescribed time period, at an address in Canada that is on file with the Canada Revenue Agency (CRA). A charity's books and records must allow the CRA to:

- verify revenues, including all charitable donations received;
- verify that resources are spent on charitable programs; and
- verify that the charity's purposes and activities continue to be charitable.

Books and records include:

Governing documents (incorporating documents, constitution, trust document), bylaws, financial statements, copies of official donation receipts, copies of annual information returns (Form T3010, Registered Charity Information Return), written agreements, contracts, board and staff meeting minutes, annual reports, ledgers, bank statements, expense accounts, inventories, investment agreements,

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<sup>1</sup> *Sagkeeng Memorial Arena Inc. v. Canada (National Revenue)*, [2012] F.C.A. 171, at paras. 8 and 9

accountant's working papers, payroll records, promotional materials, and fundraising materials.

Books and records also include source documents. Source documents support the information in the books and records, and include items such as: invoices, vouchers, formal contracts, work orders, delivery slips, purchase orders, and bank deposit slips.

In this regard, the following areas of concern with the books and records were revealed during the audit:

i. Proof of Governance

The audit revealed that the Organization had not maintained documentation to support board level communications and approval. It was evident that board meetings were not being conducted and therefore no meeting minutes were available for the period under review. Therefore, the Organization failed to maintain documentation to support board governance in terms of email communications or documented phone calls.

ii. Source Documentation

The audit revealed that in the 2015 fiscal period the Organization provided the following 'Christmas Gifts':

- \$1,000 issued to
- \$1,000 issued to
- \$1,000 issued to
- \$1,000 issued to

Source documentation was not maintained to substantiate the disbursements and purpose of these gifts. Information obtained verbally suggests that some of the gifts may have been provided as a thank you to individuals whom provided assistance to the Organization in the fiscal period, while other gifts were provided to assist families in financial need at Christmas time.

If the funds were disbursed to an individual for employment purposes within the Organization, a T4A slip must be issued and a copy maintained for the Organization's books and records. If the funds were disbursed for goods received or services rendered, source documents should be available to support the transactions.

If funds are disbursed to an individual for benevolence or for financial assistance, the Organization must prove that the individual or family is in



financial need in order for the disbursement to be considered a charitable activity.

An organization can maintain proper documentation for financial need in the following ways:

- Obtain a bank statement from the individual and letters of request for assistance
- Avoid providing financial assistance by giving cash or cheque and instead purchase gift cards to the local grocery store, or department store, etc.
- Obtain copies of utility bills and pay the outstanding amounts directly to the utility
- Purchase specific items required by the family and then maintain receipts to confirm purchase

As such, it is our position that the Organization has failed to maintain adequate books and records in accordance with subsection 230(2).

Under subsection 149.1(2) of the Act, the Minister may revoke the registration of the charitable organization in the manner as described at paragraph 168(1)(b) and (e) of the Act because the registered charity has failed to comply with the requirements of this Act for its registration and has failed to comply with or contravened any of sections 230(2).

Failing to maintain adequate books and records is an offense under the Act. A registered charity that fails to maintain adequate books and records is subject to the suspension of its receipting privileges. While we have considered the application of this suspension, due to the severity of this issue and the Organization's refusal to sign the compliance agreement, we are not proposing this sanction at this time.

### **C. Gifting funds to non-qualified donees**

Pursuant to subsection 149.1(1) of the Act, a registered charity is required to devote all of its funds to charitable purposes carried on by the organization. The *Income Tax Act* permits a registered charity to carry out its charitable purposes, both inside and outside of Canada, in only two ways.

- It can make gifts to other organizations that are on a list of qualified donees set out in the *Income Tax Act*.
- It can carry on its own charitable 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.

Providing funds to individuals without proper documentation to support that it was for a charitable purpose could be seen as a gift to a non-qualified donee. As outlined above, the Organization failed to maintain adequate books and records to illustrate that its provision of funds to four different families was in pursuit of a charitable purpose. As such, it is our position that the Organization has gifted the funds to non-qualified donees, which is a contravention of the Act.

Providing an undue benefit, which includes gifting to a non-qualified donee, is an offence under the Act. A registered charity that confers an undue benefit is liable to a penalty equal to 105% of the amount of the benefit, increasing to 110% if the offence is reproduced within five years. While we have considered the application of this penalty, due to the severity of this issue and the Organization's refusal to sign the compliance agreement, we are not proposing this sanction at this time.

**Other issues of non-compliance:**

**Form T3010, Registered Charity Information Return (T3010)**

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file an information return with the applicable schedules.

The audit revealed that the T3010s pertaining to the audit period have been filed on time, however there were some errors and omissions noted.

It is the responsibility of the Organization to ensure that the information that is provided in its information return, schedules and financial statements, is factual and complete in every respect.

A charity is not meeting its requirement to file an information return if it fails to exercise due care with respect to ensuring the accuracy of its T3010.

There were some variances between what was reported on the Organization's T3010 and what was reported on its accompanying financial statements. The financial statements submitted with the T3010 must be reconcilable to the T3010 and the general ledger.

Specific items of note were:

## **Schedule 6**

### **1. Revenue**

Line 4500 (Receipted Donations) should be the total amount of all official receipted donations as recorded on the transaction report. It was noted that the donations provided during the fiscal period were not official donations and that only non-official receipts were provided. These donations should have been placed on line 4530 for non-receipted donations instead.

Line 4530 (Non-Receipted Donations) should be the total amount of non-receipted donations received.

### **2. Expenses (Part 1)**

Line 4850 (Occupancy Costs) should include the amount paid for insurance and any expenses incurred for maintenance of the property and utilities paid in the year.

Line 4891 (Purchased Supplies and Assets) was not completed, however this should have been the amount reported on the financial statements for the chairs and glass vase and any other expenses incurred as part of the renovation that included the purchase or improvement of an asset. It appears as though this amount was omitted from the T3010 completely.

Line 4920 (Other Expenses) should include all other expenses. It appears as though some of the renovation/restoration expenses were included here, and about \$980 worth of these expenses were omitted from the T3010 completely. These amounts should be included on line 4891. Furthermore, it appears as though the \$4,000 in 'Christmas gifts' to individuals were also omitted from the form completely.

All expenses incurred during the year must be reported on the T3010, unless otherwise indicated in the notes to the financial statements.

### **3. Expenses (Part 2)**

Line 5000 (Charitable Expenses) – Enter the part reported at line 4950 that represents all expenditures on charitable activities, except for gifts to qualified donees (other charities). This would be all expenses reported except for amounts reported on lines 5010, 5020 and 5050.

Line 5010 (Management and Administration) – Enter the part reported at line 4950 that represents management and administrative expenditures. Amounts reported on lines 4820, 4840 and 4860 would be considered expenses related to administration.

Line 5050 (Gifts to Charities) – Enter the total amount of donations made to qualified donees. In 2015, a total of \$3,500 was provided to a food bank, a school and a hospice organization. Only \$2,000 was reported on this line and the rest appears to have been omitted from the T3010. The amount reported on this line must match the total reported on the Qualified Donee Worksheet.

We refer to Guide T4033E, Completing the Registered Charity Information Return which is available on our website at [www.cra-arc.gc.ca/chrts-gvng](http://www.cra-arc.gc.ca/chrts-gvng).

It was also noted that the Organization was not accurately completing the Directors/Trustees and Like Officials Worksheet as this sheet was missing one of the Directors birthdates.

#### Segregation of Duties and Governance

It was noted that the Organization has listed a board of directors. It was also noted that only one of the directors, Alicia Maniloff, was involved in all aspects of the day to day financial transactions for the Organization. While it was evident that all source documentation could be provided to substantiate the revenues and expenses, it is highly recommended that the Organization implement stronger internal controls to mitigate financial risks.

Furthermore, it was noted that two of the board members were inactive in the decision-making and financial governance of the Organization in the period under review.

#### 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, Belinda Hatton, may also be reached at [REDACTED]

Yours sincerely, /

[REDACTED]  
Shaunessy Hawthrop  
Audit Division-Charities Section  
Nova Scotia TSO - Halifax

Telephone: [REDACTED]  
Toll Free: 1-800-267-2384 (*Charities Directorate*)  
Facsimile: (902) 450-8556  
Address: PO Box 638, Halifax NS B3J 2T5

c.c.: Amy Greenlaw (Treasurer), [REDACTED]



## **APPENDIX "A"      Relevant Provisions of the Act**

### **Section 149.1: [Charities]**

#### **149.1(2) Revocation of registration of charitable organization**

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

- (a) carries on a business that is not a related business of that charity; or
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the organization's disbursement quota for that year.

#### **149.1(3) Revocation of registration of public foundation**

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

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (c) since June 1, 1950, acquired control of any corporation;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or
- (e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection (4), to revoke its registration as a private foundation.

#### **149.1(4) Revocation of registration of private foundation**

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

- (a) carries on any business;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (c) since June 1, 1950, acquired control of any corporation; or
- (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 the registered charity has made a gift to another registered charity and it can reasonably be considered that one of the main purposes of making the gift was to unduly delay the expenditure of amounts on charitable activities;
- (b) of the other charity referred to in paragraph (a), if it can reasonably be considered that, by accepting the gift, it acted in concert with the registered charity to which paragraph (a) applies; and
- (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.

**Section 168: Notice of intention to revoke registration**

168(1) Where a registered charity or a registered Canadian amateur athletic association

- (a) applies to the Minister in writing for revocation of its registration,
  - (b) ceases to comply with the requirements of this Act for its registration as such,
  - (c) fails to file an information return as and when required under this Act or a regulation,
  - (d) issues a receipt for a gift or donation otherwise than in accordance with this Act and the regulations or that contains false information,
  - (e) fails to comply with or contravenes any of sections 230 to 231.5, or
  - (f) in the case of a registered Canadian amateur athletic association, accepts a gift or donation the granting of which was expressly or impliedly conditional on the association making a gift or donation to another person, club, society or association,
- the Minister may, by registered mail, give notice to the registered charity or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.

**168(2) Revocation of Registration**

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

- (a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the *Canada Gazette*, and
- (b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the *Canada Gazette*,

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

**168(4) Objection to proposal or designation**

A person that is or was registered as a registered charity or is an applicant for registration as a registered charity that objects to a notice under subsection (1) or any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) 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.

**Section 172: Appeal from refusal to register, revocation of registration, etc.**

**172(3) Appeal from refusal to register, revocation of registration, etc.**

Where the Minister

- (a) refuses to register an applicant for registration as a Canadian amateur athletic association,
- (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,
- (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) refuses to issue a certificate of exemption under subsection 212(14),
- (e) refuses to accept for registration for the purposes of this Act an education savings plan,
- (e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,
- (f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,
- (f.1) refuses to accept an amendment to a registered pension plan, or
- (g) refuses to accept for registration for the purposes of this Act any retirement income fund, the applicant or the organization, foundation, association or registered charity, as the case may be, in a case described in paragraph (a) or (a.1), the applicant in a case described in paragraph (b), (d), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), the promoter in a case described in paragraph (e.1), or the administrator of the plan or an employer who participates in the plan, in a case

described in paragraph (f) or (f.1), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

#### **Section 180: Appeals to 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) the mailing of notice to a registered Canadian amateur athletic association under subsection 168(1),
- (c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),
- (c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1), or
- (c) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

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

#### **Section 188: Revocation tax**

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

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

- (a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;
- (b) a new taxation year of the charity is deemed to begin immediately after that day; and
- (c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

##### **188(1.1) Revocation tax**

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

$A - B$

where

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



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

**188(4) Idem**

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

**188(5) Definitions**

In this section,

“net asset amount”

“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”

“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.

## **Section 189**

### **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 mailed 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 registered charity in respect of the charity'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 charity after the day on which the Minister first assessed that liability and before the particular time 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 total of

- (a) the consideration given by the 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, 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.