



REGISTERED MAIL

MAY 03 2016

Family Life Foundation
of Willowdale
505-341 Bloor Street W.
Toronto ON M5S 1W8

Attention: Mr. Dan King, Executive Director

BN: 888762663RR0001

File #: 0422824

**Subject: Notice of Intention to Revoke
 Family Life Foundation of Willowdale**

Dear Mr. King:

We are writing further to our letters dated September 25, 2014 and January 8, 2015 (copy enclosed), in which you were invited to submit representations as to why the registration of Family Life Foundation of Willowdale (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act*.

As of this date, we have not received any response to our letters.

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* (Act). In particular, it was found that the Organization failed to maintain adequate books and records, issued receipts not in accordance with the Act, failed to file an information return as and when required by the Act and/or its Regulations, and lacked direction and control over the use of the Organization's resources and failed to carry out its own charitable activities. 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 letters dated September 25, 2014 and January 8, 2015, we 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), 168(1)(c), 168(1)(d) 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
888762663 RR0001	Family Life Foundation of Willowdale 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

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*

and appeals against revocation, can be found in Appendix "A", attached. Form T-2046 and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our website 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* (ETA). As a result, the Organization may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your 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 letters dated September 25, 2014 and January 8, 2015
- Appendix "A", Relevant provisions of the Act

c.c.: John Dowson, Chairman of the Board





REGISTERED MAIL

FAMILY LIFE FOUNDATION
OF WILLOWDALE
505-341 Bloor Street W.
Toronto, Ontario M5S 1W8

BN # 888762663 RR0001
File # 0422824

January 8, 2015

Subject: Audit of Family Life Foundation of Willowdale

Dear Sir/Madam:

This letter is further to the audit of the books and records of Family Life Foundation of Willowdale (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2011 to December 31, 2012.

As a result, of a previous audit conducted by the CRA, the Organization entered into a Compliance Agreement, with the CRA, dated August 7, 2008 to address the issues of non-compliance. The following is a list of corrective measures the Organization agreed to undertake on or before December 31, 2008, and our results of the implementation.

Corrective Measures

I. Books and Records – Adequate Documentation

The Organization committed to maintain adequate records and books of account as per subsection 230(2) of the *Act*, such that the CRA will be able to verify the accuracy of the information reported in the Charity's Information returns, financial statements and schedules.

Canada

It is our opinion that the Books and records remain inadequate and do not meet the requirements of Subsection 230(2) of the Income Tax Act.

II. Official Donation Receipts (ODRs)

The Organization committed to implement and employ controls to maintain the integrity of the administration and safeguarding of the ODRs.

The results of our audit determined that the Organization has not fully implemented controls to maintain the integrity of the administration and safeguarding of the ODRs.

III. Objects and Activities:

The Organization committed to maintain sufficient documentation of its objects and activities to demonstrate that its actual operations are congruent with that of its stated objects as registered with the CRA.

The Organization has failed to maintain sufficient documentation of its objects and activities to demonstrate that the charitable activities are in furtherance of its stated objects, as registered with the CRA.

IV. Gifts to Non-Qualified Donee (NQD)

The Organization committed to cease its current practice of giving donations to NQDs unless the Organization has retained a NQD as its agent to carry out the Charity's own charitable activities and met all the requirements in dealing with intermediaries.

The Organization has failed to cease its practice of giving to NQDs.

V. Devotion of Resources to Charitable Activities

The Organization has committed to devote all its resources to charitable activities carried on by it to the extent that it carries on a related business; it disburses no more than 50% of its income to qualified donees in a taxation year; or it disburses income to a registered charity that the Minister has designated in writing as being associated with the Organization.

The Organization has failed to devote all its resources to charitable activities.

VI. Timely Filing of T3010/Proper Completion of T3010

The Organization has committed to file complete, accurate and timely Registered Charity Information Returns (T3010) and all supporting schedules, within the deadlines as stipulated by subsection 149.1(14) of the Act.

The Organization has failed to file its T3010 and all supporting schedules within the required time as required by subsection 149.1(14) of the Act. Furthermore, the Organization has failed to ensure that the information contained in its T3010 and all supporting schedules are complete and accurate in every respect.

Conclusion:

The Organization had committed to fully implement all the above corrective measures by December 31, 2008, as stated in the Compliance Agreement. As of the conclusion of our audit, it is our position that the Organization has failed to implement the required corrective measures as agreed to.

In the course of the audit review, specific areas of non-compliance with the provisions of the *Income Tax Act* and/or its *Regulations* were identified in the following areas.

AREA OF NON-COMPLIANCE:		
	Issue	Reference
1.	Failure to maintain adequate books and records	168(1)(e), 230(2), 230(4)
2.	Issuing receipts not in accordance with the Act	149.1(2), 168(1)(d), Regulations 3500, 3501(1), 3501(1.1)
3.	Lack of direction and control over the use of the Organization's resources / Failure to carry out its own charitable activities	149.1(1), 149.1(2), 168(1)(b)

4.	Failure to file an information return as and when required by the Act and/or its Regulations	149.1(2), 168(1)(c)
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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 Area of Non-Compliance:

1. Failure to Maintain Adequate Books and Records:

Subsection 230(2) of the Act requires that every registered charity maintain adequate books and records, and books of account, at an address in Canada recorded with the Minister. 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 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 relate."

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

- it is the responsibility of the registered charity to prove that its charitable status should not be revoked¹;
- 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 thereto²; 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 status³.

Audit Findings:

The audit revealed that certain expenditures were determined to be inadequately supported by suitable original expense vouchers. Furthermore, the lack of minutes, resolutions, defining the Organization's decision-making to support expenditures was non-existent. Documentation in support of the amounts reported did not allow verification of reasonability nor provide sufficient information to determine an allocation of expense between charitable program and management/administrative duties. The expenditures reported could not be confirmed as related to charitable purposes.

To demonstrate, in the fiscal period ending December 31, 2012, expenditures recorded in general ledger account # 557 categorized as "Mission Project Expenses" represented 78% of the total expenditures applicable to the period. The transactions recorded were largely unsupported by expense vouchers, transfer documents, agency agreements or secondary documents including meeting minutes and director resolutions to define, quantify or substantiate the outlays as charitable in nature and incurred in furtherance of the Organization's registered objects. The sole original source document available, being a draft cheque in the amount of \$ 2,505 payable to [REDACTED] [REDACTED] does not speak to the purpose of the outlay. Verbal representation provided that the transaction represents payment of rent on behalf of a third party further exacerbates the concerns arising from the lack of adequate documentation.

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

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

³ *(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 the absence of supporting documentation to demonstrate existence, accuracy, completeness and charitable purpose of the outlays recorded, it is not possible to confirm the accounting of the expenditures reported by the Organization.

It is the responsibility of the Organization to obtain and to maintain adequate documentary evidence to clearly demonstrate its financial position. By failing to maintain and retain complete documentation to allow the verification of assets, liabilities, revenue and expenditures, the Organization cannot show that it meets the requirement of paragraph 149.1(1)(a) of the Act.

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 that 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.

2. Issuing Receipts not in Accordance with the Act and/or its Regulations

As described in Information Bulletin *IT-110R3 Gifts and Official Donation Receipts* and stipulated by Regulation 3501(1)(c) of the *Income Tax Act*, every official donation receipt issued by a registered charity must show clearly, in such a manner that it cannot be readily altered:

- a statement that it is an official receipt for income tax purposes;
- name and address of the charity as on file with the CRA;
- charity's registration number;
- serial number of the receipt;
- place or locality where the receipt was issued;
- day or year donation was received;
- day on which the receipt was issued if it differs from the day of donation;
- full name, including middle initial, and address of the donor;
- amount of the gift;
- value and description of any advantage received by the donor;
- eligible amount of the gift;
- signature of an individual authorized by the charity to acknowledge donations; and
- name and Web site address of the Canada Revenue Agency - www.cra.gc.ca/charities.

For non-cash gifts (gifts in kind), these additional elements must be identified:

- day on which the donation was received (if not already indicated);
- brief description of the property transferred to the charity;
- name and address of the appraiser (if property was appraised); and
- deemed fair market value of the property in place of amount of gift above.

The audit revealed the Organization did not issue official donation receipts in accordance with Regulation 3501 of the Act and IT-110R3 as described:

- i) The donation receipts reviewed were lacking specific information disclosures including:
 - day on which the receipt was issued if it differs from the day of donation
 - a sequentially ordered serial number of the receipt
 - brief description of the property transferred to the charity (gift in kind)

The receipts issued in fiscal period ending December 31, 2011 included duplicate use of receipt number 1, 2 and 6. In fiscal period ending December 31, 2012, significant gaps were observed in the sequential order of receipt numbers (7 receipt numbers spanning number 37 through 95). This period also included 8 separate issuances of receipt number 61.

In the absence of a sequential ordering system (intact serial numbers), the donation receipts cannot be verified to accurately reflect the order of issuance, and completeness of the official donation receipts cannot therefore be determined.

- ii) In the course of the fiscal period ending December 31, 2012 the Organization appears to have issued donation receipts in recognition of proceeds contributed toward a fundraising activity carried out by an unrelated third party. Pledge sheets reviewed for the fundraising activity carried out by the unrelated third party do not identify the Organization as the primary entity of a joint campaign undertaken.
- iii) Gift of Services. The Organization issued an official donation receipt in exchange for a gift in kind of services received in the audit period. A gift, for purposes of sections 110.1 and 118.1 of the Income Tax Act, is a voluntary transfer of property without valuable consideration.

Generally a gift is made if all three of the conditions listed below are satisfied:

- (a) some property (usually cash) is transferred by a donor to a registered charity;
- (b) the transfer is voluntary; and
- (c) the transfer is made without expectation of return. No benefit of any kind may be provided to the donor or to anyone designated by the donor, except where the benefit is of nominal value.

The gift of services does not constitute a gift of property and as such no receipt may be issued in exchange. Receipt number 6 in fiscal period ending December 31, 2011 in the amount of \$ 6,200.00 was identified in the audit period as issued in recognition of services and as such found to be ineligible.

As a result of each concern identified above, it is our position that the Organization has issued a receipt otherwise than in accordance with the Act. Under paragraph 168(1)(d) of the Act, the Minister may, by registered mail, give notice to an Organization that the Minister proposes to revoke its registration because the Organization issues a receipt for a gift otherwise than in accordance with the Act and the regulations or that contains false information.

3. Lack of direction and control over the use of resources / Failure to carry out its own charitable activities

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.⁴ 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:

⁴ *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)

- (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 the 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 comments of the court in *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*⁵:

"Pursuant to subsection 149.1 (1) of the [Income Tax Act], a charity must devote all its resources to charitable activities carried on by the 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..."

Based on our findings, the Organization did not operate in accordance with the above requirements during the audit period.

In the course of the audit period, the Organization incurred expenditures in the following general areas: i) direct costs to carry out counselling services (i.e. travel costs); ii) provision of funds to support activities undertaken by third party individuals and entities; iii) carry out fundraising activities on behalf of an unrelated third party; and iv) general management and administrative costs. The concerns identified in the observed activities of the Organization are detailed as follows:

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*

- i) The available supporting documentation in the books and records failed to demonstrate the existence, availability and accessibility of any type of counselling or educational services provided by the Organization.
- ii) The primary focus of expenditures in the fiscal period ending December 31, 2012 related to a classification in the books and records as "Mission Project Expenses". The activities applicable to the expenditures were poorly defined and simply included an arrangement with a non-registered third party. A single document retained in the books and records indicates contact from this organization requesting support to carry out programs to assist youth with removing addictive behaviour. Due to insufficient documentation, we were unable to determine the specific dispositions of funds attributed to this endeavor however it would appear the Organization transferred funds to a non-qualified donee in contravention of subsection 149.1(1) of the Act.

A further example of the Organization devoting resources to a non-qualified donee occurred in fiscal period ending December 31, 2011 wherein a payment of \$ 3,450 was issued on January 18, 2011 to an individual, without supporting documentation or a corresponding agency agreement detailing the charitable purpose undertaken.

- iii) In fiscal period ending December 31, 2012 the Organization paid applicable expenditures to carry out a fundraising activity on behalf of an non-registered unrelated third party totalling \$ 1,037. The expenses incurred included production of signage, t-shirts, etc. identifying non-registered unrelated third party as the sponsoring organization of a specialized kayak program for disabled individuals. Pledge sheets retained in the books and records of the Organization identified contributions to the event recognized with a donation receipt issued by the Organization. The proceeds received, recognized via donation receipt, were deposited to the bank account of the Organization.

In the absence of a documented affiliation between Family Life Foundation of Willowdale and the non-registered unrelated third party, the fundraising activity does not appear to have been undertaken by the Organization for the purpose of generating proceeds with which to further its own charitable activities, rather a means by which donations contributed to an event may be recognized via official donation receipt by an unrelated registered charitable organization.

The Organization failed to provide as substantiating evidence the Organization's means test or criteria, and copies of documentation provided by the applicants to whom the Organization provided financial support. The Organization provided no evidence of holding formal board meetings or preparation of minutes of any meetings or conversations held. The discretion for approval or denial of requests for financial support by applicants in the audit period, as well as the amount of aid received, could not be quantified via documentation.

The mere fact that an Organization's Board of Directors, or the person approving applications (if the parties could be identified and decision quantified), may have had personal knowledge of the applicants does not constitute evidence that the funding was being made to further the Organization's charitable purpose or registered objects. 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 furthering its registered objects in a manner consistent with the Act.

As the Organization's financial statements and accompanying documentation do not properly identify or support the total expenditures incurred in the course of carrying out charitable activities, we cannot determine the amount of funds spent. Any funds distributed to a non-qualified donee third party in the absence of corresponding agency agreements would not be considered resources devoted to a charitable activity carried on the by the Organization itself.

It does not appear the Organization has maintained effective control and direction over the use of its resources such that it can be considered that all of the resources of the Organization are devoted to its own charitable activities. In fact, it appears the Organization has acted as a conduit by transferring its resources to a non-qualified donee, without any direction or control.

Under subsection 149.1(2) of the ITA, the Minister may revoke the registration of the Charity, because it has failed as described at paragraph 168(1)(b) of the ITA to comply with the requirements of the ITA for its registration as such.

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

Subsection 149.1(14) and Paragraph 168(1)(c) of the Act require a registered charity to accurately file the Registered Charity Information Return (T3010) along with applicable schedules, within six months from the end of the charity's fiscal period (taxation year), without notice or demand. A charity may be subject to a \$500 late-filing penalty for failing to file its information return as and when required.

Summary of Fiscal Year Ends (FYEs), due dates and dates received for T3010s:

Organization FYE	Due Date	Date Received
2012-12-31	2013-06-30	2013-08-28
2011-12-31	2012-06-30	2012-07-24
2010-12-31	2011-06-30	2011-08-05
2009-12-31	2010-06-30	2010-12-09

In addition to consistent late filing of T3010s, we have noted the following concerns regarding the accuracy of these returns filed for the audit period:

The T3010 Information Returns in the audit period demonstrated an improper or unsubstantiated allocation methodology of expenditures related to charitable programs, and expenditures related to management and administration.

A registered charity cannot arbitrarily allocate its expenditures at the end of its fiscal period. The organization must keep track of its expenditures during the fiscal period so that it can provide amounts on the T3010 return that are reasonably accurate and must be able to justify the amounts reported.

The Organization failed to demonstrate an acceptable allocation methodology employed in the books and records and failed to appropriately recognize apportionments applicable on Line 5000 and Line 5010.

Additional reporting fields of Section D: Financial Information in the T3010 Information Returns of the audit period were found to be incorrect:

<u>2011-12-31</u>	<u>Per T3010</u>	<u>Per Audit</u>	<u>Variance</u>
Line 4500	\$ 8,081.00	\$ 14,282.02	\$ 6,201.02
Line 4510	5,000.00	0.00	5,000.00
Line 4530	1,800.00	6,799.50	4,999.50
Line 5100	13,851.00	5,827.61	8,023.39

<u>2012-12-31</u>	<u>Per T3010</u>	<u>Per Audit</u>	<u>Variance</u>
Line 4500	\$ 39,998.00	\$ 4,697.50	\$ 35,300.50
Line 4530	40.00	35,340.00	35,300.00
Line 5100	19,852.00	2,881.29	16,970.71

The T3010 Information Return for fiscal period ending December 31, 2011 did not include a complete T1236 *Qualified Donees Worksheet* disclosing the required prescribed information. Specifically, the registration number of recipient was omitted.

The Minister may revoke the registration of the registered charity in the manner as described at paragraph 168(1)(c) of the *Act* because the registered charity has failed to file an information return as and when required under the *Act* or a regulation. For this reason, it appears to us that there are 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 15 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 the undersigned at the numbers indicated below. My team leader, Bruce Pettipas, may also be reached at (613) 541-3669.

Yours sincerely,



Ted Dubien
Audit Division
Tax Services Office: 11 - East Central Ontario TSO - Kingston

Telephone: (613) 541-7477
Facsimile: (613) 536-4629
Address: 31 Hyperion Court, Kingston, ON K7L 9Z9



REGISTERED MAIL

FAMILY LIFE FOUNDATION
OF WILLOWDALE
505-341 Bloor Street W.
Toronto, Ontario M5S 1W8

BN # 888762663 RR0001
File # 0422824

September 25, 2014

Subject: Audit of Family Life Foundation of Willowdale

Dear Sir/Madam:

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Corrective Measures

I. Books and Records – Adequate Documentation

The Organization committed to maintain adequate records and books of account as per subsection 230(2) of the *Act*, such that the CRA will be able to verify the accuracy of the information reported in the Charity's Information returns, financial statements and schedules.

It is our opinion that the Books and records remain inadequate and do not meet the requirements of Subsection 230(2) of the Income Tax Act.

II. Official Donation Receipts (ODRs)

The Organization committed to implement and employ controls to maintain the integrity of the administration and safeguarding of the ODRs.

The results of our audit determined that the Organization has not fully implemented controls to maintain the integrity of the administration and safeguarding of the ODRs.

III. Objects and Activities:

The Organization committed to maintain sufficient documentation of its objects and activities to demonstrate that its actual operations are congruent with that of its stated objects as registered with the CRA.

The Organization has failed to maintain sufficient documentation of its objects and activities to demonstrate that the charitable activities are in furtherance of its stated objects, as registered with the CRA.

IV. Gifts to Non-Qualified Donee (NQD)

The Organization committed to cease its current practice of giving donations to NQDs unless the Organization has retained a NQD as its agent to carry out the Charity's own charitable activities and met all the requirements in dealing with intermediaries.

The Organization has failed to cease its practice of giving to NQDs.

V. Devotion of Resources to Charitable Activities

The Organization has committed to devote all its resources to charitable activities carried on by it to the extent that it carries on a related business; it disburses no more than 50% of its income to qualified donees in a taxation year; or it disburses income to a registered charity that the Minister has designated in writing as being associated with the Organization.

The Organization has failed to devote all its resources to charitable activities.

VI. Timely Filing of T3010/Proper Completion of T3010

The Organization has committed to file complete, accurate and timely Registered Charity Information Returns (T3010) and all supporting schedules, within the deadlines as stipulated by subsection 149.1(14) of the Act.

The Organization has failed to file its T3010 and all supporting schedules within the required time as required by subsection 149.1(14) of the Act. Furthermore, the Organization has failed to ensure that the information contained in its T3010 and all supporting schedules are complete and accurate in every respect.

Conclusion:

The Organization had committed to fully implement all the above corrective measures by December 31, 2008, as stated in the Compliance Agreement. As of the conclusion of our audit, it is our position that the Organization has failed to implement the required corrective measures as agreed to.

In the course of the audit review, specific areas of non-compliance with the provisions of the *Income Tax Act* and/or its *Regulations* were identified in the following areas.

AREA OF NON-COMPLIANCE:		
	Issue	Reference
1.	Failure to maintain adequate books and records	168(1)(e), 230(2), 230(4)
2.	Issuing receipts not in accordance with the Act	149.1(2), 168(1)(d), Regulations 3500, 3501(1), 3501(1.1)
3.	Lack of direction and control over the use of the Organization's resources / Failure to carry out its own charitable activities	149.1(1), 149.1(2), 168(1)(b)

4.	Failure to file an information return as and when required by the Act and/or its Regulations	149.1(2), 168(1)(c)
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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 Area of Non-Compliance:

1. Failure to Maintain Adequate Books and Records:

Subsection 230(2) of the *Act* requires that every registered charity maintain adequate books and records, and books of account, at an address in Canada recorded with the Minister. 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 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 relate.”

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

- it is the responsibility of the registered charity to prove that its charitable status should not be revoked¹;
- 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 thereto²; 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 status³.

Audit Findings:

The audit revealed that certain expenditures were determined to be inadequately supported by suitable original expense vouchers. Furthermore, the lack of minutes, resolutions, defining the Organization's decision-making to support expenditures was non-existent. Documentation in support of the amounts reported did not allow verification of reasonability nor provide sufficient information to determine an allocation of expense between charitable program and management/administrative duties. The expenditures reported could not be confirmed as related to charitable purposes.

To demonstrate, in the fiscal period ending December 31, 2012, expenditures recorded in general ledger account # 557 categorized as "Mission Project Expenses" represented 78% of the total expenditures applicable to the period. The transactions recorded were largely unsupported by expense vouchers, transfer documents, agency agreements or secondary documents including meeting minutes and director resolutions to define, quantify or substantiate the outlays as charitable in nature and incurred in furtherance of the Organization's registered objects. The sole original source document available, being a draft cheque in the amount of \$ 2,505 payable to [REDACTED]

[REDACTED] does not speak to the purpose of the outlay. Verbal representation provided that the transaction represents payment of rent on behalf of a third party further exacerbates the concerns arising from the lack of adequate documentation.

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

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

³ *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 the absence of supporting documentation to demonstrate existence, accuracy, completeness and charitable purpose of the outlays recorded, it is not possible to confirm the accounting of the expenditures reported by the Organization.

It is the responsibility of the Organization to obtain and to maintain adequate documentary evidence to clearly demonstrate its financial position. By failing to maintain and retain complete documentation to allow the verification of assets, liabilities, revenue and expenditures, the Organization cannot show that it meets the requirement of paragraph 149.1(1)(a) of the Act.

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 that 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.

2. Issuing Receipts not in Accordance with the Act and/or its Regulations

As described in Information Bulletin *IT-110R3 Gifts and Official Donation Receipts* and stipulated by Regulation 3501(1)(c) of the *Income Tax Act*, every official donation receipt issued by a registered charity must show clearly, in such a manner that it cannot be readily altered:

- a statement that it is an official receipt for income tax purposes;
- name and address of the charity as on file with the CRA;
- charity's registration number;
- serial number of the receipt;
- place or locality where the receipt was issued;
- day or year donation was received;
- day on which the receipt was issued if it differs from the day of donation;
- full name, including middle initial, and address of the donor;
- amount of the gift;
- value and description of any advantage received by the donor;
- eligible amount of the gift;
- signature of an individual authorized by the charity to acknowledge donations; and
- name and Web site address of the Canada Revenue Agency - www.cra.gc.ca/charities.

For non-cash gifts (gifts in kind), these additional elements must be identified:

- day on which the donation was received (if not already indicated);
- brief description of the property transferred to the charity;
- name and address of the appraiser (if property was appraised); and
- deemed fair market value of the property in place of amount of gift above.

The audit revealed the Organization did not issue official donation receipts in accordance with Regulation 3501 of the Act and IT-110R3 as described:

i) The donation receipts reviewed were lacking specific information disclosures including:

- day on which the receipt was issued if it differs from the day of donation
- a sequentially ordered serial number of the receipt
- brief description of the property transferred to the charity (gift in kind)

The receipts issued in fiscal period ending December 31, 2011 included duplicate use of receipt number 1, 2 and 6. In fiscal period ending December 31, 2012, significant gaps were observed in the sequential order of receipt numbers (7 receipt numbers spanning number 37 through 95). This period also included 8 separate issuances of receipt number 61.

In the absence of a sequential ordering system (intact serial numbers), the donation receipts cannot be verified to accurately reflect the order of issuance, and completeness of the official donation receipts cannot therefore be determined.

ii) In the course of the fiscal period ending December 31, 2012 the Organization appears to have issued donation receipts in recognition of proceeds contributed toward a fundraising activity carried out by an unrelated third party. Pledge sheets reviewed for the fundraising activity carried out by the unrelated third party do not identify the Organization as the primary entity of a joint campaign undertaken.

iii) Gift of Services. The Organization issued an official donation receipt in exchange for a gift in kind of services received in the audit period. A gift, for purposes of sections 110.1 and 118.1 of the Income Tax Act, is a voluntary transfer of property without valuable consideration.

Generally a gift is made if all three of the conditions listed below are satisfied:

- (a) some property (usually cash) is transferred by a donor to a registered charity;
- (b) the transfer is voluntary; and
- (c) the transfer is made without expectation of return. No benefit of any kind may be provided to the donor or to anyone designated by the donor, except where the benefit is of nominal value.

The gift of services does not constitute a gift of property and as such no receipt may be issued in exchange. Receipt number 6 in fiscal period ending December 31, 2011 in the amount of \$ 6,200.00 was identified in the audit period as issued in recognition of services and as such found to be ineligible.

As a result of each concern identified above, it is our position that the Organization has issued a receipt otherwise than in accordance with the Act. Under paragraph 168(1)(d) of the Act, the Minister may, by registered mail, give notice to an Organization that the Minister proposes to revoke its registration because the Organization issues a receipt for a gift otherwise than in accordance with the Act and the regulations or that contains false information.

3. Lack of direction and control over the use of resources / Failure to carry out its own charitable activities

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.⁴ 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:

⁴ *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)

(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 the 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 comments of the court in *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*⁵:

"Pursuant to subsection 149.1 (1) of the [Income Tax Act], a charity must devote all its resources to charitable activities carried on by the 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..."

Based on our findings, the Organization did not operate in accordance with the above requirements during the audit period.

In the course of the audit period, the Organization incurred expenditures in the following general areas: i) direct costs to carry out counselling services (i.e. travel costs); ii) provision of funds to support activities undertaken by third party individuals and entities; iii) carry out fundraising activities on behalf of an unrelated third party; and iv) general management and administrative costs. The concerns identified in the observed activities of the Organization are detailed as follows:

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*

- i) The available supporting documentation in the books and records failed to demonstrate the existence, availability and accessibility of any type of counselling or educational services provided by the Organization.
- ii) The primary focus of expenditures in the fiscal period ending December 31, 2012 related to a classification in the books and records as "Mission Project Expenses". The activities applicable to the expenditures were poorly defined and simply included an arrangement with a non-registered third party. A single document retained in the books and records indicates contact from this organization requesting support to carry out programs to assist youth with removing addictive behaviour. Due to insufficient documentation, we were unable to determine the specific dispositions of funds attributed to this endeavor however it would appear the Organization transferred funds to a non-qualified donee in contravention of subsection 149.1(1) of the Act.

A further example of the Organization devoting resources to a non-qualified donee occurred in fiscal period ending December 31, 2011 wherein a payment of \$ 3,450 was issued on January 18, 2011 to an individual, without supporting documentation or a corresponding agency agreement detailing the charitable purpose undertaken.

- iii) In fiscal period ending December 31, 2012 the Organization paid applicable expenditures to carry out a fundraising activity on behalf of an non-registered unrelated third party totalling \$ 1,037. The expenses incurred included production of signage, t-shirts, etc. identifying non-registered unrelated third party as the sponsoring organization of a specialized kayak program for disabled individuals. Pledge sheets retained in the books and records of the Organization identified contributions to the event recognized with a donation receipt issued by the Organization. The proceeds received, recognized via donation receipt, were deposited to the bank account of the Organization.

In the absence of a documented affiliation between Family Life Foundation of Willowdale and the non-registered unrelated third party, the fundraising activity does not appear to have been undertaken by the Organization for the purpose of generating proceeds with which to further its own charitable activities, rather a means by which donations contributed to an event may be recognized via official donation receipt by an unrelated registered charitable organization.

The Organization failed to provide as substantiating evidence the Organization's means test or criteria, and copies of documentation provided by the applicants to whom the Organization provided financial support. The Organization provided no evidence of holding formal board meetings or preparation of minutes of any meetings or conversations held. The discretion for approval or denial of requests for financial support by applicants in the audit period, as well as the amount of aid received, could not be quantified via documentation.

The mere fact that an Organization's Board of Directors, or the person approving applications (if the parties could be identified and decision quantified), may have had personal knowledge of the applicants does not constitute evidence that the funding was being made to further the Organization's charitable purpose or registered objects. 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 furthering its registered objects in a manner consistent with the Act.

As the Organization's financial statements and accompanying documentation do not properly identify or support the total expenditures incurred in the course of carrying out charitable activities, we cannot determine the amount of funds spent. Any funds distributed to a non-qualified donee third party in the absence of corresponding agency agreements would not be considered resources devoted to a charitable activity carried on by the Organization itself.

It does not appear the Organization has maintained effective control and direction over the use of its resources such that it can be considered that all of the resources of the Organization are devoted to its own charitable activities. In fact, it appears the Organization has acted as a conduit by transferring its resources to a non-qualified donee, without any direction or control.

Under subsection 149.1(2) of the ITA, the Minister may revoke the registration of the Charity, because it has failed as described at paragraph 168(1)(b) of the ITA to comply with the requirements of the ITA for its registration as such.

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

Subsection 149.1(14) and Paragraph 168(1)(c) of the Act require a registered charity to accurately file the Registered Charity Information Return (T3010) along with applicable schedules, within six months from the end of the charity's fiscal period (taxation year), without notice or demand. A charity may be subject to a \$500 late-filing penalty for failing to file its information return as and when required.

Summary of Fiscal Year Ends (FYEs), due dates and dates received for T3010s:

Organization FYE	Due Date	Date Received
2012-12-31	2013-06-30	2013-08-28
2011-12-31	2012-06-30	2012-07-24
2010-12-31	2011-06-30	2011-08-05
2009-12-31	2010-06-30	2010-12-09

In addition to consistent late filing of T3010s, we have noted the following concerns regarding the accuracy of these returns filed for the audit period:

The T3010 Information Returns in the audit period demonstrated an improper or unsubstantiated allocation methodology of expenditures related to charitable programs, and expenditures related to management and administration.

A registered charity cannot arbitrarily allocate its expenditures at the end of its fiscal period. The organization must keep track of its expenditures during the fiscal period so that it can provide amounts on the T3010 return that are reasonably accurate and must be able to justify the amounts reported.

The Organization failed to demonstrate an acceptable allocation methodology employed in the books and records and failed to appropriately recognize apportionments applicable on Line 5000 and Line 5010.

Additional reporting fields of Section D: Financial Information in the T3010 Information Returns of the audit period were found to be incorrect:

<u>2011-12-31</u>	<u>Per T3010</u>	<u>Per Audit</u>	<u>Variance</u>
Line 4500	\$ 8,081.00	\$ 14,282.02	\$ 6,201.02
Line 4510	5,000.00	0.00	5,000.00
Line 4530	1,800.00	6,799.50	4,999.50
Line 5100	13,851.00	5,827.61	8,023.39

<u>2012-12-31</u>	<u>Per T3010</u>	<u>Per Audit</u>	<u>Variance</u>
Line 4500	\$ 39,998.00	\$ 4,697.50	\$ 35,300.50
Line 4530	40.00	35,340.00	35,300.00
Line 5100	19,852.00	2,881.29	16,970.71

The T3010 Information Return for fiscal period ending December 31, 2011 did not include a complete T1236 *Qualified Donees Worksheet* disclosing the required prescribed information. Specifically, the registration number of recipient was omitted.

The Minister may revoke the registration of the registered charity in the manner as described at paragraph 168(1)(c) of the Act because the registered charity has failed to file an information return as and when required under the Act or a regulation. For this reason, it appears to us that there are 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 the undersigned at the numbers indicated below. My team leader, Bruce Pettipas, may also be reached at (613) 541-3669.

Yours sincerely,



Ted Dubien
Audit Division
Tax Services Office: 11 - East Central Ontario TSO - Kingston

Telephone: (613) 541-7477
Facsimile: (613) 536-4629
Address: 31 Hyperion Court, Kingston, ON K7L 9Z9

c.c.: [REDACTED] Lindsay King [REDACTED]

Section 149.1 Qualified Donees

149.1(2) Revocation of registration of charitable organization

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

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

149.1(3) Revocation of registration of public foundation

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

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (b.1) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) since June 1, 1950, acquired control of any corporation;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or
- (e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the Minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection 149.1(4), to revoke its registration as a private foundation.

149.1(4) Revocation of registration of private foundation

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

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

149.1(4.1) Revocation of registration of registered charity

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

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

Section 168:
Revocation of Registration of Certain Organizations and Associations

168(1) Notice of intention to revoke registration

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

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

168(2) Revocation of Registration

Where the Minister gives notice under subsection 168(1) to a registered charity or to a registered Canadian amateur athletic association,

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

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

168(4) Objection to proposal or designation

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

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

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

Where the Minister

- (a) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.2) and (22) and 168(1) by the Minister, to a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for registration as a registered Canadian amateur athletic association, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,
 - (a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,
 - (a.2) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.3), (22) and 168(1) by the Minister, to a person that is a person described in any of subparagraphs (a)(i) to (v) of the definition “qualified donee” in subsection 149.1(1) that is or was registered by the Minister as a qualified donee or is an applicant for such registration, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,
- (b) refuses to accept for registration for the purposes of this Act any retirement savings plan,
- (c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,
- (d) [Repealed, 2011, c. 24, s. 54]
- (e) refuses to accept for registration for the purposes of this Act an education savings plan,
- (e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,

- (f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,
- (f.1) refuses to accept an amendment to a registered pension plan,
- (g) refuses to accept for registration for the purposes of this Act any retirement income fund,
- (h) refuses to accept for registration for the purposes of this Act any pooled pension plan or gives notice under subsection 147.5(24) to the administrator of a pooled registered pension plan that the Minister proposes to revoke its registration, or
- (i) refuses to accept an amendment to a pooled registered pension plan,

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

180(1) Appeals to Federal Court of Appeal

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

- (a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),
- (b) [Repealed, 2011, c. 24, s. 55]
- (c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),
- (c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1),
- (c.2) the mailing of notice to the administrator of the pooled registered pension plan under subsection 147.5(24), or
- (d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan or pooled registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

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

Section 188: Revocation tax

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

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

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

188(1.1) Revocation tax

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

$$A - B$$

where

A

is the total of all amounts, each of which is

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

B

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

- (a) a debt of the charity that is outstanding at the end of that taxation year,
- (b) an expenditure made by the charity during the winding-up period on charitable activities carried on by it, or

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

188(1.2) Winding-up period

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

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

188(1.3) Eligible donee

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

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

188(2) Shared liability — revocation tax

A person who, after the time that is 120 days before the end of the taxation year of a charity that is deemed by subsection (1) to have ended, receives property from the charity, is jointly and severally, or solidarily, liable with the charity for the tax payable under subsection (1.1) by the charity for that taxation year for an amount not exceeding the total of all appropriations,

each of which is the amount by which the fair market value of such a property at the time it was so received by the person exceeds the consideration given by the person in respect of the property.

188(2.1) Non-application of revocation tax

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

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

188(3) Transfer of property tax

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

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

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

188(4) Transfer of property tax

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

188(5) Definitions

In this section,

“net asset amount”

« *montant de l'actif net* »

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

$$A - B$$

where

A

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

B

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

“net value”

« *valeur nette* »

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

$$A - B$$

where

A

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

B

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

189(6) Taxpayer to file return and pay tax

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

(a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

189(6.1) Revoked charity to file returns

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

(a) file with the Minister

- (i) a return for the taxation year, in prescribed form and containing prescribed information, and
- (ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and

(b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

189 (6.2) Reduction of revocation tax liability

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

(a) the amount, if any, by which

- (i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was sent and ends at the end of the one-year period

exceeds

- (ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and

(b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

189(6.3) Reduction of liability for penalties

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

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

189 (7) Minister may assess

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