



REGISTERED MAIL

Chasdei Tovim Meoros
6927 Park Avenue Suite 210
Montréal QC H3N 1X7

SEP 03 2014

BN: 85164 1639RR0001

Attention: Mr. Yoel Rosenberg

File #: 3029078

**Subject: Notice of Intention to Revoke
Chasdei Tovim Meoros**

Mr. Rosenberg:

I am writing further to our letter dated October 10, 2013 (copy enclosed), in which you were invited to submit representations as to why the registration of Chasdei Tovim Meoros (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act*.

We have now reviewed and considered your written response dated December 18, 2013. However, notwithstanding your reply, our concerns with respect to the Organization's failure to devote all its resources to its charitable purposes and failure to maintain adequate books and records as required by the Act have not been alleviated. The basis for our concerns is explained below.

1. Failure to Devote All of Its Resources to its Charitable Purposes

As a result of our audit, we have discovered that the Organization has not been exercising direction and control over its resources, therefore not being able to support that it has been devoting its resources for charitable purposes. A registered charity must be able to demonstrate to the Canada Revenue Agency's (CRA) satisfaction that it maintains control over, and is fully accountable for, the use of resources provided to the intermediary, at all times. The existence of an arrangement that demonstrates sufficient and continuing direction and control over, and full accountability for, all resources and related activities, is critical. The arrangement must establish that the activities in question are, in fact, those of the charity.

In the Organization's notification of registration dated July 26, 2005, charitable registration was granted on the expressed understanding that it would limit its activities

to providing basic necessities which generally include food, shelter or clothing and clause 4 of its By-Laws indicates the "criteria for deciding assistance shall be based on financial need."

The Amended Statement of Activities and/or Programs document submitted by the Organization at the time it sought registered charity status indicates the following:

- The candidate will fill in a form to state his income and other details;
- The assistance committee or the Agent will personally interview the candidates to see if they need assistance;
- [REDACTED], on the recommendation of leading rabbis in Jerusalem and by personal investigation, will determine if the candidate needs the assistance and will send each application to the Organization;
- The executive of the Organization has the right to decrease, increase or reject any and all applications;
- The Organization will provide funds for approved applications in a special bank account maintained by [REDACTED] who will disburse the funds to the candidates; and
- [REDACTED] will keep proper records of all his transactions and send reports as required by the Agency Agreement.

These procedures *could* contribute to the Organization's confirmation that it maintains direction and control over its resources in helping needy people in Canada and Israel. However, the audit revealed that these procedures were either not entirely followed and in some cases, were not implemented at all. These factors therefore contribute to our conclusion the Organization has failed to demonstrate it maintained direction and control over its activities carried on by an agent and that it failed to devote all its resources to charitable activities.

During the fiscal periods of 2009 and 2010, the Organization transferred \$5,955,566 and \$4,270,738 respectively to Israel for its programs. These transfers were made either through its agent or through two entities purportedly providing banking services to the Organization. The audit revealed that the Organization did not exercise a reasonable degree of control over the funds transferred outside of Canada. This was apparent due to a lack of supporting documentation provided to reasonably assure the funds were being used for their intended purpose. It is our position the Organization operated as a conduit, transferring resources to non-qualified donees.

According to the Organization's representations submitted by [REDACTED], there is no legal requirement for an organization to have predetermined criteria for selecting beneficiaries of aid to the poor, they are not required to have a calculated basis upon which financial aid is granted and the decision to provide aid remained that of the Organization.

We concur there is no legal requirement to have predetermined criteria for selecting beneficiaries; however, an organization must be able to demonstrate that the relief it is providing benefits only proper objects of charity considering the relief offered. For instance, an organization relieving poverty must show that the beneficiaries of its programs in fact suffer from conditions associated with poverty whether it is the organization itself or an agent of its choosing selecting the beneficiaries. As it pertains to our audit, we are unable to ascertain neither the criteria utilized, predetermined or otherwise, by the Organization, to select its beneficiaries nor how it conveyed this selection criteria to its agent. It appears, from the information provided that the agent established his own criteria for determining the "financial need" of the beneficiaries and for calculating the amount to be received based on his assessment of said "financial need". We were not provided with the additional information that would have been exchanged between the Organization and its agent on an on-going and regular basis on how the beneficiaries identified merited the amount of funding recommended by the agent or whether it was reasonable for the relief to be provided. Based on the limited information provided and the representations received, it appears all persons applying for aid were granted aid as we lack the documentation and explanations as to how the Organization considered the applications and supporting documentation provided to it by its agent in making its decisions to grant said aid.

(A) Lack of Direction and Control over Resources

During our audit, we were provided with a sample of the application forms utilized by the Organization's agent in Israel but we were not provided with sufficient information that demonstrated, in our opinion, the Organization's on-going oversight of its programs and the actions undertaken by its agent. Along with the application forms, we were also provided with listings of funds purportedly distributed upon the authorization of the Organization. However, due to the lack of documentation provided and the fact that neither the application form nor the listing were in English or French, we were unable to ascertain whether the persons receiving funds were proper objects of charity and that the Organization directed the agent to distribute funds of varying amounts to the selected beneficiaries when it was satisfied the beneficiaries were in fact proper objects of charity. In 2010, all funds distributed were purportedly given in cash therefore we have no source documents, such as a cheque, to cross reference against the application forms or the listing. This is further complicated by the fact the Organization used two other organizations to transfer funds through without providing details as to how the funds were to be used. We were able to view that the funds were sent to the money transfer organizations but beyond the organizations receiving the funds, we have no further information as to where the funds ended up. Given the insufficient documents provided, we were prevented from verifying whether the Organization exercised direction and control over these activities.

By way of example, the application forms alone fail to demonstrate that the Organization's agent conducted investigations into whether the beneficiaries could qualify for financial aid before submitting the forms to the Organization for their review.

Further, the 2009 application forms viewed did not request an applicant's yearly income therefore we do not know if or how the Organization could have determined the applicant was in financial need. No supporting documentation was provided to demonstrate, or further explain, how the agent verified an applicant's financial need or circumstances surrounding the applicant's need for assistance as instructed to do so by the agency agreement entered into with the Organization. The Agency Agreement reads at subparagraphs 2 c) and h) respectively that the agent is to "keep copies in the applicant's file of all documents, letters, schedules, etc., that the [Agent] used to grant assistance for poor people" and "to provide all the above noted documentation upon request of the [Organization] for audit and verification." Further financial aid information was to be forthcoming for both years audited and was not provided during the course of our audit¹. Your representations infer we should assume that all applications provided by the agent to the Organization have been verified by the agent and if he is satisfied, the CRA should be satisfied the agent is fulfilling his duties. We do not concur as we have not been provided satisfactory information the agent is fulfilling his duties to the Organization or that the Organization provided direction to the agent on the activities to be conducted on its behalf. Inferring that the agent's satisfaction is all that is necessary does not, in our view, demonstrate the Organization's involvement or oversight of its activities.

It is our opinion that the Organization has not been able to support, through its representations or the documentation provided during our audit, that it exercised sufficient direction and control over its funds outside Canada for the previously mentioned reasons. From our audit, it appears the Organization is transferring its funds to Israel and the recipients of those funds can determine how the funds will be used which is contrary to the definition of a charitable organization at paragraph 149.1(1)(a) which reads "'charitable organization' means an organization, whether or not incorporated, a) all the resources of which are devoted to charitable activities carried on by the organization itself". The CRA has not been provided sufficient evidence to conclude that the activities undertaken in Israel are, in fact, those of the Organization under its continuing direction and control. Therefore, by failing to demonstrate that the Organization devoted its resources to charitable activities, the Organization has failed to satisfy the criteria that permit it to be registered by virtue of subsection 149.1(1) as a charitable organization. Consequently, this constitutes one of the reasons we conclude the Organization's registered charity status should be revoked by virtue of paragraph 168(1)(b) of the Act.

¹ For 2009, we were provided a sample of the application forms including the applicant's personal information (number of family members, occupation) and the purpose for the request, in writing, with documents to support it (a reference letter from a Rabbi from another Organization in Israel or a doctor, a certificate of authentication, a medical report). For 2010, we were provided with the sample application forms and no further documentation.

B) Failure to Devote Resources to Charitable Activities

The audit demonstrated that the Organization incurred expenses totalling \$1,955,450 between 2009 and 2010 that were determined to be non-charitable expenditures.

Your representative has stated that \$1,488,500 and \$270,000 were transferred to [REDACTED] and [REDACTED] respectively and that they were for distribution to the poor. Furthermore, your representative has stated that the balance of the funds was used to pay for food (fish and meat) and general fundraising expenses.

The representative provided an explanation that [REDACTED] was used to provide banking services and funds were transferred via this organization but did not provide any further information such as who was the recipient of the funds transferred through them. Similarly for the funds transferred to [REDACTED] [REDACTED] or other entities for fundraising or food purchases, no source documentation was provided to substantiate the representations.

Based on the information and documentation provided to the CRA during the course of our audit, we observed funds being transferred to these organizations but we were not provided with details on who were the recipient of the funds nor how the funds were used or were intended to be used. As such, we are unable to conclude that all funds transferred via these organizations were used for the Organization's own activities or for activities under their on-going control. The Organization did not maintain nor did it make available, adequate records to support these transfers of funds outside of Canada.

It is our opinion, that the Organization has devoted a portion of its resources to non-qualified donees and did not retain the supporting documents to demonstrate to us that these resources were used for charitable purposes. Consequently, this constitutes one of the reasons to recommend revocation of registration of the Organization by virtue of paragraph 168(1)(b) of the *Income Tax Act*.

2. Failure to Maintain Adequate Books and Records

The Organization was not able to produce or locate pertinent books and records during the audit. Considering the absence of the books and records, our audit could not corroborate all the amounts indicated on the *Registered Charity Information Return*, form T3010, or to adequately support that the Organization was maintaining direction and control over its resources.

As noted above, the representative provided an explanation that [REDACTED] and [REDACTED] provided banking services yet did not provide any further information to enable CRA to trace who was the recipient of

the funds transferred through them. In this regard, we conclude the Organization did not maintain nor did it make available adequate records to support these transfers of funds outside of Canada.

Furthermore, the absence of various documents such as an applicant's proof of financial need and receipt of fundings, referred to above, inhibits the validation of the accuracy of the information on the T3010. The books and records of the Organization must be retained for a minimum of six years after the last taxation year.

With respect to documentation provided, the majority of the Organization's records provided were in Hebrew. We note your representations state that "the law requires that certain information be made available to the CRA to determine the [Organization's] compliance with the Act, if the documents are irrelevant the fact that they are not in English or French would be immaterial." We respectfully disagree. The Act, per subsection 230(2), requires that every registered charity shall keep records and books of account at an address in Canada recorded with the Minister containing information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under the Act and subsection 230(4) also states "every person required by this section to keep books of account shall retain:

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

The Act does not speak of providing *certain* records or those to which the charity has deemed relevant to the audit. The Act requires a registered charity to maintain, and make available to the CRA at the time of the audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records deemed appropriate or sufficient to meet our audit obligations.

Documentation such as a cheque disbursement listing noting the amount, city, address and recipient name and copies of completed application forms plus supporting notes were made available in Hebrew. In discussions with the Organization, it provided a translation of the heading titles on the disbursement listings but we were unable to cross-reference the listing of funds provided to the approved application forms nor were we able to identify the reasons why funding was provided to ensure it was for proper objects of charity, elements we consider critical to ensuring a charity is meeting its obligations under the Act. We also do not agree that the documents not provided in English or French to be immaterial to our audit given the nature of the Organization's operations.

We commented on the uncompleted portions of the application forms as this step of the application and approval process reveals whether the application form was approved by the Organization, the amount approved and for what purposes. Applications without this information reveal to us that applicants applied for relief but may or may not have been approved which makes it challenging to identify which beneficiaries were approved and those who were not.

We brought the issue of failing to complete a T4A slip, *Statement of Pension, Retirement, Annuity, and Other Income* to the Organization's attention as it properly issued T4A's for some persons but opted not to issue a T4A to others. The T4A slip must be completed if a charity made payments totaling \$500 or more in a calendar year and the Organization failed to meet this obligation under the Act.

Our audit revealed the Organization reported loans payable of \$890,972 in 2010 yet reported it as other liabilities of \$530,359 on line 4330 of its T3010; a \$360,613 difference. On form T1240, *Registered Charity Adjustment Request* provided by the Organization's representative on March 28, 2013 to the auditor, the Organization reports an amendment to line 4330. The amount to be reported on line 4330 should be \$806,548 because the "difference between 890 972 [and] 806 548 is revenue from sources outside Canada 84 424". Furthermore, the representative also included a letter from another organization indicating the Organization owed it \$778,500 in 2009. No representations were submitted as to the nature of the loan or repayment terms nor were any submissions made with respect to the Organization's external revenue sources. We conclude the Organization has not maintained adequate records pertaining to its loans payable nor has it provided documentation on its foreign income.

It is our opinion that the Organization is in contravention of subsection 230(2) of the *Income Tax Act* for not having retained nor provided its complete books and records, as well all the supporting documents that support the information on the T3010 and its accompanying financial statements. Consequently, we conclude these are grounds to revoke the Organization's registered charity status by virtue of paragraph 168(1)(e) of the *Income Tax Act*.

3. Failure to File an Information Return as Required by the Act

We accept the Organization's representations with respect to the late-filing of its T3010 returns and will not rely on paragraph 168(1)(c) as grounds for revocation. We do remind the Organization that it is obligated to file its annual information return within six months of its fiscal period end and we've noted that it has never met this obligation since it obtained its registered charity status. Charities who fail to file may also be subject to a \$500 late filing penalty as per subsection 188.1(6) of the Act.

Conclusion:

The audit by the *Canada Revenue Agency (CRA)* has revealed that the Organization is not complying with the requirements set out in the *Income Tax Act*. In particular, it was found that the Organization did not devote all its resources to its charitable purposes and failed to maintain proper books and records. 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 October 10, 2013, I wish to advise you that, pursuant to subsection 168(1) of the Act, I propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

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

Business Number	Name
851641639RR0001	Chasdei Tovim Meoros Montreal QC

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

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

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

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

Consequences of Revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix "A". Form T-2046 and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our Web site at www.cra-arc.gc.ca/charities;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act*. 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, I wish to advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered charity throughout the year) file a return of income with the Minister in the prescribed form, containing prescribed information, for each taxation year. The return of income must be filed without notice or demand.

Yours sincerely,



Cathy Hawara
Director General
Charities Directorate

Attachments:

- CRA letter dated October 10, 2013;
- Your letter dated December 18, 2013; and
- Appendix "A", Relevant provisions of the Act

C.C.:

Place de Ville, Tower A
320 Queen Street, 13th Floor
Ottawa ON K1A 0L5



REGISTERED MAIL

Chasdei Tovim Meoros
6927 Park Avenue Suite 210
Montréal, QC
H3N 1X7

BN: 851641639RR0001

Attention: Mr. Yoel Rosenberg

File #:3029078

October 10, 2013

Subject: Audit of Chasdei Tovim Meoros

Dear Sir:

This letter is further to the audit of the books and records of the Chasdei Tovim Meoros (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2009, to December 31, 2010.

At our meeting of April 9, 2013, you were advised that the CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act (Act)* and/or its *Regulations* in the following areas.

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Failure to Devote all of its Resources All of Its Resources to its Charitable Purposes – (A) Lack of Direction and Control over Resources; (B) Failure to Devote Resources to Charitable Activities	149.1(1), 168(1)(b)
2.	Failure to Maintain/Provide Adequate Books and Records	168(1)(e), 230(2),
3.	Failure to File an Information Return as Required by the Act	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 All of Its Resources to its Charitable Purposes

Legislation

In order for an organization to be recognized as a charity, it must be constituted exclusively for charitable purposes, and devote its resources to charitable activities in furtherance thereof.¹ In the Supreme Court decision of *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.* [1999] 1 S.C.R. 10, Iacobucci J. speaking for the majority, summarized the requirements for charitable registration at paragraph 159, as follows:

"In conclusion, on the basis of the Canadian jurisprudence, the requirements for registration under s. 248(1) come down to two:

- (1) the purposes of the organization must be charitable, and must define the scope of the activities engaged in by the organization; and*
- (2) all of the organization's resources must be devoted to these activities."*

The term "charitable" is not defined in the *Act*, therefore it is necessary to rely on the jurisprudence in the common law. The courts have recognized four general categories of charitable purposes: (1) the relief of poverty; (2) the advancement of religion; (3) the advancement of education; and (4) other purposes beneficial to the community as a whole (or a sufficient section thereof) in a way that the law regards as charitable. This last category identifies an additional group of purposes that have been held charitable at law rather than qualifying any and all purposes that provide a public benefit as charitable.

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

¹ *Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10, at page 110 (paragraph 152, 154, 156)

comments of the court in *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*²:

"Pursuant to subsection 149.1 (1) of the [Act], a charity must devote all its resources to charitable activities carried on by the organization itself. While a charity may carry on its charitable activities through an agent, the charity must be prepared to satisfy the Minister that it is at all times both in control of the agent, and in a position to report on the agent's activities..."

And

"Under the scheme of the Act, it is open to a charity to conduct its overseas activities either using its own personnel or through an agent. However, it cannot merely be a conduit to funnel donations overseas".

As re-iterated by the Federal Court of Appeal, it is not enough for a charity to fund an agent that carries on certain activities. The *Act* requires that the agent actually conduct those activities *on the organization's behalf*³:

"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."⁴

Audit Findings:

The audit has raised serious concerns with respect to the Organization's foreign activities. According to the audit, the Organization has not demonstrated adequate direction and control over its foreign activities.

² *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, 2002 FCA 72 at paragraphs (FCA) at paragraphs 40 and 30

³ *Bayit Lepletot v. Minister of National Revenue*, [2006] FCA 128

⁴ *Canadian Magen David Adom for Israel v. Minister of National Revenue*, [2002] FCA 323 at paragraph 66

(A) Lack of Direction and Control over Resources

The Organization was registered as a charitable organization effective February 14, 2005. As stated in its governing documents, the objects and purposes of the Organization shall be to relieve poverty in Israel and Canada by providing basic necessities to persons in need. The Organization must show that it is charitable because it has been established for the purpose of providing basic amenities to persons who lost their jobs or are otherwise suffering from serious financial problems because of sickness in the family, age of family compared to income or other financial hardships, by allowing such individuals to turn to Chasdei Tovim Meoros or to its representative in Israel, [REDACTED], thereby relieving poverty.

Registration was granted with the understanding that the Organization should retain and make available to the CRA upon request sufficient evidence the Organization effectively authorizes, controls, and monitors its activities outside of Canada. The Organization must be able to show that the agency agreement with the application is properly implemented.

Furthermore, the Organization should enforce provisions to regularly receive copies of the full and complete financial information relating to its programs, in addition to other documentation, that enable the Organization to show that it has devoted its resources to its own charitable activities. This documentation should include:

1. Details about the activities authorized by the Organization;
2. Copies of the agent's bank statements that relate to the Organization, along with copies of any cheques issued to [REDACTED] in Israel;
3. Copies of invoices and receipts that show purchases of necessities made on behalf of the Organization; and,
4. Copies of cancelled cheques and receipts or similar documentation, if financial assistance is provided directly to poor people.

To achieve and control its stated purposes the Organization has established procedures. If the applicant is from Canada, the request is studied by the assistance committee; if the applicant is from Israel, the Agent personally interviews the candidate to see if they need the assistance. The applicant fills in a form stating his personal information and other pertinent details; such as yearly income, spouse, number of dependents, type of request, and special considerations. At times, the assistance committee asks for the opinion of [REDACTED] in Canada, a respected [REDACTED], to help in approving assistance requests. All requests are approved by the committee before any disbursements are made. If the applicant is from Israel, [REDACTED], on the recommendation of leading rabbis in Jerusalem and also by personal investigation, determines if the candidate needs the assistance. He sends each application to Chasdei Tovim Meoros. The executive of Chasdei Tovim Meoros may decrease, increase or reject any and all applications. After the application is approved

by Chasdei Tovim Meoros, the Organization provides funds to a special bank account maintained by [REDACTED]. He then disburses funds to the applicants. [REDACTED] is to keep proper records of all transactions. He should send reports as required by the Agency Agreement.

The current audit revealed that the Organization's ongoing program consists of providing financial assistance to needy persons in Canada and in Israel.

For its various assistance programs, the Organization spent \$4,270,738 and \$5,538,446 in taxation years 2009 and 2010 respectively. The table below shows the distribution of funds:

Program -Distributions	<u>2010</u>	<u>2009</u>
Individual	\$329,148	\$1,141,576
Local non profit – qualified donees	455,179	1,020,717
International Organizational	254,976	482,475
International Individual	4,916,263	1,625,970
	<u>\$5,955,566</u>	<u>\$4,270,738</u>

According to the financial statements, the amounts distributed for the international individual program were managed through an agent located in Jerusalem, Israel, [REDACTED]. The Organization provided us with an agency agreement, dated October 18, 2004. This agreement established the rights and responsibilities between the Organization and its agent.

In order to receive grants, individuals from Israel are required to complete an application form and be interviewed by [REDACTED] in order to prove their need for financial assistance, as well as to prove their medical needs. Based on this information, the request is transferred to Montréal and approved by the Chasdei Tovim Meoros assistance committee before the funds are sent to [REDACTED] in Israel. The funds are sent by wire and distributed in cash to the beneficiaries by the representative.

Individuals from Canada are required to complete an application form, and the form is submitted and approved by the Chasdei Tovim Meoros assistance committee before a cheque is issued to the applicant.

In 2010, the documents maintained by the Organization, in order to substantiate the distribution of funds to individuals in Israel, were the agent's approval, proof of transfer of funds, application forms, and acknowledgment in signing application form.

For the funds distributed in Canada, the Organization also has the cheques issued to the beneficiaries.

In 2009, the Organization had proceeded otherwise to allow a grant. The documentation provided to [REDACTED] for a request of assistance consisted of the application form including personal information (number of family members, occupation) and the purpose for the request, in writing, with documents to support it. Examples of documents provided are a reference letter from a Rabbi from another Organization in Israel or a doctor, a certificate of authentication, and a medical report. Also, there is a second part for office use only, including the amount which has been determined to help the family, cheque number and the authorized person's signature.

The Organization provided us with copies of the cheques issued in 2009 to demonstrate the use of its resources for charitable purposes and maintenance of a reasonable degree of control over them in 2009. As of 2010, the Organization paid all the grants to beneficiaries in cash and, consequently, failed to keep any documentation as proof of control over their resources outside of Canada.

Our audit revealed that the Organization has not demonstrated that it retained a reasonable degree of control over the funds outside Canada for the following reasons:

- I) The Organization did not provide pre-established written selection criteria to select the beneficiary. In addition, it did not provide supporting documentation that proves the implementation of the criteria;
- II) The documents maintained by the Organization did not allow us to determine how the financial aid was calculated, and whether it was reasonable. The Organization was not able to demonstrate that the agent was fulfilling his obligations, nor was it able to demonstrate that the agent was assisting needy individuals in Israel;
- III) Funds transferred to Israel were not transferred to the Organization's official agent. Transfers were payable to [REDACTED] and [REDACTED];
- IV) Once transferred to Israel no further documentation supported the distribution of funds;
- V) Some of the documentation provided was not available in English or in French. The Organization did not provide any document detailing how the requested funds were to be used, or any proof of how the funds advanced were actually used. The only document provided by the Organization to support that the money

was actually spent for assisting needy individuals in Israel is an acknowledgement of receipt signed by the beneficiary.

The Organization has failed to demonstrate to the CRA's satisfaction that it maintained control over, and was fully accountable for, the use of resources provided to the intermediaries. Therefore, it is CRA's position that the Organization has relinquished control and transferred the funds to non-qualified donees. It is further our position that the Organization has failed to satisfy subsection 149.1(1) of the Act with regard to devoting resources to its own charitable activities.

The records maintained by the Organization did not allow us to verify the use of funds granted to the beneficiaries. We were unable to verify that the funds were being used for charitable purposes.

A charity that does not direct and controls its resources when working through an intermediary risks sanctions under the Act, including the revocation of its registered status.

Conclusion:

Based on the above findings, it is our position that the Organization operated as a conduit, transferring resources to non-qualified donees. The Organization failed to devote all of its resources to its own charitable activities or by way of gifts to qualified donees, and as a result, the Organization has failed to meet the requirements of subsection 149.1(1) of the Act as "an organization, all the resources of which are devoted to charitable activities carried on by the organization itself".

It is the responsibility of the Organization to obtain and to maintain adequate documentary evidence that clearly demonstrates recipients of its financial aid program were in fact poor and/or sick, and that the applications received were evaluated against an established set of criteria. The mere fact that the representative of the Organization in Israel, local rabbi or local charities may have had personal knowledge of the applicants does not constitute evidence that the funding was being made to relieve poverty and sickness. Personal knowledge cannot be a substitute for a properly applied and documented system of selection criteria that serves to prove that a charity is in fact relieving poverty and sickness in a manner consistent with the Act.

Documentary evidence may consist of originals or copies of source documents such as salary stubs, tax returns or bank statements, written selection criteria, evaluations and approval or rejection of applications along with appropriate evidence showing the source documents supplied by the individuals.

By failing to show that it applied selection criteria in such a manner that the beneficiaries of its funding were in fact proper objects of charitable relief, the

Organization has failed to demonstrate that it meets the requirement of paragraph 149.1(1)(a) of the Act. Further, it is our view that by failing to demonstrate its on-going direction and control of its resources, the Organization has failed to demonstrate that it meets the test of continued registration under subsection 149.1(1) of the *Act* as a charitable organization "all the resources of which are devoted to charitable activities." For this reason, it appears to us that there may be grounds for revocation of the charitable status of the Organization.

(B) Failure to Devote Resources to Charitable Activities

With the exception of making gifts to qualified donees, a registered Canadian charity cannot simply fund the activities of another entity. Rather, it is essential that the charity instruct and monitor the manner in which their resources are applied on an ongoing basis. Where the recipient has full authority to expend the charity's resources on projects being carried on either by itself, or by another entity, *the charity is not exercising the required direction and control over the use of its resources*. Operating in this manner does not comply with the legal requirements pertaining to registered charities.

We have found that the expenditures reported were not incurred for charitable purposes. In this regard, we view the expenditures to be a devotion of resources to non-charitable purposes. The following is a list of non-charitable expenditures:

In 2010

-	\$1,488,500
-	\$43,417
-	\$24,900
-	\$20,079
-	\$15,617
-	\$9,224
-	\$7,778
-	\$7,500
-	\$4,000
-	\$3,600
-	\$3,000
-	\$2,700
-	\$1,400

In 2009

-	\$270,000
-	\$14,800
-	\$16,545
-	\$9,744
-	\$9 600
-	\$3 046

Conclusion:

Based on the above findings, it is our position that the Organization operated as a conduit, transferring resources to non-qualified donees, without regulating the application thereof, and in fact exists solely for this purpose. In summary, the Organization failed to devote all of its resources to its own charitable activities or by way of gifts to qualified donees, and as a result, the Organization has failed to meet the requirements of subsection 149.1(1) of the *Act*.

2. Failure to Maintain Adequate Books and Records

Legislation

Pursuant to paragraph 230(2)(a) of the *Act*, every registered charity shall keep records and books of account containing information that would enable the Minister to determine whether there are any grounds for the revocation of its registration under the *Act*. Further, RC4108 (E) *Registered Charities and the Income Tax Act* states that a registered charity must keep books and records in one of Canada's official languages, either English or French at a Canadian address it has on file with the CRA. The purpose of these requirements is to enable the charity to accurately provide the CRA with the information required by the *Act*, as well as to verify the accuracy of reported information through the conducting of audits. Further details about the requirement to maintain books and records can be found in the Operating a registered charity section of the Charities and Giving Web pages.

In addition to substantiating all costs and expenses paid out of its funds, the charity's books and records should provide documentary evidence that monies it has transferred to any agency or director have been applied to conduct activities that are charitable under Canadian law and for which the charity itself is directly and legally responsible.

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

- It is the responsibility of the registered charity to prove that its charitable status should not be revoked⁵;
- 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 thereto⁶; 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 status⁷.

In the course of the audit, the following deficiencies were found with regard to the Organization's books and records:

- The documentation provided, including agreements entered into, was unable to support that the Organization directed or controlled activities of its own or that agency relationships existed;
- The Organization was unable to provide support for all the expenditures reported. Funds were distributed to [REDACTED] .., non-profit organizations in both Israel and the USA, and [REDACTED] by [REDACTED]. In 2010, funds of \$2,996,355.00 were drawn from the Organization's U.S. bank account via bank wires and drafts. The Organization was therefore unable to demonstrate that the expenses reported were for its own activities rather than those of [REDACTED];
- The Organization was not able to support the amount of \$890,972 of loans declared in its 2010 financial statements; nor was it able to satisfactorily tie that amount to the \$530,359 it reported on line 4330 (other liabilities) of its form T3010 for 2010;
- In 2009, the Organization had not completed their part on the application forms, such as amount allowed, cheque No.# and the authorized person's signature;

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; ITA section 168(1)

- In 2010, the Organization had paid for fundraising commissions to several persons (five), while only three T4As had been issued;
- In 2010, the Organization did not issue a T4A for fundraiser commissions paid to [REDACTED] in the amount of \$8,250;
- Some of the documentation provided was not available in English or in French.

As a result, we conclude that the Organization failed to maintain adequate books and records as required under section 230 of the Act.

3. Failure to File an Information Return as Required by the Act

Pursuant to subsection 149.1(14) of the Act, every "registered charity" must, within six months after the end of the charity's fiscal period (taxation year), without notice or demand, file a Registered Charity Information Return with the applicable schedules. This return must be in prescribed form and contain prescribed information. A charity is not properly meeting its information return filing requirements when it fails to exercise due care with respect to insuring the accuracy thereof.

The Organization has not filed its T3010 within six months of the charity's fiscal period ending (FPE) as summarized below:

FPE	Due Date	Date Received
31-12-2009	30-06-2010	19-11-2011
31-12-2010	30-06-2011	18-11-2011

As a result, the Organization failed to exercise due care with respect to ensuring the accuracy of its T3010 Information Returns.

The Organization's Options:

a) No Response

You may choose not to respond. In that case, the Director General of the Charities Directorate may give notice of its intention to revoke the registration

of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

b) Response

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

- no compliance action necessary;
- the issuance of an educational letter;
- resolving these issues through the implementation of a Compliance Agreement; or
- giving notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

If you appoint a third party to represent you in this matter, please send us a written authorization naming the individual and explicitly authorizing that individual to discuss your file with us.

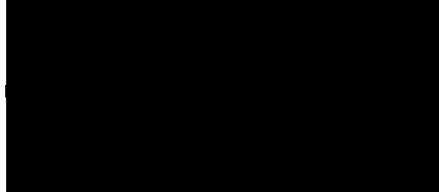
If you have any questions or require further information or clarification, please do not hesitate to contact me at the numbers indicated below.

Yours sincerely,

Jason Flemming
Audit Division
Montreal TSO

Telephone: (514)618-4690
Facsimile: (514)283-8208
Address: 305 René-Lévesque Blvd. West
Montréal, Québec H2Z 1A6

c.c.:



[REDACTED]

[REDACTED]

December 18, 2013

Jason Flemming
Audit Division
Montreal TSO
305 René – Lévesque Blvd. West
Montréal, Québec
H2Z 1A6

Via Fax: (514) 283 – 8208

Dear Mr. Flemming:

Re: Chasdei Tovim Meoros (the “Charity”) B/N: 851641639RR0001
Your File Number: 3029078

This letter is in response to your letter of October 10th. We believe you already have authorization in your file to discuss the matter with us. If, for some reason, you do not please let us know.

As a preliminary matter we thank you for your understanding in extending your deadline to respond to your letter. While this letter may not be a full reply to your audit we proffer it as a means to move the file forward while we seek greater information from our client.

Issue 1

The first issue you raise deals with sufficient control and direction over the charity’s assets and dedicating all those assets to charitable activities. Your conclusions in this respect surprised us given that your letter spends significant space outlining the procedures the Charity has in place for the distribution of aid. Generally speaking, based on a review of your letter, it would seem that the Charity is in overall compliance with the Act, notwithstanding that there seem to be a few issues to resolve. The first of those issues are described on page 6 of your letter and so we begin there.

First, there is no requirement in law that there need be a pre-written set of selection criteria to select beneficiaries of aid to the poor. It is sufficient in law that the beneficiary simply be deserving of such aid. I would point out that on page 5 you make clear that the decision of whether or not to distribute aid was left in the hands of the Charity. If you have some basis in law for making such a claim we would request that you bring it to our attention.

We believe that your request intends to seek confirmation that the Charity’s resources were used to help the poor. As a logical matter, a pre-written set of selection criteria does not do that, as criteria which is applied without investigation would be of little use. Rather, the Charity accepts the

[REDACTED]

application for aid form (we believe you have copies of these in your file) and has the agent verify the need for aid. If verified, the agent forwards the documents on to the charity so that the charity has verified information in its files to present to the CRA as proof of penury. These application forms can then be cross referenced against the documents signed by the recipient when aid is given. In sum, it seems clear that there is sufficient documentary evidence for the CRA to confirm that the Charity is in compliance with the Act.

Your second point in that same paragraph is that there was no supporting documentation that proves the implementation of the criteria. Respectfully, we do not understand your point here, in dealing with the poor there is no particular criteria to implement. Please elaborate on your question.

Second, the CRA does not have jurisdiction to question whether the aid a charity provides to the poor is reasonable. Please provide a basis upon which you assume that authority. Neither does there need to be a calculated basis upon which financial aid is granted. Such decisions may be dependent on the perceived need, the time of the year, the resources available to the Charity, and the weather that may be afflicting those in need. These questions do not go to control and direction over the charity's assets. So long as the decision is made by the Charity the CRA has no authority to seek justification for or question those decisions.

You also question whether the agent is fulfilling his duties. Your letter, on page 4, states that the Agent reviews the financial circumstances of applicants in Israel and, if satisfied with his investigation, forwards on the application form completed by the applicant. We understand from your audit that you have reviewed sample application forms and so you have seen proof that the Agent is fulfilling his role.

Third, [REDACTED] and [REDACTED] provide banking services for the Charity. Funds were not transferred to those organizations they were transferred via those organizations.

Fourth, in the next question you state that you have seen signed documents indicating that the funds have been received by the beneficiary. We cannot imagine a greater proof that the funds are being distributed to the poor by the Agent and so we ask why this has not been dispositive.

Fifth, if you could be more specific about which documents were not in English or French we may be able to track down the problem and ensure that you have not seen a comparable document in English or provide a translation.

We have seen many cases where the CRA has alleged insufficient control and direction but, respectfully, we have never seen a file where the auditor's own findings so clearly undermine such allegations. It is simply unclear from your letter that there is any documentation missing at all. On balance, based on your own findings, we do not see how you could possibly support the contention that the Charity is acting as a conduit or that it does not have adequate documentary evidence to show that its assets are being used in pursuit of its charitable objects. Fundamentally, the application forms are verified by the Agent and in and of themselves serve as proof of poverty. The beneficiaries then sign documents indicating that they have received the funds. At its core, that is what is most required.

Issue 2

Your letter characterizes expenses of a charity as either being in pursuit of the charity's purposes or otherwise being grounds for revocation. The law is understood to mean that there is room for a charity to pay for expenses related to the administration of a charity itself. We will leave it to you to review the CRA position on this point but that it is clearly true should be without doubt.

That said there are two explanations for the expenses listed in your letter.

The expenses on page 8 (besides the one for [REDACTED] which was sent to Israel for distribution) were for basic necessities (such as fish and meat) which was then distributed to the poor directly (rather than distributing cash).

The expenses on page 9 (besides the one [REDACTED] which was sent to Israel for distribution) were for general fundraising expenses.

Your allegation that the Organization exists solely to be a conduit to non-qualified donees is rather harsh and without merit. Surely, expenses for food by an organization which exists to help the poor are not unexpected and neither are expenses for fundraising by a charity. Our client finds such language highly offensive and we are left to wonder on what basis could you possibly believe such language is warranted?

Issue 3

We have commented on certain specific documentary issues under 'Issue 1' above and so refer you there. It seems that there may have been some misunderstandings (such as transfers via [REDACTED] [REDACTED]) and so we trust those have been cleared up. We are still waiting for information from our client regarding the loans to forward to your office

With respect to the fact that the Organization did not complete the section designated for internal use, we do not understand why that was necessary. The issue is whether or not the funds were actually transferred not whether the form was signed by the internal staff. Please tell us why you place any significance on this information as that would be helpful in understanding your position.

Please forward copies of the documents that were neither in French or English. While the law requires that certain information be made available to the CRA to determine the Charity's compliance with the Act, if the documents are irrelevant the fact that they are not in English or French would be immaterial.

Finally, you raise potential issues regarding the T4A forms issued by the Charity. We make no comments on the substance of your claim and only point out that it was inappropriate to raise it as grounds for revocation. There is no basis in law for your position on this point and would ask you to please justify your comments in this regard.

Issue 4

Your comments with respect to filing the T3010 seem to be contradictory. The penalty you imply relates to a failure in "...insuring the accuracy..." of the T3010. (Please note that the word should be spelled 'ensuring'). You then cite the lateness of the filing of the document as proof that the Charity filed an inaccurate T3010.

We would point out that a late document is not necessarily an inaccurate document. And you have not alleged inaccuracies. Consequently, we would suggest that this is a non-issue, unless you have some more pertinent information to provide.

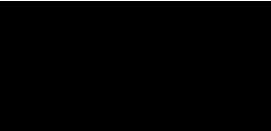
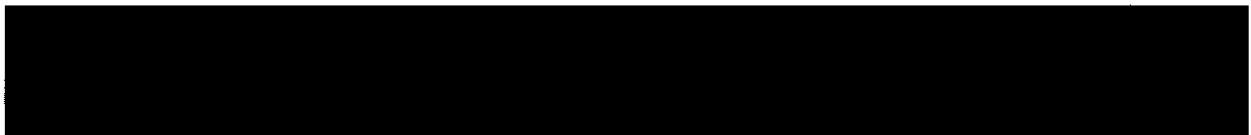
Conclusion

Respectfully, we believe your letter is effectively proof positive that the Charity has generally been in compliance with the Act and we do not understand how you can propose revocation based on your particular findings especially in light of the Guidelines for Intermediate Sanctions published by the Charities Directorate.

We trust our letter helps put your findings in perspective and hope that we may be able to work out any additional issues quickly so that the Charity may continue in the pursuit of its charitable objects.

Our best wishes for this holiday season.

Yours truly,

A large black rectangular redaction box covering the signature area.A large black rectangular redaction box covering the signature area.

ITR APPENDIX A

Section 149.1 Qualified Donees

149.1(2) Revocation of registration of charitable organization

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

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

149.1(3) Revocation of registration of public foundation

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

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

149.1(4) Revocation of registration of private foundation

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

- (a) carries on any business;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (c) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

149.1(4.1) Revocation of registration of registered charity

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

- (a) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;
- (b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;
- (c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;
- (d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length; and
- (e) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever.

Section 168:

Revocation of Registration of Certain Organizations and Associations

168(1) Notice of intention to revoke registration

Where a registered charity or a registered Canadian amateur athletic association

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

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

168(2) Revocation of Registration

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

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

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

168(4) Objection to proposal or designation

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

- (a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);
- (b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or
- (c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

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

Where the Minister

- (a) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.2) and (22) and 168(1) by the Minister, to a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for registration as a registered Canadian amateur athletic association, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,
- (a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that

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

- (a.2) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.3), (22) and 168(1) by the Minister, to a person that is a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1) that is or was registered by the Minister as a qualified donee or is an applicant for such registration, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,
- (b) refuses to accept for registration for the purposes of this Act any retirement savings plan,
- (c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,
- (e) refuses to accept for registration for the purposes of this Act an education savings plan,
- (e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,
- (f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,
- (f.1) refuses to accept an amendment to a registered pension plan, or
- (g) refuses to accept for registration for the purposes of this Act any retirement income fund,

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

180(1) Appeals to Federal Court of Appeal

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

- (a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),
- (c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),
- (c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1), or
- (d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

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

Section 188: Revocation tax

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

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

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

188(1.1) Revocation tax

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

$$A - B$$

where

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

- (a) the fair market value of a property of the charity at the end of that taxation year,
- (b) the amount of an appropriation (within the meaning assigned by subsection (2) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or
- (c) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

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

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

188(1.2) Winding-up period

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

- (a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,
- (b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and
- (c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

188(1.3) Eligible donee

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

- (a) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;
- (b) that is not the subject of a suspension under subsection 188.2(1);
- (c) that has no unpaid liabilities under this Act or under the Excise Tax Act;
- (d) that has filed all information returns required by subsection 149.1(14); and
- (e) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable.

188(2) Shared liability — revocation tax

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

188(2.1) Non-application of revocation tax

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

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

188(3) Transfer of property tax

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

188(3.1) Non-application of subsection (3)

Subsection (3) does not apply to a transfer that is a gift to which subsection 188.1(11) or (12) applies

188(4) Transfer of property tax

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

188(5) Definitions

In this section,

"net asset amount" of a charitable foundation at any time means the amount determined by the formula

$$A - B$$

where

A is the fair market value at that time of all the property owned by the foundation at that time, and

B is the total of all amounts each of which is the amount of a debt owing by or any other obligation of the foundation at that time;

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

$$A - B$$

Where

A is the fair market value of the property on that day, and

B is the amount of any consideration given to the foundation for the transfer.

189(6) Taxpayer to file return and pay tax

Every taxpayer who is liable to pay tax under this Part (except a charity that is liable to pay tax under section 188(1)) for a taxation year shall, on or before the day on or before which the taxpayer is, or would be if tax were payable by the taxpayer under Part I for the year, required to file a return of income or an information return under Part I for the year,

- (a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;
- (b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

189(6.1) Revoked charity to file returns

Every taxpayer who is liable to pay tax under subsection 188(1.1) for a taxation year shall, on or before the day that is one year from the end of the taxation year, and without notice or demand,

- (a) file with the Minister
 - (i) a return for the taxation year, in prescribed form and containing prescribed information, and
 - (ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and
- (b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

189 (6.2) Reduction of revocation tax liability

If the Minister has, during the one-year period beginning immediately after the end of a taxation year of a person, assessed the person in respect of the person's liability for tax under subsection 188(1.1) for that taxation year, has not after that period reassessed the tax liability of the person, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of

- (a) the amount, if any, by which
 - (i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was sent and ends at the end of the one-year period exceeds
 - (ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and
- (b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

189(6.3) Reduction of liability for penalties

If the Minister has assessed a particular person in respect of the particular person's liability for penalties under section 188.1 for a taxation year, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of all amounts, each of which is an amount, in respect of a property transferred by the particular person after the day on which the Minister first assessed that liability and before the particular time to another person that was at the time of the transfer an eligible donee in respect of the particular person, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the total of

- (a) the consideration given by the other person for the transfer, and
- (b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

189 (7) Minister may assess

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