



**REGISTERED MAIL**

Mr. Rick Skauge  
Director  
Jessica Charitable Foundation  
2300 125 9 Avenue SE  
Calgary AB T2G 0P6

BN:888953148RR0001  
File #: 1026053

**APR 13 2018**

**Subject: Notice of intention to revoke  
Jessica Charitable Foundation**

Dear Mr. Skauge:

We are writing following our letter dated August 31, 2016 (copy enclosed), in which the Jessica Charitable Foundation (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA), and explain why the registration of the Organization should not be revoked in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

We have now reviewed and considered your written response dated September 23, 2016. Your reply has not alleviated our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity. Our concerns are explained in Appendix A, attached.

**Conclusion**

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization failed to devote its resources to charitable activities, issued official donation receipts otherwise than in accordance with the Act, failed to maintain adequate books and records, and was not constituted for exclusively charitable purposes. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

For each of the reasons mentioned in our letter dated August 31, 2016, pursuant to subsection 168(1) of the Act, we propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

*Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(d), and 168(1)(e) of the Income Tax Act, that I propose to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration is effective on the date of publication of this notice in the Canada Gazette.*

<b>Business number</b>	<b>Name</b>
888953148RR0001	Jessica Charitable Foundation Calgary AB

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

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

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

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

### **Consequences of revocation**

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix B. Form T2046 and the related Guide RC4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our website at [canada.ca/charities-giving](http://canada.ca/charities-giving);
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act*. As a result, the Organization may be subject to obligations and entitlements under the *Excise Tax Act* that apply to organizations other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

Finally, we advise that subsection 150(1) of the *Income Tax Act* requires that every corporation (other than a corporation that was a registered charity throughout the year) file a return of income with the Minister in the prescribed form, containing prescribed information, for each taxation year. The return of income must be filed without notice or demand.

Yours sincerely,

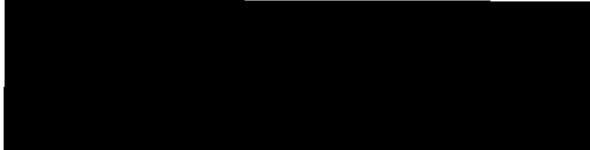


Tony Manconi  
Director General  
Charities Directorate

Attachments:

- CRA letter dated August 31, 2016
- The Organization's representations dated September 23, 2016
- Appendix "A", Comments on representations
- Appendix "B", Relevant provisions of the Act

c.c.:





**REGISTERED MAIL**

Jessica Charitable Foundation  
2300 125 9 Avenue SE  
Calgary AB T2G 0P6

BN: 888953148RR0001

Attention: Berniece Wood

File #: 1026053

August 31, 2016

**Subject: Audit of the Jessica Charitable Foundation**

Dear Ms. Wood:

This letter is further to the audit of the books and records of the Jessica Charitable Foundation (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from March 3, 2012, to March 2, 2014.

At our meeting of January 12, 2015, you were advised that the CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* (the Act) and/or its *Regulations* in the following areas.

<b>AREAS OF NON-COMPLIANCE:</b>		
	<b>Issue</b>	<b>Reference</b>
1.	Devotion of resources	149.1(1)
2.	Official donation receipts	118.1(2), Reg. 3501
3.	Books and records	230(2), 230(4)
4.	Purposes (objects) and activities	149.1(1)
5.	Form T3010, <i>Registered Charity Information Return</i>	149.1(14)

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

### **Item 1: Devotion of resources**

#### *Audit findings:*

The Organization's primary purpose (discussed further in Item 4 below) includes a reference to "the relief of poverty". Accordingly, during the course of the audit we requested details as to how the Organization went about selecting beneficiaries for assistance. Mr. Rick Skauge, the founder of the Organization and its principal donor, explained that the process is very subjective.

As an example, Mr. Skauge described one of the selected beneficiaries as a waitress that he had met in his travels; another beneficiary was described as a cancer patient Mr. Skauge met while waiting in his doctor's office. In each of these examples, Mr. Skauge appears to have based his determination of financial need solely on what he was told by the individual recipient.

It was also reported that on another occasion, [REDACTED], Mr. Skauge met a couple who were fundraising for a particular cause. It appears that Mr. Skauge inquired about how much financial assistance the couple required, and then simply wrote them a cheque for several thousand dollars from the Organization's account.

For the examples provided, we found no evidence of any formal vetting process, in which the Organization verified that recipients were, in fact, in need. Additionally, the Organization has not shown that it used any criteria to select and establish who qualifies as being in need, to ensure that resources were devoted strictly to charitable beneficiaries. Furthermore, simply providing cash to an individual or individuals confers a private benefit to those individuals (discussed further in Item 1b below).

These expenditures were listed in the general ledger as "Rick Skauge Expenses." For the 2014 fiscal period they totalled \$17,000, and for the 2013 fiscal period they totalled \$16,000.

#### *Conclusion:*

Based on the audit findings, it is our view that the Organization is operating in contravention of subsection 149.1(1) of the Act. The Organization failed to demonstrate that it employs any measures to ensure that its programs are limited to appropriate beneficiaries of the relief of poverty.

**a. Control of activities outside Canada and gifts to non-qualified donees**

**Legislation:**

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

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

A charity must continue to meet all of its obligations whether the activities are undertaken directly or by intermediaries operating on its behalf. If a charity engages an agent or other intermediary to carry out programs on its behalf, it must be in a position to show that it effectively directs and actually controls the activities it funds, whether through the implementation of an agency agreement, or other documentary evidence.

The CRA has developed policy guidance (CG-002, *Canadian Registered Charities Carrying Out Activities Outside Canada*), which describes the guidelines that we use to assess how much effective direction and actual control a registered Canadian charity exercises, in greater detail.

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

The existence of either a written or verbal agency agreement is only one example of evidence required to show that a sufficient principal-agent relationship truly exists. The charity, through documented evidence, must demonstrate that actual events transpired which prove the continued existence of the principal-agent relationship. Thus, the charity must provide the CRA with a means of examining the internal decision-making mechanisms within the charity's own structure through records, such as: minutes of board meetings; internal communications and memoranda; as well as policies and procedures that show that

the charity, by directing and controlling each of its activities, acted as the guiding-mind in the principal-agent relationship. In addition, the charity must provide source documentation, reports, and the various other instruments it received from its agent showing that throughout the life of the principal-agent relationship, the agent reported back to the principal in such a manner and frequency as to allow the principal to make informed decisions about the resources and projects for which the principal was responsible.

The registered Canadian charity must not only show that an appropriate agreement existed (written or otherwise), but it must also show that the agreement was implemented in a manner which clearly demonstrates that the registered Canadian charity exercised direct, effectual, and constant responsibility for undertaking the charitable activities to which its resources were applied. In effect, the registered Canadian charity must show that it acted as the principal through the implementation of the agreement.

Where an agreement exists only in verbal form, or where some of the elements outlined in the aforementioned guidelines are not explicitly expounded in a written agreement, the CRA will look at all supporting documentation as well as the conduct of both parties to ascertain whether or not the registered Canadian charity maintained effective direction and actual control through its relationship with the other organization.

For purposes of the Act, when a registered charity merely transfers its resources to another entity that is not a qualified donee, but fails to maintain effective direction and actual control over those resources, the result is the same as a gift to a non-qualified donee. Allowing a non-qualified donee to take control of the resources of a registered charity contravenes the Act.

Audit Findings:

During the audit it was revealed that [REDACTED], Mr. Skauge had visited an orphanage in Nairobi, Kenya, and purportedly felt compelled to provide financial assistance. He subsequently made arrangements for the Organization to send funds to the orphanage, which is operated by an entity called the [REDACTED]

[REDACTED]. We would point out that according to CRA's records, [REDACTED] is not a registered Canadian charity. The Organization wires all funds directly to [REDACTED] and, in return, the Organization receives a statement from [REDACTED] indicating the amount of funds received, along with what those funds were used for. Based on our review of the statements from [REDACTED] it appears that the funds were used for items such as groceries for the orphanage, school tuition expenses, school fees, rent and salary for the house help, etc.

However, no accounting of the actual distribution of funds throughout [REDACTED] various programs was provided. The Organization failed to indicate that invoices had been provided for any of the fund transfers, or that it otherwise directed, monitored or regulated the use of its funds by [REDACTED] Moreover, no evidence was provided indicating that any structured

agreement had ever been in place, whereby [REDACTED] agreed to use and restrict the resources as specifically directed by the Organization. As such, we are unable to determine that the Organization exercised direct, effectual, and constant responsibility for undertaking the charitable activities to which its resources were applied by [REDACTED]

On another occasion, [REDACTED], Mr. Skauge reportedly set about collecting books in Canada to send to the schools in Fiji. Mr. Skauge eventually filled a shipping container which was then sent to Fiji, where the books were distributed to several schools there. From the information obtained during the audit, there appears to have been no formal agreements in place for this program and no records indicating specifically how or where the books were distributed, or to whom.

Conclusion:

Based on the audit findings, it is our view that the Organization is operating in contravention of the Act, as it gifts its resources to entities that are not qualified donees, and it does not direct or control any funds that are sent to individuals or organizations outside of Canada.

**b. Providing a private benefit**

The CRA's Summary Policy CSP-P09, *Private Benefit*, reads:

To qualify for registration as a charity, an organization's purposes and activities must provide a tangible benefit to the community or a section of the community. The courts have held that an organization established to benefit a named individual or a private group (for example, a professional association) is established for private benevolence and therefore not charitable at law.

Audit Findings:

During the audit, it was revealed that Mr. Skauge had made arrangements to pay for ongoing medical treatments for a boy in Calgary who had suffered brain damage as the result of an accident. The treatments would take place at a facility in Toronto called the [REDACTED] [REDACTED] or [REDACTED]. We would point out that [REDACTED] is a for-profit entity, and our information indicates that Mr. Skauge offered to pay for the [REDACTED] treatments through the Organization.

No information was provided during the audit regarding how the Organization determined that this specific boy and his family were appropriate beneficiaries of relief of poverty. However, the audit revealed that the Organization paid approximately \$90,000 in expenses for the boy in 2014. In this case, there appears to have been a private benefit conferred upon this family.

We note that the Organization provided financial assistance in 2014 to at least one additional individual in order for her to also receive treatment at [REDACTED]. There is an additional expense line for 2014 with the title “[REDACTED] Expenses”, in the amount of \$4,410. This appears to be another example of the Organization conferring a private benefit on an individual.

Additionally, a review of [REDACTED] website reveals the following entry: “[REDACTED] [REDACTED] If a user chooses to click on the *Donate Now* link, they are directed to a donation form for the Jessica Charitable Foundation. All donations are directed through the Organization; however, [REDACTED] is a for-profit enterprise, as mentioned above.

By prompting individuals to donate through the Organization, [REDACTED] stands to benefit from an increase in exposure and, potentially, an increase in business. While the funds donated through the Organization have been directed towards treatments for specific individuals, the cost of each treatment includes all overhead costs as well. This means that public donations are being used to increase the profits of a privately owned for-profit enterprise. The amount that was paid to [REDACTED] \$48,513 in 2013 and \$44,243 in 2014.

It was also revealed during the audit that Mr. Craig Skauge (Rick Skauge's [REDACTED]), and his wife made the decision to provide financial aid to a family they had befriended in Arusha, Tanzania. It was further reported that because he did not want his funds being expended on administration fees, Craig Skauge approached [REDACTED] (Rick Skauge) with a proposal to send funds through the Jessica Charitable Foundation. From the information provided, it appears that Rick Skauge agreed to the proposal.

Based on the information provided, it appears that the family in Tanzania receives approximately \$550 US per month (directed by Craig Skauge), through the Jessica Charitable Foundation, and it also appears that they are free to use these funds in whatever way they see fit.

Conclusion:

Based on the audit findings, it is our view that the Organization is operating in contravention of the Act as its programs confer private benefits on named individuals and for-profit entities.

Summary:

Our audit revealed that the Organization failed to exercise adequate control or direction over resources it sends outside of Canada, and it confers private benefits to named individuals as well as for-profit entities. As such, it is the CRA's position that the Organization has failed to demonstrate that it meets the requirements for continued registration as a charity, because it devotes its resources to non-charitable activities.

## **Item 2: Official donation receipts**

### Legislation:

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

Additionally, Section 188.1(7) and 188.1(9) of the Act stipulate the following:

### **Incorrect information**

(7) Except where subsection (8) or (9) applies, every registered charity and registered Canadian amateur athletic association that issues, in a taxation year, a receipt for a gift otherwise than in accordance with this Act and the regulations is liable for the taxation year to a penalty equal to 5% of the amount reported on the receipt as representing the amount in respect of which a taxpayer may claim a deduction under subsection 110.1(1) or a credit under subsection 118.1(3).

### **False information**

(9) If at any time a person makes or furnishes, participates in the making of or causes another person to make or furnish a statement that the person knows, or would reasonably be expected to know but for circumstances amounting to culpable conduct (within the meaning assigned by subsection 163.2(1)), is a false statement (within the meaning assigned by subsection 163.2(1)) on a receipt issued by, on behalf of or in the name of another person for the purposes of subsection 110.1(2) or 118.1(2), the person (or, where the person is an officer, employee, official or agent of a registered charity or registered Canadian amateur athletic association, the charity or association) is liable for their taxation year that includes that time to a penalty equal to 125% of the amount reported on the receipt as representing the amount in respect of which a taxpayer may claim a deduction under subsection 110.1(1) or a credit under subsection 118.1(3).

### Audit findings:

Our audit of the Organization's official donation receipts revealed a number of instances of serious non-compliance with the Act. As such, we are of the opinion that revocation of the Organization's charitable status is a more appropriate measure than imposition of penalties, as explained in detail below.

- A registered charity cannot issue an official donation receipt if a donor has directed the charity to give the funds to a specified person or family. In reality, such a gift is made to

the person or family and not to the charity. The audit revealed that the Organization issued official donation receipts for donations that were directed to individuals.

The Organization's donor form contains two boxes that can be checked by the donor: General or Sponsorship. For sponsorship donations (which, we would point out, are actively encouraged), there is a space for the donor to indicate the name of the individual they would like to sponsor. The total amount of receipts issued for directed donations was \$133,814.80 in 2014 and \$45,561.55 in 2013. These amounts accounted for 60% and 40%, respectively, of all donation receipts issued by the Organization in those years.

- The name of the true donor is not always included on the receipt. There were several instances where the true donor was a corporation, but the receipt was issued to an individual (that is, to the shareholder of the corporation). In our view, this amounts to the provision of a false statement on a receipt.

Other areas of non-compliance with regard to the Organization's official donation receipts are as follows:

- The receipts do not contain the name, **Canada Revenue Agency**.
- Where multiple donations were given throughout the year, the receipt did not indicate the dates of the donations or the year in which they were given.
- The place or locality where the receipt was issued was not included on all receipts.
- Receipts for gifts in kind did not include a description of the gift.
- The Organization issued official donation receipts to other registered charities that donated money to the Organization.
- The Organization did not use proper procedures when replacing lost receipts. To replace a lost receipt, the Organization is required to issue a replacement receipt with a new number and all other required information, plus a notation to the effect that "**This cancels and replaces receipt #** \_\_\_\_." The Organization did not do this.
- The Organization is required to retain a copy of the lost receipt and mark it "**Cancelled**." The Organization did not do this.

Conclusion:

It is our position that the Organization issued official donation receipts for directed donations, which are not valid charitable gifts, provided false and/or incorrect information on its receipts, and failed to ensure that the content of its receipts complied with Regulation 3501 of the Act.

### Item 3: Books and records

#### Legislation:

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 records and books of account shall retain:

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

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

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

#### Audit Findings:

We found the Organization's books and records to be deficient in the following areas:

- Domestic expenditures – While some of the funds spent in Canada could be vouched to actual receipts or invoices, others could not. Some expenditures could only be traced to emails, statements, wire transfers, and/or cheques.
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<sup>1</sup> The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen, 2002 FCA 72 (FCA)

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

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

- Foreign expenditures – Funds spent outside of Canada did not have any supporting documentation at all.
- Intermediary agreements – The Organization does not have any records to substantiate that it exercised appropriate direction and control over the use of its resources outside Canada through structured agreements of any kind.
- Minute book – The Organization maintained a minute book that contained annual signed resolutions without meeting, documentation regarding the appointment or resignation of directors, governing documents, corporate filings, contracts, and agreements. However, it was lacking in notes about how beneficiaries are selected, who the beneficiaries will be in any given year, changes to the activities, and other significant events.
- Bylaws – The bylaws lack a dissolution clause.

Conclusion:

It is our position that the Organization did not keep books or records of account as required by subsection 230(2) of the Act.

**Item 4: Purposes (objects) and activities**

Legislation:

Under subsection 149.1(1) of the Act, a “*charitable foundation*” is defined as “*a corporation or trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof...*”

Charitable purposes are not defined in the Act and it is therefore necessary to refer, in this respect, to the principles of the common law governing charity. This is a two-part test. Firstly, the purposes it pursues must be wholly charitable and secondly, they must restrict the charity to activities that support its charitable purposes in a manner consistent with charitable law. An organization that has one or more non-charitable purposes or devotes resources to activities undertaken in support of non-charitable purposes cannot be registered as a charity.

Common law courts have grouped charitable purposes into four categories: the relief of poverty, the advancement of education, the advancement of religion, and other purposes beneficial to the community as a whole which have been identified as charitable by the courts. The fourth category identifies an additional group of specific purposes that have been held charitable at law, rather than qualifying as charitable every purpose that provides a public benefit. It is important to note that not all endeavours that directly or indirectly benefit the community are necessarily charitable at law. Many endeavours must be denied charitable status because they do not meet the definition or criteria of “charitable” as established by common law.

An organization's governing document must contain a clear statement of each of its purposes. If

the wording is broad or vague, a purpose is not likely to meet the legal requirements for registration as a charity. To be eligible for registration under the Income Tax Act, a purpose should generally identify three elements either expressly or implicitly through its context:

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

*Audit findings:*

The Organization's purpose, found in Paragraph 2 of the Memorandum of Association, reads (in part) as follows:

"The objects for which the Company is established are to receive and maintain a fund or funds and apply from time to time all or part thereof and/or the income therefrom exclusively for helping the disabled and for relief of poverty, and for such purposes:

- a) To pay out, use and apply the income and capital of the Company (except such amounts or properties from time to time comprising all or any part of the capital of the Company which have been received by the Company subject to a trust or direction that the amount or property given, or property substituted therefor, is to be held permanently by the Company for the purpose of gaining or producing income therefrom) upon and in respect of such charitable activities carried on by the Company within Canada or elsewhere as the directors of the Company may in their unfettered discretion determine and/or as a gift or gifts to any one or more organizations in Canada, and corporations resident in Canada and in the event of the winding-up of the Company by the court, or voluntarily, or subject to the supervision of the court, to pay and transfer all property and assets of the Company remaining after satisfying the interest of creditors and other persons in all the debts, obligations and liabilities of the Company, if any, to such *one* or more organizations in Canada, and corporations resident in Canada, and in such amounts and in such shares as the directors of the Company shall in their unfettered discretion determine; and
- b) to do all such things as are incidental and conducive to the attainment of the above objects..."

Paragraph B contains additional sections which are essentially power clauses, and do not affect our position as it relates to the Organization's purposes.

We would first advise that the wording of the Organization's purposes is very broad and could potentially allow for the Organization to undertake non-charitable activities. While this broad

wording may have been acceptable at the time of registration, that does not necessarily mean it would be acceptable if the Organization were to apply for registration today.

Similarly, the Organization's statement of activities at the time of registration was lacking in detail and would not necessarily be sufficient if the Organization were applying for registration today. As an example, the original description of activities read, in part:

*"The overall objectives of the foundation are very broad with respect to the memorandum of association. Only time, imagination, and need will determine the specific short term and long term objectives of the foundation.*

*However, in the near term, the foundation would like to devote its energies to acquiring a vehicle that would be capable of transporting electric powered wheelchair users.*

*The specific area of service would be residents in Northwest Calgary and the idea would be to provide at no charge the use of the vehicle to allow the disabled, and their care givers, easier methods of transportation for either medical, recreational or social purposes not easily facilitated through the HandiBus system."*

We note that the Organization had its registration revoked on June 24, 2000, for failure to file its T3010 Information returns, and it was subsequently re-registered as a charity, effective June 25, 2000.

In the Notification of Re-registration, received by the Organization on June 12, 2002, the CRA included the following cautionary paragraph:

*"We have re-registered the organization based on the information provided with the application. If the organization wishes to formally change its stated purposes or objects, it should obtain our prior approval, because this may affect its status. If the Organization wishes to undertake programs and activities that are materially different from those in the information already submitted to us, it should make sure that they are within the scope of the organization's stated purposes. Moreover, if the programs or activities are different from those we reviewed, they may not be charitable. So as a precaution, we recommend that you check with us beforehand. If the organization actually undertakes programs that are not charitable, its registration may be revoked."*

However, the CRA is primarily concerned with our review of the actual activities undertaken since registration, and, in particular, during the audit period.

Despite the caution paragraph mentioned above, the audit revealed that the Organization is currently undertaking non-charitable activities, the majority of which are outside the scope of the activities described at registration, and are not limited to furthering charitable purposes.

- Paying for treatments at the [REDACTED] for various

individuals – this activity is not charitable for the following reasons:

- it provides a private benefit to a for-profit entity;
- there is an insufficient vetting process to determine the financial need of the individuals receiving the treatment, resulting in a private benefit to individuals; and,
- there is no process in place to ensure that Federal guidelines involving treatment using hyperbaric oxygen therapy are being met. This form of therapy can be viewed as charitable if it is used to treat one of 13 specific conditions listed by Health Canada on its website (<http://www.hc-sc.gc.ca/hl-vs/iyh-vsv/med/hyper-eng.php>).

- Paying expenses and/or cash to individuals – there is an insufficient vetting process in place to determine whether or not the individuals are appropriate beneficiaries for relief from poverty, resulting in a potential private benefit.

Conclusion:

It is our position that the Organization's purposes are too broad to meet the requirements for continued registration as a charity. In addition, the Organization is currently undertaking activities that are substantially different from those for which it was originally registered, and those activities are not exclusively charitable as they are not limited exclusively to furthering charitable purposes. As well, the Organization does not appear to be conducting any of its own charitable activities, whether through an agent or otherwise. Finally, the majority of the Organization's resources are being directed to individuals and/or organizations that are not qualified donees.

**Item 5: T3010, *Registered Charity Information Return***

Legislation:

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file a *Registered Charity Information Return (T3010)* with the applicable schedules.

It is the responsibility of the Organization to ensure that the information provided in its T3010, schedules and statements is factual and complete in every respect. A charity is not meeting its requirement to file an Information Return if it fails to exercise due care with respect to ensuring the accuracy thereof.

Audit findings:

The Organization improperly completed the T3010 for the fiscal periods ending March 2, 2013,

and March 2, 2014, in that some items reported were incorrectly identified. We refer specifically to the following:

- Schedule 2 contained the following errors:
  - The Organization gave money to various individuals outside of Canada but failed to complete line 200 (Total expenditures on activities/programs/projects carried on outside Canada).
  - Line 260 should have been marked “yes”, because the Organization sent books to Fiji.
- The Organization received gifts from other registered charities but failed to indicate this on line 4510 (Total amount received from other registered charities).
- The Organization received interest income but reported it incorrectly on line 4530 (Total other gifts received for which a tax receipt was not issued by the charity), rather than on line 4580 (Total interest and investment income received or earned).
- Line 5050 (Total amount of gifts made to all qualified donees) was completed; however, the Organization did not make any gifts to qualified donees. Rather, the figure entered at line 5050 represents the amount that was paid to the [REDACTED]  
[REDACTED], a for-profit entity.
- The T1236, *Qualified donees worksheet*, was completed; however, the Organization did not gift any resources to other qualified donees.

Conclusion:

Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because the charity fails to file a *Registered Charity Information Return* as and when required under the Act or a Regulation. For this reason, it is our view 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 me at the number indicated below. My team leader, Francis Yu, may also be reached at [REDACTED]

Yours sincerely,

[REDACTED]

Jason Lefkemann  
Audit Division  
Edmonton Tax Services Office

Telephone: [REDACTED]  
Toll Free: 1-800-992-0562  
Facsimile: 780-495-4243  
Address: Suite 10, 9700 Jasper Ave  
Edmonton AB T5J 4C8

c.c.:

[REDACTED]

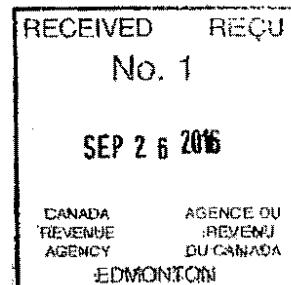
**JESSICA CHARITABLE FOUNDATION**

2300, 125 – 9<sup>th</sup> Avenue S.E.  
Calgary, Alberta, T2P 0P6

Via Mail

September 23, 2016

Canada Revenue Agency  
Suite 10, 9700 Jasper Avenue NW  
Calgary, Alberta  
T5J 4C8



Attention: Jason Letkemann, Auditor, Audit Division – Charities Directorate

**RE: Audit of the Jessica Charitable Foundation**  
**File No: 1026053**

Dear Mr. Letkemann,

The Jessica Charitable Foundation acknowledges receipt of your correspondence dated August 31, 2016 with respect to the above captioned matter. In response to the areas of non-compliance raised in your correspondence, The Jessica Charitable Foundation provides the following responses:

**Item One: Devotion of Resources**

The process Jessica Foundation uses to help others is very subjective and we believe, totally appropriate for a small charity. Larger charities that use up significant amounts of their budgets on administration may have more formal approval processes and checks and balances, but significant funds never benefit those in need. Jessica Foundation receives donations from two main sources: Rick Skauge donations and donations from individuals that want Jessica to be funded so that Jessica may support a cause that is dear to the donor. In other words, the scrutiny of the legitimacy of the need to assist is made not by reference to a set of criteria, but to the identification of need by the donors. The fact is that Jessica has supported various charitable causes identified by the donors as needing assistance which attests to the fact that the identification of need definitely takes place whether documented or not. Jessica has no administrative expense except bank charges. 100 percent of all monies raised go directly to beneficiaries needs. We are proud of the fact that we provide whole value for donations.

With respect to the comment of a waitress met on my travels, this occasion escapes my memory but helping someone in need regardless of their occupation still meets the criteria of Jessica helping the poor. Providing funds so that a cancer victim does not have to lose their house while recovering from cancer still meets the criteria of helping someone who is disabled and cannot work. The assistance to provide a donation so that individuals that have stayed [REDACTED] in Fiji and that were involved in raising money to provide clean drinking water for the poor people in Savusavu, Fiji is certainly well within Jessica's powers ( our charter provides for "helping the disabled and for the relief in poverty" and further states we can pay out in respect of charitable activities carried on by the company in Canada or elsewhere as the directors of the Charity , in their unfettered discretion determine. Amended Memorandum of Association clause 2(a)). In other words, there is absolutely nothing preventing Jessica from helping people that are poor that have no access to clean drinking water. The writer also operates

2 dive operations in Savusavu and is aware of the dire circumstances of some of the residents and the fact that the project was completed.

The items listed in the general ledger as Rick Skauge expenses were misleading. Rick Skauge had no expenses, this was just the way accounting used to identify recipients. If Rick Skauge identified a person of need then all monies directed to that person would be classified under Rick Skauge's name. Those funds primarily went to a divorced mother with three children under the age of 5 where one of the children had severe anxiety issues, the dead beat father of the children had a drug addiction and a spotty job history and the mother could not work. Had the CRA auditor asked for more detail and been more aware of the circumstances I am sure this donation should not be an issue.

Control of Activities Outside Canada and Gifts to Non-Qualified Donors.

The donations to [REDACTED] are a result of [REDACTED] soliciting funds from people she knows so that she can help support the orphanage. She personally visits the orphanage and keeps in contact. We would be happy to supply receipts if that is what is required so that we can continue supporting this worthwhile cause.

With respect to getting students to gather over 8000 books in Calgary and then having them shipped to Savusavu Fiji where the schools have very few books, Jessica had a major impact by having the books delivered to several schools. The deliveries were made by employees of [REDACTED] who work for Rick Skauge. If you require documentation of which schools and how many books were delivered to each we can supply that. The fact is Jessica and Rick Skauge know the books were delivered to the right place.

Providing a Private Benefit

[REDACTED] had an accident at school when he was 8 years old. He was released from hospital after 3 months and his parents were told that the doctors could do no more for him and that he could go home and stay paralyzed for the rest of his life and be on a feeding tube. As you point out later in your audit, Hyperbaric Therapy is only covered by the government in Canada for 13 or maybe now 14 procedures. [REDACTED] parents could not afford hyperbarics, the government wouldn't pay, and he was totally disabled. He has improved considerably since having over 200 hyperbaric treatments and continues to have them. He now has a walker, he can kick his legs, he can sit up, and much of this improvement his parents attribute to hyperbaric treatments. Any of [REDACTED] treatments have all been done either in Red Deer or Calgary Alberta (not at [REDACTED] as the CRA Auditor suggests). The Calgary treatments are at [REDACTED]. The fact that [REDACTED] is a for profit medical facility should have no bearing on the legitimacy of Jessica funding these treatments. There is no non-profit that provides these services. Jessica deals at arms-length with all providers of Hyperbarics and the Jessica directors are using their "unfettered discretion" by choosing to support disabled persons through funding some of hyperbaric treatments. Whether or not the provider of the hyperbaric services makes a profit has nothing to do with whether the persons supported by Jessica benefit from the treatment. Jessica would not use a provider if it thought the cost per treatment was out of line. In fact most of the treatments funded by Jessica are around \$200, OHIP pays around \$375 for the same treatment on the approved 13 items. When the Red Cross puts its action team together to help in disaster situations they pay many "for Profit" businesses to help get the job done. Jessica did nothing but the same by forwarding funds to the Hyperbaric Centers so the money could be used to pay for treatments of patients Jessica picked.

The donations made to Jessica by Craig Skauge and the funds then forwarded to the family in Tanzania have been used to build a new residence, pay for education, and provide other essential life benefits. Jessica did not understand the need for direction and proof of use and will now undertake to provide this and have proof of use.

#### **Item Two: Official Donation Receipts**

The donors receipt had a space for the donor to name an individual or be a general sponsor. For those who named an individual (mostly for hyperbaric treatments) the individual never received any money. All monies went to the service provider on the condition that the money be used to TREAT THE INDIVIDUAL with hyperbaric therapy. It should be noted that most, if not all, of the beneficiaries have severe medical disabilities and most have some improvement because oxygen is the main healing agent of the body and hyperbaric provides concentrated oxygen. Hyperbaric treatments are medical mainstream in Russia, Cuba, Japan and many European countries.

With respect to the receipts issued, Jessica did what it thought was correct. It is perfectly capable of providing receipts in the form indicated in the audit. We had never had a previous issue with the receipts issued and so had no idea that they were not in the form required.

#### **Item Three: Books and Records**

Books and records have been kept by Jessica since the beginning. We have access to back up for all of the donations and monies paid out. The books are managed by Berniece Wood, a [REDACTED] who has been working with Rick Skauge on many different companies for 27 years and can find back up for most anything going back that far. We have never given money to those not in need (either poor or disabled). Our intentions have always been to help and we were not aware of the need to document all giving. Again, I refer to our charter which clearly states Jessica has objectives to help the poor and the disabled in an "unfettered way". That to me means when we see a qualifying need and we have the money we can do some good. Unfortunately, our limited funds only allow us to do limited good.

#### **Item Four: Purposes (objects) and Activities**

Jessica has broad powers and it has had no reason to believe it should not exercise them. That being said, our only beneficiaries have been disabled or poor. The idea that paying monies to [REDACTED] [REDACTED] or any other hyperbaric clinic is done to benefit a for profit entity is completely missing the point. Anyone that we have received donations for hyperbaric treatments has been disabled....not able to work. Our charter provides that we can help the disabled....it doesn't set a means test....it simply says disabled. The comment that we need a vetting process to determine financial need ignores the fact that if a person is disabled we have the authority through our charter to help (unfettered discretion). Jessica would not be funding hyperbaric treatments for off label treatments if Medicare would cover them. The fact that off label treatments are not covered by Medicare in no way reduces the effectiveness of the treatments. In fact, by supporting hyperbaric treatments, Jessica is helping the entire community by giving them some information that would not be available using only

Health Canada guidelines. Some of these off label uses of hyperbaric may someday lead to Health Canada adding to the list of 13. When [REDACTED] walks and talks Health Canada should be inclined to review their stance.

We do not feel any of the auditors comments in this section have merit.

**Item Five Registered Charity Information Return**

Jessica has always had its returns completed by [REDACTED]. [REDACTED] is a CPA and has been in practise for 40 years. It appears he has made several mistakes in completing the form and we have advised him of your comments and we would expect better reporting for the next period.

**Summary**

Obviously things have changed since Jessica received its charter. The one thing that hasn't changed is Jessica's commitment to help the poor and the disabled. To keep its overhead to the minimum or zero.

Jessica's books from day one have been kept professionally and its returns have been prepared by a CPA. The President of Jessica is also the President of [REDACTED] and the CPA who completes our annual returns is the Audit Committee Chairman of [REDACTED]. Berniece Wood is a [REDACTED] and has kept Jessica's records since inception. Jessica has the right vision (to help the poor and disabled), has done significant good over the years, and would like to continue to do so. We are willing to look at how we account for things with guidance from CRA and we will definitely try to do a better job of our annual filings.

Jessica Foundation would like to maintain its status as a private registered charity.

Yours truly,

**Jessica Charitable Foundation**

Rick Skauge

**JESSICA CHARITABLE FOUNDATION**

**Comments on representations of September 23, 2016**

Based on the Canada Revenue Agency's (CRA) audit of the Jessica Charitable Foundation (the Organization), as explained in our letter of August 31, 2016 (attached), and after consideration of the Organization's response, our position remains that the identified areas of non-compliance with the provisions of the *Income Tax Act* (the Act) and the Income Tax Regulations warrant revocation of the Organization's registration.

Please find below:

- (1) A description of the issues raised in our letter of August 31, 2016;
- (2) A summary of the Organization's response, provided by Rick Skauge on September 23, 2016; and
- (3) The CRA's analysis and conclusion, following consideration of the response from the Organization.

The issues of concern are:

1. Devotion of resources in furtherance of exclusively charitable purposes, entailing the following:
  - a) Inadequate vetting process for poverty relief programs
  - b) Inadequate direction and control of programs outside of Canada
  - c) Private benefits that outweigh public benefit;
2. Failure to issue receipts in accordance with the Act and the Income Tax Regulations;
3. Failure to maintain adequate books and records;
4. Carrying out activities not in pursuit of exclusively charitable purposes; and
5. Failure to complete an accurate charity return.

## 1. Devotion of resources

### a) Inadequate vetting process for poverty relief programs

In our letter of August 31, 2016, we advised the Organization that it did not have an adequate process in place to determine if those receiving its assistance were eligible beneficiaries under the relief of poverty.

#### Organization's response:

In its response, the Organization stated that "the process Jessica Foundation uses to help others is very subjective and we believe, totally appropriate for a small charity." The Organization stated further that:

"[...] the scrutiny of the legitimacy of the need is made not by reference to a set of criteria, but to the identification of need by the donors. The fact is that Jessica has supported various charitable causes identified by the donors as needing assistance which attests to the fact that the identification of need definitely takes place, whether documented or not."

#### Analysis and Conclusion:

It is the responsibility of a charity to determine whom it helps, not its donors. The Organization failed to provide evidence that individuals who received assistance *actually* qualified as being in need, and were selected by the Organization. Moreover, the Organization clearly stated its position that the process it follows is appropriate and it did not intend to change its process.

The Organization's response did not alter our position that the process it follows for vetting potential beneficiaries of its poverty relief programs is inadequate.

### b) Inadequate direction and control of programs outside of Canada

As indicated in our letter of August 31, 2016, during the course of the audit, the Organization failed to demonstrate that it exercised adequate direction and control over its purported activities outside of Canada.

#### Organization's response:

The Organization's response referenced activities involving the [REDACTED] [REDACTED], books being sent to Fiji, and the involvement of individuals with those projects. The Organization stated that it "would be happy to supply receipts" and "If you require documentation of which schools and how many books were delivered to each we can supply that."

**Analysis and Conclusion:**

As explained in our letter of August 31, 2016, a registered charity can only further its charitable purposes by gifting to qualified donees, or by carrying out the activities itself or through an intermediary. There is no documentation to indicate that the Organization provided financial assistance to qualified donees.

As well, no documentation was submitted showing that the Organization effectively authorized, controlled and monitored the use of its resources outside of Canada.

While a charity does not need a written agreement with a representative (such as an agent) which the charity claims is carrying out activities on its behalf, the lack of such a document makes it difficult to validate such claims. The records provided during the audit, and the letter of September 23, 2016, did not allow us to determine if the Organization was controlling its purported activities.

As such, the Organization failed to demonstrate that it exercised adequate direction and control over its purported activities outside of Canada.

**c) Private benefits that outweigh public benefit**

During the audit, it was found that the Organization directly funded a for-profit enterprise to administer hyperbaric treatments to named individuals. In our letter of August 31, 2016, we stated that this activity equates to funding a non-qualified donee, which is in contravention of the Act.

**Response:**

In its response, the Organization argued that “the fact that [REDACTED] is a for-profit medical facility should have no bearing on the legitimacy of Jessica funding these treatments.” The Organization stated further that “whether or not the provider of the hyperbaric services makes a profit has nothing to do with whether the persons supported by Jessica benefit from the treatment.”

**Analysis and Conclusion:**

Registered charities may operate for the purpose of promoting health through activities such as providing education, operating clinics, and offering treatments, provided there is a benefit to the public as a whole. As well, in the course of carrying out its activities in furtherance of a charitable purpose, a registered charity may pay a for-profit entity for services that fulfill the charity's charitable purposes, for the public benefit. Any private benefit realized by the for-profit entity must be necessary, reasonable, and proportionate to the public benefit that is delivered.

Our concern is that the Organization did not select eligible beneficiaries to receive hyperbaric treatments and then pay for those treatments; it gave funds to a for-profit enterprise for treatments received by persons selected by others. The Organization only exercised direction and control over the funds it gave to the for-profit clinic, therefore it funded a non-qualified donee.

In summary, the Organization did not show that it effectively authorized, controlled, and monitored the use of its resources, and it funded a non-qualified donee; therefore, it did not devote its resources in furtherance of exclusively charitable purposes. It remains our view that there are grounds for revocation of its charitable registration under paragraph 168(1)(b) of the Act.

## **2. Issuing official donation receipts otherwise than in accordance with the Act**

As stated in our August 31, 2016, letter, the CRA's concerns were that:

- a) The Organization issued official donation receipts where the donor directed the donation to an individual or family and not to the charity;
- b) The name of the true donor was not always included on the receipt. In several instances, although the true donor was a corporation, the receipt was issued to an individual (specifically, the shareholder of the corporation); and
- c) There were issues regarding incorrect and missing information on the receipts.

### **Organization's response:**

In its response, the Organization stated that the named individuals never received any funds directly, as all funds were directed to the service provider on the condition that they be used to treat the named individual with hyperbaric therapy.

The Organization did not address the issue of ensuring that the true donor's name was on each receipt.

The Organization stated that it was capable of providing receipts in the form indicated during the audit, but that it had been unaware of what was required with regard to the format and content of official donation receipts.

### **Analysis and Conclusion:**

While the named individuals on the donor forms may not have received money directly from the Organization, the end result is the same as if they had. The Organization acted as a conduit, funding treatments for individuals who were identified by the same individuals who provided the directed funds.

As well, the Organization did not address our concern that not all official donation receipts contained the name of the true donor and, in some cases, contained incorrect information.

We acknowledge the Organization's willingness to make required changes, however, this does not change our position. The Organization issued official donation receipts for directed donations that were not valid charitable gifts, and incorrect information appeared on its receipts. As such, it is our view that there are grounds for revocation of the Organization's charitable registration under paragraph 168(1)(d) of the Act.

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

Our audit revealed that the Organization failed to maintain adequate books and records, as required by subsection 230(2) of the Act.

Specifically, it was found that while some of the funds expended in Canada could be reconciled with actual receipts or invoices, others could only be traced to emails, statements, wire transfers, or cheques.

#### **Organization's response:**

In its response, the Organization provided some examples of expenditures that included supporting documentation in the form of a statement, a wire transfer, or a cheque. As to its books and records, the response was, "We have access to back up for all of the donations and monies paid out."

#### **Analysis and Conclusion**

Simply asserting that books and records exist, or that a charity may have access to them is not sufficient; the requested books and records must be produced to enable the CRA to confirm that a charity is carrying out its activities in the required manner.

For this reason, it remains our position that the Organization has failed to maintain adequate books and records as required by subsection 230(2) of the Act. As such, there are grounds for revocation of its charitable registration under paragraph 168(1)(b) of the Act.

### **4. Carrying out activities not in pursuit of exclusively charitable purposes**

In our letter of August 31, 2016, we stated that the Organization's broad purposes, along with its activities that go beyond those described at the time of registration, mean it no longer meets the requirements for continued registration as a charity. We also explained that the provision of hyperbaric oxygen therapy would only be recognized as

a charitable activity if the therapy was used as an effective treatment for one of the 13 specific conditions identified on the Health Canada webpage<sup>1</sup>.

**Organization's response:**

In its response, the Organization acknowledged that "Jessica has broad powers, and it has not had reason to believe that it should not exercise them. The only beneficiaries of Jessica are disabled or poor people." The Organization also referred back repeatedly to the term "unfettered discretion", from its purposes, in arguing that it can essentially carry out any activity it wishes to, as long as it feels the beneficiaries are acceptable.

As to hyperbaric treatments, the response stated, "Hyperbaric treatments are medical mainstream in Russia, Cuba, Japan and many European countries" and "The fact that off label treatments are not covered by Medicare in no way reduces the effectiveness of the treatments."

**Analysis and Conclusion:**

The Organization's response did not offer any proposals to remedy our concerns about its purposes.

When a charity funds or provides health care services or products used to prevent or relieve a health condition we expect that the effectiveness of the health care service or product has been recognized for individuals with the identified health condition by Health Canada, or a provincial or territorial health authority in Canada. This expectation is explained in our guidance product, CG-021, *Promotion of health and charitable registration*<sup>2</sup>. We have not received documentation which demonstrates that the treatments the Organization has funded fall within this expectation.

We therefore continue to maintain our position that:

- 1) The Organization's purposes are broad;
- 2) The majority of the Organization's current activities fall outside the scope of the activities described at its time of registration; and
- 3) The activities are not limited to furthering exclusively charitable purposes.

As such, it remains our view that there are grounds for revocation of the Organization's charitable registration under paragraph 168(1)(b) of the Act.

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<sup>1</sup> See [www.canada.ca/en/health-canada/services/healthy-living/your-health/medical-information/hyperbaric-oxygen-therapy.html](http://www.canada.ca/en/health-canada/services/healthy-living/your-health/medical-information/hyperbaric-oxygen-therapy.html).

<sup>2</sup> See [www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/promotion-health-charitable-registration.html](http://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/promotion-health-charitable-registration.html).

## **5. Failure to complete an accurate information return**

In our letter of August 31, 2016, we stated that the Organization improperly completed its Form T3010, *Registered Charity Information Return*, and some items reported were incorrectly identified. These errors include inaccurate reporting of:

- Incorrect reporting on Schedule 2, *Activities Outside Canada*;
- Failure to report gifts from other qualified donees; and
- Incorrect reporting of interest income, gifts to qualified donees (which was actually amounts paid to a for-profit entity), and incorrect completion of the T1236, *Qualified donees worksheet* (the Organization did not make gifts to qualified donees).

### **Organization's response:**

In its response, the Organization stated that the reporting errors were made by a CPA who completed the form on the Organization's behalf. The Organization stated it advised him of our comments and that better reporting was expected for the next period.

### **Analysis and Conclusion:**

The CRA acknowledges the Organization's efforts to correct its reporting; however, it remains our position that the Organization improperly completed Form T3010 and Form T1236, and some items were incorrectly identified.

While we recognize these T3010 and schedule reporting errors may not amount to major inaccuracies on their own, in context with the more serious non-compliance issues identified in the AFL, there are grounds to revoke the registered status of the Organization.

## APPENDIX B

### 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.