



REGISTERED MAIL

Biosphere Conservation Foundation
503 Davenport Road
Toronto ON M4V 1B8

FEB 21 2017

BN: 828315366RR 0001

Attention: Mr. Bryan Grimes

File #: 3036323

**Subject: Notice of Intention to Revoke
Biosphere Conservation Foundation**

Dear Mr. Bryan Grimes:

We are writing further to our letter dated March 23, 2016 (copy enclosed), in which you were invited to submit representations as to why the registration of Biosphere Conservation Foundation (the Organization) should not be revoked in accordance with subsection 168(1) of the Income Tax Act (the Act).

We have now reviewed and considered your written response dated June 14, 2016. However, notwithstanding your reply, our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position is fully described in Appendix "A" attached.

Conclusion

The audit by the Canada Revenue Agency (CRA) has revealed 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 activities carried on by the Organization itself, failed to issue donation receipts in accordance with the Act and/or its Regulations, failed to maintain adequate books and records and failed to file an accurate T3010, Registered Charity Information Return. 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 23, 2016, we wish to advise you that, pursuant to subsection 168(1) 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), and 168(1)(e) Income Tax Act that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.

Business number	Name
82831 5366 RR 0001	Biosphere Conservation Foundation Toronto, Ontario

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

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

Notwithstanding the filing of an objection, a copy of the revocation notice, described above, will be published in the Canada Gazette after the expiration of 30 days from the date this letter was mailed. The Organization's registration will be revoked on the date of publication.

A copy of the relevant provisions of the Act concerning revocation of registration, including appeals from a notice of intent to revoke registration can be found in Appendix "B", attached.

Consequences of revocation

As of the effective date of revocation:

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

- b) by virtue of section 188 of the Act; the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on prescribed Form 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 "B". 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;
- 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:

- CRA letter dated March 23, 2016
- Appendix "A", Comments on Representations of June 14, 2016
- Appendix "B", Relevant provisions of the Income Tax Act

c.c.:

Yuri Petyushin,
Novina Wong,



CANADA REVENUE AGENCY AGENCIE DU REVENU
DU CANADA

Biosphere Conservation Foundation
503 Davenport Road,
Toronto, ON M4V 1B8

Registered Mail

BN: 82831 5366 RR 0001

File #: 3036323

March 23, 2016

Subject: Audit of Biosphere Conservation Foundation

Dear Mr. Bryan Grimes:

This letter is further to the audit of the books and records of the Biosphere Conservation Foundation (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2012 to December 31, 2013.

The CRA has identified non-compliance with the provisions of the *Income Tax Act* and/or its Regulations in the following areas:

AREAS OF NON-COMPLIANCE	
Issue	Act Reference
1. Failure to Devote Resources to Charitable Activities Carried on by the Organization Itself	149.1(1) 168(1)(b)
2. Failure to Issue Donation Receipts in Accordance with the Act and/or its Regulations	118.1(2), 230(2) Reg. 3501, 168(1)(d)
3. Failure to Maintain Adequate Books and Records	168(1)(e), 230(2)
4. Failure to File an Accurate T3010, <i>Registered Charity Information Return</i>	149.1(14), 168(1)(c)

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

1. Failure to devote resources to charitable activities carried on by the Organization itself

In order to satisfy the definition of a "charitable organization" pursuant to subsection 149.1(1) of the Act, "charitable organization" means an organization, "all the resources of which are devoted to charitable activities".

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

The Organization was registered with the following objectives:

- To organize or participate in environmental projects designed to:
 - i. Preserve and protect flora and fauna;
 - ii. Preserve, protect and restore rivers; or
 - iii. Improve the urban environment.
- To educate and increase the public's understanding of the environment and its importance by offering courses, seminars, conferences and meetings and by collecting and disseminating information on that topic;
- To conduct research relating to the environment and to disseminate the results of such research.

The CRA has not been made aware of any changes to these objects since initial registration was granted on February 5, 2009.

Once registered, a charity must only pursue activities in furtherance of the specific charitable purposes as approved by CRA. The implicit understanding is that the charity will not

undertake any activity beyond those described in the application for charitable registration. This is necessary to ensure that the charity will operate within the limitations imposed by the Act. When an organization wishes to change its formal stated objects, it must formally notify the Charities Directorate of the change.

Based on our audit findings, the Organization has demonstrated that the activities that it undertakes on a day-to-day basis do not support its charitable purposes in a manner consistent with charitable law. In fact, the evidence presented during the audit, as outlined below, demonstrates that the Organization failed to retain the necessary direction and control over its resources to fully demonstrate that it operated in a charitable manner in pursuit of its registered purposes. A preponderance of the effort and resources of the Organization are devoted to providing resources to non-qualified donees.

Direction and Control

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

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

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

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

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

- the intermediary is to carry out certain identified and fully described activities that the charity wishes to accomplish, on the charity's behalf, during a specified term. The scope of the intermediary's authority to act on the charity's behalf should be clearly defined in relation to each project;
- the charity's funds will remain separate and apart from those of the intermediary, so that the charity's role in any particular project or endeavour is independently identifiable as its own charitable activity; and,
- the intermediary will provide regular and comprehensive written reports to the charity, including expense vouchers and receipts, concerning the on-going activities that are carried out on the charity's behalf. While the exact reporting schedule may depend on the nature of the individual project, it is suggested that reports should be required quarterly or semi-annually, at minimum. These written reports should be supplemented at least annually by a complete financial report outlining the use of all transferred funds.

The audit revealed that while the Organization does have written agreements with various agents, those agreements do not contain the required elements to make them effective in this regard nor did the Organization provide sufficient documentary evidence during the audit to support that the agent carried out activities on its behalf resulting in the Organization failing to demonstrate that it had full control over its resources at all times.

a) Principle-Agent Agreements

The Organization entered into the following principle-agent agreements:

- [REDACTED] Agreement ([REDACTED])
- [REDACTED] Agreement ([REDACTED])
- [REDACTED] Agreement ([REDACTED])
- [REDACTED] Agreement ([REDACTED])

After a careful review of these agreements it would appear that the Organization cannot substantiate that its activities are, in fact, its own. Our review of these contract agreements concluded that essential contractual elements are lacking. Specifically, the executed agreements generally lack one or more of the following:

- Detailed descriptions of the activity itself, failing to document its exact nature, scope, and complexity. The activity descriptions do not specify exactly what the activity involves, how it furthers the charitable objects of the Organization, and the charitable public benefit it provides.
- Provisions outlining how the activity is to be carried out by the agent on the Organization's behalf, such as setting parameters and describing the deliverables, milestones, and performance benchmarks that are to be measured and reported.

- Provide actual mechanisms that enable the Organization to have input into and modify the nature or scope of the activity on an ongoing basis in order to, in fact, monitor the activity and the agent carrying on the activity.
- In all agreements that we reviewed, there were no mechanisms specified that allowed for ongoing input or instructions by the Organization as to how it wanted the agent to operate on its behalf, nor was there evidence that the Organization participated in ongoing decisions relating to the activities in any way.

The audit also revealed that meaningful reporting to the Organization was seemingly deficient in practice. When the agent wanted reimbursement for its expenses, it would simply provide a report on activities it had already undertaken. No documentation was provided to show that the Organization had pre-approved the activities undertaken. The Organization would review the agent's report and if satisfied, they would reimburse any acceptable expenses. After-the-fact review of actions already taken cannot be equated to ongoing direction and control in the charitable context.

Although the Organization provided copies of agreements with third party organizations to the auditor, case law supports the position that the existence of an agreement alone is not sufficient. In order for an organization to show that it exercises sufficient direction and control over its resources and activities, it must demonstrate that it effectively implements and enforces the agreement, which in our opinion, the Organization did not do.

In the case of *Bayit Lepletot*¹, the FCA reiterated that a charity which operates via an agent must be in a position to show that its agent is actually carrying out the activities in question *on its [the Organization's] behalf*.

"It is open for [a charity] to carry on its charitable works through an agent but it must be shown that the agent is actually carrying on the charitable works. It is not sufficient to show that the agent is part of another charitable organization which carries on a charitable program. The question which remains in such a case, as it does here, is who is carrying on the charitable works. It was incumbent upon the appellant to show that they were being carried on its behalf. On the record before us it was open to Minister to conclude that it had failed to do so." (paragraph 5)

Further support for this position is found in the case of *Canadian Magen David Adom for Israel v. Minister of National Revenue*²:

"[A] charitable organization is obliged to carry on its charitable activities itself. If it does not do so, its registration may be revoked. A charitable organization that wishes to operate in a location where it has not officers or employees must somehow act through a person in that location. That could obviously be done by establishing an agency relationship between the charity and the person. Evidence that such a relationship has been established by contract, and that the contract has been adhered to, might well be the most straightforward means of proving to the Minister that a person purporting to carry out the charitable activities of a

¹ *Bayit Lepletot v. Minister of National Revenue*, [2006] FCA 128

² [2002] FCA 323, at paragraph 66

charity in a particular location is in fact acting on behalf of the charity. It is possible that the same result might be achieved by other means. *However, a charity that chooses to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any acts that purport to be those of the charity are effectively authorized, controlled and monitored by the charity.*" (emphasis added).

Accordingly, in our view, the actual relationship between the Organization and the agent, in each case, is one in which the former did not exercise direction and control over the latter and/or any "charitable" activity conducted by it. Instead, it would appear that the Organization facilitated the agent in conducting its' own activities. The Organization demonstrated this by having and issuing tax receipts for donations on behalf of the agent. The following chart illustrates the value of the official donation receipts issued for funds received through the agents. It further shows the percentage of donation receipts written to agent donors compared to the total donation receipts issued in the taxation year.

	2013	2012
██████████ Donations:	184,905	-
██████████ Donations:	11,920	-
██████████ Donations:	61,500	-
██████████ Donations:	8,140	-
	-	160,364
	\$ 266,465	\$ 160,364
Official donation receipts issued to Agent Donors:	52%	59%

As such, the existence of a principle-agent relationship and agreement alone does not suffice. Evidence demonstrating that the agent acted in accordance with the terms of the arrangement, under the charity's continuous instruction and supervision, is also necessary. In the case of the Organization, it has not provided a sufficient basis, by way of documentary evidence to support its contention that the activities carried on by its purported agent were, in fact, its own.

It is our opinion that the Organization's role in this arrangement is one where it is paid to receive and move money purportedly gifted to it as directed and without question. As such, we are of the opinion that the Organization has failed to demonstrate that it has devoted all of its resources to charitable activities in this regard. Under paragraph 168(1)(b) of the Act, the Minister may revoke the Organization's registration because it did not comply with the requirements of the Act.

b) Gifts to Non-Qualified Donees

A "qualified donee" means a donee described in subsection 149.1(1) of the Act. As the Act specifically states what constitutes a qualified donee, applying the maxim "*expressio unius est exclusio alterius*" means that entities not expressly stated in this list are not considered qualified donees.

The audit revealed that the Organization created a separate entity called [REDACTED] [REDACTED]. It is our understanding that this entity was created to assist a revoked charity, Escarpment Biosphere Foundation Inc. (EBF) with legal costs associated with opposing its revocation and related legal issues. The audit further revealed that the Organization lent approximately \$20,000 of its charitable funds to [REDACTED] who is neither a registered charity nor qualified donee. Further, the purpose for which the funds were lent does not appear to be in furtherance of the Organization's charitable programming.

As our audit findings suggest, it would appear that the Organization has used its funds in support and/or made payments to a non-qualified donee. Providing charitable funds to a non-qualified donee, even for a short period of time is not an acceptable activity for a registered charity. Under paragraph 168(1)(b) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it did not comply with the requirements of the Act for its registration as such. It is our position the Organization has failed to comply with and has contravened section 149.1(1) of the Act by making payments to a non-qualified donee. For this reason, it appears that there may be grounds for revocation of the charitable status of the Organization.

c) Lack of Control over Charitable Funds

Our audit revealed that, as a result of the revocation of the charitable status of EBF, the Organization was the intended recipient of EBF's charitable assets whose divesture was required in order to satisfy the Part V tax requirement applicable to revoked charities.³ Supporting documentation reviewed during our audit suggests that such a transfer did not fully occur as not all of the assets of EBF were transferred as required.

As set out in Schedule A of the Deed of Gift document dated January 2, 2013 between the Organization and EBF provided during the audit, the Organization was to receive a number of assets from EBF. During the audit, a bank statement dated February 14, 2014 for the [REDACTED] account [REDACTED] and a partial statement of the [REDACTED] account dated September 30, 2014 were reviewed. It would appear that both accounts in question remained in the name of EBF and the former director of EBF and were not transferred as indicated in the Deed of Gift referred to above. Such documentation would suggest that the Organization did not gain full control over these assets despite the fact that it was reported to CRA that ownership of such assets was transferred to it. As such, it would appear that the Organization did not exercise the required control over its charitable assets.

³ Escarpment Biosphere Foundation Inc. (EBF), BN # 888782778, was revoked for cause on February 11, 2012.

d) Operating as a Conduit

Based on the audit findings, it would appear that the Organization is operating as a conduit for several organizations. As stated above, the Organization purportedly entered into a separate principle-agent agreements with [REDACTED], [REDACTED], [REDACTED] and [REDACTED], all of which are corporations. A review of each agreement revealed that the basic terms and conditions of each agreement were very similar. Under each agreement, the Organization agreed to:

- establish a 'fund' for the purpose of providing funding for the contracted services specific to each entity,
- pay the expenses as submitted by each entity as they relate to these contracted services, assist the entity in obtaining and maintaining grants or other funding,
- permit the entity to use the Organization's registered charitable status when seeking such grants or other funding,
- issue official donation receipts for amounts deposited to said fund by donors, and
- limit its withdrawals from said fund to the agreed upon percentage as an administration fee (usually between 2.5 and 4.5%).

It would appear that the terms of these agreements were non-negotiable and that the Organization had no control over the monies that were contributed to the fund in each case. Each agreement was carefully worded in such a way that the Organization retained very little discretion over the expenditures it would reimburse, or how much of the fund it was able to retain for its own charitable programming, if any. In fact, each agreement contained a termination clause which stipulated that if the agreement was terminated, the amount remaining in the fund would either be returned to the entity or restricted for the use of the entity only. At no point was the Organization permitted unfettered access to the amounts in the fund.

As stated above, each principle-agent agreement similarly stipulated that the Organization could retain between 2.5% and 4.5% of the funds it received from the agent. Such evidence strongly suggests that the Organization has no control over the funds it receives and was merely acting as a financial conduit for the agent. The following chart illustrates that a significant portion (in certain cases, all) of the funds received by the agent through its various fundraising efforts were returned to the agent under the guise of a purportedly valid agreement.

	2013		
	Amounts received on behalf of the Agent	Funds returned to Agent	% of funds returned
[REDACTED]	\$184,905	\$312,473	169.0%
[REDACTED]	\$11,920	\$ 5,509	46.2%
[REDACTED]	\$61,500	\$ 61,000	99.2%
[REDACTED]	\$8,140	-	0.0%
[REDACTED]	-	\$20,041	n/a
	<u>\$ 266,465</u>	<u>\$399,030</u>	150%

	2012		
[REDACTED]	\$160,364	\$183,828	115%

The audit evidence further revealed that the Organization failed to demonstrate that it played an active role in the decision making regarding the activities the agent engaged in on behalf of it, and/or in support of its charitable purposes. During the audit review, only three board meeting minutes⁴ with limited details were presented. There was no evidence in these minutes to suggest that the board discussed the agent's activities. Further, no written communications or other documentary evidence was presented that demonstrated an active role was taken on the part of the board.

It is our opinion that, the Organization's lack of involvement in the decision-making and the lack of direction, control and input over the use of its funds, and/or over the activities to be conducted with those funds is a sound indicator that the agent organization is carrying out its own programming and using the Organization to legitimize the funds raised by it as charitable donations. In these circumstances, it is our view, that the Organization has failed to demonstrate the terms of the above noted agreements were implemented.

Further, it is also our view that the Organization has not established that it is carrying out its own charitable activities in accordance with the provisions of the Act. In fact, it appears that the Organization is simply acting as a conduit, funding the programs of the various agents.

We are also concerned that, notwithstanding the agreements in place, it appears the purpose of the Organization may not be to carry out its own activities, but to fund and facilitate the work of the various agents. It is our view that by failing to demonstrate the Organization's on-going direction and control over its assets and programming, 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 "...all the resources of which are devoted to charitable

⁴ Meeting minutes were dated February 21, 2012, February 27, 2013 and September 30, 2013.

activities". For this reason, it appears to us that there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

2. Failure to Issue Donation Receipts in Accordance with the Act

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

Additionally, we would like to inform you that certain amendments to the Act were introduced as part of Bill C-33 tabled in Parliament on March 23, 2004, that came into force May 13, 2005. As part of the amendments, a registered charity that issues an ODR that includes incorrect information is liable to a penalty equal to 5% of the eligible amount stated on the receipt. This penalty increases to 10% for a repeat infraction within 5 years. A registered charity that issues an ODR that includes false information is liable to a penalty equal to 125% of the eligible amount stated on the receipt, where the total does not exceed \$25,000. Where the total exceeds \$25,000, the charity is liable to a penalty equal to 125% and the suspension of tax-receiving privileges. However, given the serious nature of non-compliance, we are of the opinion that revocation of the Organization's charitable status is a more appropriate measure as explained below.

The audit revealed that the donation receipts issued by the Organization did not comply with the requirements of Regulation 3501 of the Act and IT-110R3, *Gifts and Official Donation Receipts*. The items are detailed below:

a) Donation receipt content issues

- The Organization's address is not present on the ODR.
- The place or locality where the receipt was issued was not present on the ODR.
- The ODRs do not contain a unique serial number. Each year the Organization starts the receipt numbering back at 1.
- The ODR copies are maintained on the computer. The Organization was not able to account for all ODRs issued. They did not maintain an exact copy of each ODR issued.
- The ODR copies that were presented for review, did not contain an authorized signature from the Organization, they were blank.
- Access to the computer used to create and store the ODRs was not protected by a password meaning anyone could have access to template receipts.

b) Donations directed to non-qualified donee

A charity may only issue receipts for gifts made to it, which it is responsible for using to further its own charitable purposes. Organizations with receiving privileges cannot issue receipts for gifts to third parties.

Audit evidence revealed that the Organization has issued ODRs on behalf of several non-qualified donees, namely [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. It is our understanding that with each of these entities, the Organization had agreed to issue receipts for donors in cases where a donor would like an ODR. These donors are directed to write a cheque to the Organization for the desired donation amount. The Organization, after negotiating said cheque, then forwards the funds to the entity. As outlined previously in this letter, the Organization was permitted under its various agreements with said entities, to retain between 2.5% and 4.5% of the donated amount as an administration fee. However, as also demonstrated earlier in this letter, such retention does not regularly occur (see chart above).

The audit has also revealed that the Organization does not demonstrate direction and control over its purported activities, and in our opinion the Organization is effectively lending its charitable registration number and corresponding tax-receiving privileges to non-qualified donees. The following examples, while not an exhaustive list, support our findings:

- In 2012 the Organization received amounts intended for the [REDACTED] from a donor in the amount of \$159,514 which represented 99% of the funds collected for that specific non-qualified donee. In 2013 they received a further \$8,140 donation from the same individual intended for the same entity. In 2012, the Organization sent \$183,828 to the same entity which represents 115% of the funds collected for the non-qualified donee in that year.
- On [REDACTED] website, it states that they are "very pleased to be associated with [the Organization], which allows their supporters to donate to [REDACTED] and receive a charitable donation receipt when they give \$50 or more". In 2013, the Organization issued donation receipts for [REDACTED] donations totalling \$11,920.
- On [REDACTED] website, it states "to make donations greater than \$1,000 please send a cheque payable to [the Organization] (our non-profit partner for tax receipt)". In 2013, the Organization issued ODRs for [REDACTED] donations totalling \$61,500.

During the audit period, the Organization received \$266,465 or 52% in 2013 and \$160,364 or 59% in 2012 of their total revenue from these types of donation arrangements. The Organization returned \$399,030 or 150% of the funds received on behalf of the agents in 2013 and \$183,828 or 115% of the funds received on behalf of the agents in 2012.

Additional Concerns

The Act provides the CRA with the discretionary authority to suspend or revoke the registration of a registered charity where an ineligible individual is a director, trustee, officer or like official, or if such an individual controls or manages the charity directly or indirectly. As detailed below, it appears that the Organization has permitted an individual who could be considered an ineligible individual authorization to issue official donation receipts on its behalf.

The definition of "ineligible individual" at subsection 149.1(1) of the Act reads (in part):

"Ineligible individual," at any time, means a person who has been

(c) a director, trustee, officer or like official of a registered charity ... during a period in which the charity ... engaged in conduct that can reasonably be considered to have constituted a serious breach of the requirements for registration under this Act and for which the registration of the charity or association was revoked in the five-year period preceding that time"

As per above, the Organization was the recipient of assets disposed of upon the revocation of Escarpment Biosphere Foundation of which [REDACTED] was a director and to whom paragraph 149.1(1) "ineligible individual" (c) would apply. During the course of our audit, we identified ODRs bearing the authorized signature of [REDACTED]. Given the concerns noted above with respect to the Organization's ODR practises, and [REDACTED] involvement with a former charity that was found to have significant non-compliance in issuing official donation receipts in accordance with the Act, we have serious concerns that the Organization is not issuing receipts in accordance with the Act. While we do not know [REDACTED] specific role in the Organization and to what extent he has direct or indirect control over the operations and management of it, it contributes to our overall concern about the Organization's ability to demonstrate its compliance with the Act when issuing receipts for bona fide gifts.

Under paragraph 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its Regulations. Issuing a donation receipt on behalf of another entity is not permitted under the Act. It is our position that the Organization has issued receipts otherwise than in accordance with the Act and its Regulations. As such, for each reason identified above, there may be grounds for revocation of the Organization's charitable status.

3. Failure to Maintain Adequate Books and Records

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;
- 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 this Act."

In addition to retaining copies of donation receipts, as explicitly required by subsection 230(2), subsection 230(4) provides that "Every person required by this section to keep records and books of account shall retain:

- (a) the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such period as prescribed; and

(b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the date of the last taxation year to which the records and books of account relate."

The policy of 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;⁵
- 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,⁶ 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.⁷

Our audit findings noted the following deficiencies:

a) Donation Receipt Issues

- The Organization was not able to supply all the ODRs that it issued during the audit period. In 2013, 29 of the 131 ODR issued were missing which represents 22% of the ODR issued in that year. For 2012, 3 ODR or 9% of the ODR issued were missing.
- The Organization listed all donations it received on their donation listing, even when a donation receipt was not issued. These amounts are included in the amount reported on Line 4500. *Total eligible amount of all gifts for which a tax receipt was issued*, of Form T3010. The donation receipt number was spoiled and not used. As a result the Line 4500 values are inflated and the Organization is unable to maintain a serially numbered receipting system as required.
- In 2013, receipt numbers 1 to 36 have the incorrect year on them. They all show the date of donation as being 2012, when in fact the donation happened in 2013.

b) Donations did not Reconcile

The donations received by the Organization did not reconcile to the amount reported on the T3010 Information Return, its financial statements or its general ledger. Our findings are summarized as follows:

⁵ The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen, 2002 FCA 72 (FCA)

⁶ Supra, footnote 3; The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada (2004) FCA 397

⁷ (College Rabbinique de Montreal Oir Hachaim D'Tash v. Canada (Minister of the Customs and Revenue Agency, (2004) FCA 101; Act section 168(1)

2013 ODR Reconciliation

	Per T3010	Per G/L	Per F/S
2013 ODR Issued per:	523,207	296,415	523,207
2013 ODR Issued per BCF's Listing:	516,238	516,238	516,238
Variance:	\$ 6,969	-\$ 219,823	\$ 6,969

2012 ODR Reconciliation

	Per T3010	Per G/L	Per F/S
2012 ODR Issued per:	325,409	281,133	325,409
2012 ODR Issued per BCF's Listing:	270,854	270,854	270,854
Variance:	\$ 54,555	\$ 10,279	\$ 54,555

It should also be noted that the total revenue recorded in the general ledger for 2013 was \$479,554, which is \$36,684 less than the amount of ODRs that were issued in that year. It would appear that, the total revenue reported is less than the total ODR issued in that year.

c) Revenues

During the audit period, the 2012 revenue as per the Organization's spreadsheet and adjusting entries provided for our review, did not reconcile to the revenue amounts recorded on the T3010 Information Return or the financial statements. A variance of \$122,494 or 34% was calculated. The variance in 2013 was lower at \$28,982 or 4%.

d) Expenses

The mileage claims reviewed during the audit period contained rounded numbers. When questioned, the Organization did not produce any documents or summaries to support how the mileage claims were calculated therefore, in our view, it appears the amounts claimed were not incurred, were overstated or a combination of the two.

e) Insufficient Meeting Minutes

According to the information provided during the audit review, the Organization conducted minimal board of director meetings throughout the year. The meeting minutes presented were limited in detail and did not allow for proper assessment of whether the board carried out its obligations as a governing body. Further, they did not generally reference the projects being undertaken, therefore failing to demonstrate direction and control by the board of directors.

It should be noted that under paragraph 188.2(2)(a), an Organization may receive a notice of suspension of delivering official receipts if it contravenes to subsection 230(2). It is our

position the Organization has failed to comply with the Act by failing to maintain adequate books and records. For this reason, there may be grounds to suspend the Organization's authority to issue official receipts under paragraph 188.2(2)(a) of the Act; however, we are not proposing suspension at this time.

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

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

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file a Form T3010, *Registered Charity Information Return* with the applicable schedules. It is the responsibility of the Organization to ensure that the information that is provided in its return, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirement to file an Information Return if it fails to exercise due care with respect to ensuring the accuracy thereof.

Our audit findings noted the following inaccuracies:

a) Donations to Qualified Donees

In response to Question C3 of the 2013 Form T3010, the Organization indicated it transferred funds to qualified donees. However, the Organization failed to file the required worksheet, Form T1236, *Qualified Donees Worksheet*, nor did they record the donations on Line 5050, *Total amount of gifts to qualified donees* of the T3010 Information Return as required. The Organization recorded these gifts to qualified donees on Line 4890, *Fair market value of all donated good used in charitable activities* of the T3010 Information Return instead of Line 5050.

b) Non-Cash Gifts

On Line C11 of Form T3010 for 2012, the Organization indicated that they received gifts in kind for which a tax receipt was issued. Our review revealed that this was only true in 2013 and therefore the answer in 2012 should have been 'no'. In 2013, when the Organization received the non-cash gift, they did indicate on Schedule 5 that it was for an insurance policy which was correct. However, the Organization failed to indicate an amount on Line 580 representing the total amount of tax-receipted gifts in kind.

c) Board of Directors

The by-laws of the Organization state that there shall be a minimum of three directors on the board of directors. According to Form T1235, *Directors/Trustees and Like Officials Worksheet*

filed with both the 2012 and 2013 T3010 Information Returns, there were only two board members listed. This issue appears to have been rectified on the 2014 T3010 as there are now four board members.

Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because the charity fails to file Form T3010, *Registered Charity Information Return* as and when required under the Act and/or Regulations. For this reason, there may be grounds for revocation of the charitable status of the Organization.

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

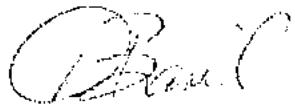
Organization, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include:

- 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, Gary Huenemoeder, may also be reached at 519-584-3982.

Yours sincerely,



Dawn Brasil
Audit Division
Kitchener Waterloo Tax Services Office

Telephone: 519-896-3611
Facsimile: 519-585-2803
Address: 166 Frederick St, Kitchener ON N2H 0A9

C.C.: [REDACTED]

[REDACTED]
Yuri Petyushin,
Novina Wong, [REDACTED]

APPENDIX "A"

Biosphere Conservation Foundation Comments on Representations of June 14, 2016

Based on the Canada Revenue Agency's (CRA) audit of Biosphere Conservation Foundation (the Organization), and our review of all of the documentation provided to us dated June 14, 2016, we remain of the opinion that the Organization has failed to show that it was and has become compliant with the Income Tax Act (the Act). As noted in our Administrative Fairness Letter (AFL) dated March 23, 2016, we are of the opinion that the Organization has failed to devote resources to charitable activities carried on by the Organization itself, failed to issue donation receipts in accordance with the Act and/or its regulations, failed to maintain adequate books and records, and failed to file an accurate T3010, Registered Charity Information Return. The following is a summary of the Organization's representations and our response to the representations.

Failure to devote resources to charitable activities carried on by the Organization itself

[REDACTED]

As part of the representations received dated June 14, 2016, the Organization provided Schedules A, B and C, which are emails referring to meetings between [REDACTED] and representatives from the Organization, and schedule D, a copy of the proposed budget attached to the agreement between [REDACTED] and the Organization.

The Organization said that [REDACTED] approached them through [REDACTED] a former director who had previously worked with [REDACTED] at another entity. [REDACTED] had undertaken a project called "[REDACTED]" to raise public awareness on the declining water levels of Lake Huron and Lake Michigan but funding was a problem.

The Organization purportedly had an interest in the same issues but lacked the human resources required to conduct the research, to perform the fundraising, or to raise public awareness. [REDACTED] said that he could fundraise himself but that potential donors would be more willing to donate if they got a donation receipt.

As discussed in the AFL, the agreement between [REDACTED] and the Organization was insufficient in substantiating that the activities being carried out were indeed those of the Organization. Furthermore, even if we accepted that the activities belonged to the Organization, it failed to demonstrate direction and control over the activities that were being carried out by [REDACTED]. Based on the representations, it appears that if [REDACTED] could raise the funds on its own, it would not have approached the Organization. Instead the agreement between the two entities was a means of accessing funds from the charitable sector with the Organization acting as a conduit. A registered charity cannot merely contribute to, or act as a conduit for, the programs of another organization. This is in violation of the Act.

The Organization states that the "target of achieving 20,000 members appears to satisfy the concern raised by CRA on page 4 of your letter." Addendum A to Schedule D indicates that one of the targets of the project was to enroll 20,000 members by the end of 2013.

While the target might have been reached, a benchmark was only one of many items noted that was missing from the agreement. Furthermore, no documentation, either during the audit or through the representations, has been provided to substantiate the purported 20,000 members.

As part of its representations, the organization provided a copy of Schedule E which was [REDACTED] 2nd Quarter report detailing the activities of the agent during that time frame. However, no other evidence was provided to show that there were ongoing reports or updates provided to the Organization by [REDACTED]

We also note that the invoices presented for review during the audit were vague and did not include a breakdown of what was being paid within the budgeted categories as listed in Addendum A to Schedule D. Due to the lack of documentation and tracking, the Organization has not demonstrated that it is in control of the expenses paid.

The Organization's representations questioned the chart on Page 9 of the AFL, citing that the mismatch between the funds received and paid back to [REDACTED] were due to the fact that only one year of figures was used.

To clarify, the figures used were those for both 2012 and 2013 which were the years under audit. The Organization provided two excel spreadsheets during the audit which summarized the monies received for 2012 and 2013. Both of these spreadsheets were reviewed to come up with the 'amounts received on behalf of the agent' figures that are listed on the chart. The Organization's spreadsheets state that \$184,905 was received from [REDACTED] in 2013.

Upon an additional review it appears as though the original figure presented for [REDACTED] of \$312,473 on the chart on page 9 of the AFL was slightly overstated; the correct figure is \$304,088. The figures as per the excel spreadsheets provided by the Organization are summarized below.

2013 Funds returned to [REDACTED] as per spreadsheets provided during the audit are:

March 28, 2013	\$ 71,579.16
April 18, 2013	\$ 21,881.20
May 24, 2013	\$ 26,081.50
June 17, 2013	\$ 61,467.66
July 24, 2013	\$ 26,388.31
August 13, 2013	\$ 18,713.93
December 16, 2013	\$ 28,532.42
<u>December 27, 2013</u>	<u>\$ 49,444.04</u>

Total funds to [REDACTED] \$ 304,088.22

The Organization noted that it has a slightly different interpretation from CRA about the requirements for continuous supervision and instruction and it believes that its supervision of [REDACTED] was highly effective. It is still our opinion that insufficient documentation was provided to support that effective direction and control was maintained.

[REDACTED]

In the Organization's representations it discussed funding public interest litigation. This approach was never discussed during the audit, nor was any evidence provided for this activity. Public interest litigation funding is not a charitable activity nor is it an activity the Organization was registered to conduct. It is therefore still our opinion that the Organization failed to devote resources to charitable activities.

[REDACTED]

In the representations provided by the Organization, it is stated that [REDACTED] approached Mr. Barnett (from the Organization) to ask if the Organization would support **her work** (emphasis added). In Schedule J also provided with the representations, it shows that [REDACTED] was the President of [REDACTED].

The Organization claimed that it had an interest in implementing an education campaign in the same geographic location as [REDACTED] work but lacked the human resources required to do so. Therefore it entered into an agreement with [REDACTED].

Even if the CRA accepted that there was a valid agency relationship between the two entities, we still maintain that the requisite direction and control was absent from the relationship.

The Organization also stated that experts ought not to be continuously supervised by anyone since such supervision could impair the expert's neutrality if the Organization attempted to guide that work. While this statement may be true, as a registered charity the Organization must demonstrate that it had input in the project and it had control of its funds. As outlined in the AFL there are many components involved in making sure that there is proper direction and control of any agent acting on behalf of the Organization. It is our opinion that such direction and control was lacking.

The audit revealed that meaningful reporting to the Organization was deficient. When the agent wanted reimbursement for expenses, he/she would simply provide a report on activities already undertaken. No documentation was provided to show that the Organization had pre-approved the activities undertaken. The Organization would review the agent's report and if satisfied, the Organization would reimburse any acceptable expenses. After-the-fact review of activities already taken cannot be equated to ongoing direction and control in the charitable context.

We also note that Schedule K is a document dated December 3, 2012. This document appears to be a proposal for work that was to be completed on behalf of [REDACTED] from June to September 2013. However since the [REDACTED] agreement with the Organization was not signed until August 1, 2013, this appears to be a pre-existing activity of the agent and as such any expenses related to the work done should not have been paid by the Organization.

[REDACTED]

It is our understanding that this organization [REDACTED] like [REDACTED] opposes the development of a gravel pit. This pit is located in [REDACTED] As discussed in the AFL, the Organization's involvement with [REDACTED] was similar to [REDACTED] and [REDACTED]. A review of each agreement with the entities showed that the basic terms and conditions of each agreement were the same.

Therefore, our discussion and position as described above for [REDACTED] and [REDACTED] is also applicable to [REDACTED] There was a lack of direction and control and the Organization was simply operating as a conduit.

[REDACTED]

To clarify, in the AFL the CRA did not state that the Organization "gave" the funds to [REDACTED] rather we stated that the audit revealed that the Organization *lent* approximately \$20,000 of its charitable funds to [REDACTED]

The Organization did not address the lending of the \$20,000 in its representations but rather explained the actions relating to other assets received from a revoked organization.

In the representations, the Organization stated that it received assets from Escarpment Biosphere Foundation (EBF) which was revoked. The assets received included "chooses in action" which is the right to sue. The Organization also stated that it did not want the "chooses in action" because it could not afford to take any litigation action.

In one section of the representations the Organization claimed that it assigned the "chooses in action" to [REDACTED] but in another section it claimed that the "chooses in action" were sold to [REDACTED] as a means of realising value from the asset.

It is unclear from the contradictory statements made in the representations whether the assets were sold or invested. Therefore we will not state an opinion on the transaction. However, since the representations did not address the \$20,000 loan, the CRA still maintains its position that the Organization lent funds to support activities that were not its own nor were the activities charitable.

Lack of Control over Charitable Funds

In its representations the Organization suggests that the transferring of the beneficial interests itself in the Deed of Gift is sufficient to reflect the legal ownership of the assets (a [REDACTED] Account and the [REDACTED] account) from EBF to the Organization.

While the beneficial interests may have been transferred with the Deed of Gift, this is not sufficient since the [REDACTED] account [REDACTED] remains in the name of a revoked charitable organization and the [REDACTED] card is in that of a former director (of the revoked charity). As such, it remains our opinion that the Organization failed to exercise the required control over its charitable assets.

Failure to Issue Donation Receipts in Accordance with the Act

The Organization's representations state that it has implemented changes necessary to comply with our concerns outlined in the AFL. However only a few changes, such as printing a copy of each receipt and ensuring the receipts are password protected, were mentioned. We also note that the implementation of the changes was not verified by the representative at the time the representations were provided.

While the actions noted may alleviate some of our concerns on a going forward basis, it is insufficient to change our opinion that the Organization has issued receipts otherwise than in accordance with the Act and its Regulations.

Failure to Maintain Adequate Books and Records

As per the representations, the Organization has retained a new auditor and is confident that he can assist in addressing the compliance issues. It was also stated that its supporting documentation was inadequate because the board did not always hold its meetings in person. Rather, due to personal circumstances and geographical constraints, board meetings were often held over the telephone. The Organization further assured us that the current board is actively seeking new leadership to help correct this problem.

No further comments were provided pertaining to the serious books and records issues as outlined in the AFL. Therefore, it is still our opinion that the Organization failed to maintain adequate books and records.

Failure to File an Accurate T3010, Registered Charity Information Return

As per the representations, the Organization has retained a new auditor and is confident that he can assist in addressing the compliance issues. No further comments were provided pertaining to the serious T3010 issues outlined in the AFL. Our opinion remains that the Organization failed to file accurate T3010s, Registered Charity Information Returns, as required under the Act.

Conclusion

According to the Organization's representations, the current board of directors is no longer willing or able to provide and consistently document the kind of guidance, supervision, direction and control over third party agents that is required by CRA. Therefore the Organization is currently searching for new leadership. In addition, the Organization believes it has met the applicable standard and feels that it has a slightly different interpretation from CRA about the requirement for continuous supervision and instruction. Furthermore, the current directors are concerned that they have not retained enough documentation about their oversight to satisfy CRA. Since the documentation is insufficient, the Organization will be winding down its engagement in such activities. It will not actively pursue further agency relationships until and unless it can identify and retain new directors who are willing and able to oversee and document the work. The Organization also stated that its work with non-charitable contractors has decreased to \$123,300 in 2015 and only \$1,500 during the first half of 2016.

The Organization states that it wishes to comply with CRA's requirements and that it is committed to exercising effective control and supervision over agents for which benchmarks could be set. Later in the representations however it goes on to say that continuous or constant control is probably not possible.

Considering the audit findings, the representations discussed and the Organization's statements in two previous paragraphs, our concerns have not been satisfactorily alleviated. We maintain that the Organization's non-compliance was serious and therefore pursuing revocation of the Organization's registered charitable status is the appropriate action to take.

APPENDIX "B"

Relevant Provisions of the Income Tax Act

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 solitarily, 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 solitarily, 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.