



REGISTERED MAIL

APR 22 2015

Ark Angel Foundation

BN: 89024 1227 RR0001
File #: 3006648

Subject: Notice of Intention to Revoke
Ark Angel Foundation

Dear [REDACTED]:

We are writing further to our letter dated March 7, 2014 (copy enclosed), in which you were invited to submit representations as to why we should not suspend the receiving privileges and qualified donee status of the Ark Angel Foundation (the Organization) in accordance with section 188.2 of the *Income Tax Act*.

We have now reviewed the representations in your written response of April 10, 2014. After careful consideration, it is clear that the Organization not only disagrees with our position but shows no willingness to (a) comply with the requirements set out in the *Income Tax Act* with respect to its books and records, and (b) to implement actions which will ensure that due diligence is given in conducting its charitable activities, while at the same time ensuring that no undue benefit is conferred on any individual.

Considering the gravity of the non-compliance issues, we have decided to revoke the registration of Ark Angel Foundation in accordance with subsection 168(1) of the *Income Tax Act*. The basis for our concern and our decision is explained in Appendix A.

Conclusion

The mandate of the Canada Revenue Agency (CRA) is to ensure compliance with the provisions of the *Income Tax Act* and apply the law in a consistent manner to all registered charities regardless of their size. The audit by the CRA has revealed that the Organization is not complying with the requirements set out in the Act and that the seriousness of the non-compliance issues identified warrants the revocation of the Organization. It is the position of

the CRA that the Organization no longer meets the requirements necessary for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the Canada Gazette.

Notice is hereby given, pursuant to paragraphs 168(1)(b), and 168(1)(e) and Subsection 149.1(3) of the Income Tax Act, that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.

Business number	Name
89024 1227 RR0001	Ark Angel Foundation Vancouver BC

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

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

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

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

Consequences of revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on prescribed Form T2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or

before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix "B". Form T2046 and the related Guide RC4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our Web site at www.cra-arc.gc.ca/charities;

c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act*. As a result, the Organization may be subject to obligations and entitlements under the *Excise Tax Act* that apply to organizations other than charities. If you have any questions about your goods and services tax/harmonized sales tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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

Yours sincerely,

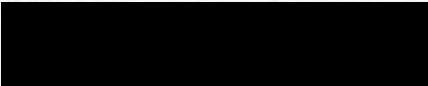


Cathy Hawara
Director General
Charities Directorate

Attachments:

- CRA letter dated March 7, 2014
- Organization's response of April 10, 2014
- Appendix A
- Appendix B

c.c.: Michael O'Sullivan, Director





CANADA REVENUE
AGENCY

AGENCE DU REVENU
DU CANADA

REGISTERED MAIL

Ark Angel Foundation
Suite 409, 120 Carlton Street
Toronto, ON
M5A 4K2

Attention: Mr. Michael O'Sullivan, Director

BN: 89024 1227RR0001

File #: 3006648

March 7, 2014

Re: Audit of Ark Angel Foundation

Dear Mr. O'Sullivan:

This letter is further to the audit of the books and records of the Ark Angel Foundation (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period December 1, 2008 to November 30, 2010.

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

AREA OF NON-COMPLIANCE:		
	Issue	Reference
1.	Failure to maintain adequate books and records	168(1)(b), 168(1)(e), 188.2(2)(a), 149.1(1), 230(2)
2.	Failure to devote resources to charitable activity	149.1(1), 149.1(3), 168(1)(b)

The purpose of this letter is to describe those 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 which may be subject to sanctions under the Act, and to provide the Organization with the opportunity to make representations or present additional information as to why a sanction should not be applied.

Registered charities must comply with the law, failing which penalties and/or suspensions may be applicable pursuant to sections 188.1 and/or 188.2 of the Act, which include suspension of the Organization's authority to issue official receipts and suspension of its

status as a "qualified donee". While the purpose of a sanction is to provide an alternative to revocation, notice may still be given of our 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.

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

1. Failure to Maintain Adequate Books and Records -

Pursuant to subsection 230(2) of the Act, every registered charity shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing:

- Information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under the Act;
- A duplicate of each receipt containing prescribed information for a donation received by it; and
- Other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under the Act.

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

- It can carry on its own activities;
- It can make gifts to other organizations that are on the list of qualified donees set out in the Act.

Where a registered charity is carrying out its own activity, it may only use its resources (funds, personnel and/or property) under the continued supervision, direction and control of its Board of Directors (the Board). Furthermore, the Board must ensure that it is capable of ensuring the CRA is provided with a means to examine the internal decision-making mechanisms through various records such as policies and procedures, minutes of Board and Annual General Meetings, activity reports, internal communications, agreements, and documentation which supports its expenditures.

Audit Findings -

Our audit included a review of the books and records of the Organization at the offices of [REDACTED] on August 29 - September 2, 2011. The accounting representative has also provided additional information in correspondence dated October 31, 2011, related to the activities and expenses which were incurred by the Organization.

The Organization is registered as a public foundation. Its activities relate to animal welfare and environmental conservation. The Organization provides gifts primarily to Ark Angel Fund to enable it to meet its on-going expenses (See Appendix A).

Mr. O'Sullivan, a Director of the Organization, is also a Director of Ark Angel Fund, Humane Society of Canada Foundation, and Humane Society of Canada for the Protection of Animals and the Environment.

Following is a breakdown of the revenue/expenses for the Organization for the period under review:

	2010	2009
Revenue:		
- donations		4,250
- gifts from other charities	7,259	33,000
- other		821
	<u>7,259</u>	<u>38,071</u>
Expenses:		
- consulting fees	5,264	10,006
- travel expenses	256	
- gifts to qualified donees		26,719
- other	1,582	913
	<u>7,102</u>	<u>37,638</u>

Below are the specific issues related to the Organization's books and records, which have been identified during the course of our audit.

(a) Direction and control -

Board members have a fiduciary responsibility to ensure that a registered charity is being operated in the public interest. They have a duty of diligence that requires them to be knowledgeable about the workings of the charity and ensure that the charity and its assets are cared for properly. Minutes of Board meetings are written documentation of the decisions made by its Directors. The minutes must provide clear evidence that it is the organization and its Board that is directing and controlling the organization's activity in support of its charitable purposes. Arguably, one of the requirements of this duty of diligence is that Directors must meet on a regular basis.

Our audit identified that the Organization's Board did not meet on a regular basis. While some meetings were held during the audit period, there was no indication that the Board was directing the affairs of Organization and reviewing its activities on a regular and timely basis. Our primary concern is that the Board did not provide on-going oversight and direction respecting the operations of the Organization.

When Board meetings were held, the minutes indicated a general lack of reporting by its Directors. Given the absence of this reporting, one could conclude that the Board did not discuss the operations of the Organization at its meetings. For example, we reviewed minutes of Board meetings which were held on December 10, 2009 and June 25, 2010, and minutes of the Annual General Meeting held on June 25, 2010. The absence of any formal discussion in relation to the Organization's programs appears to indicate a general lack of Board involvement in the on-going operation of the Organization.

As a result, it is our belief that the Board does not exercise the required degree of direction and control over the use of its funds, the activities to be conducted with those funds, or to ensure that the Organization is operating in accordance with the provisions of the Act. None of the minutes indicated that the Board was exercising any direction or control whatsoever; rather, it appeared that the function of the Board was simply to rubber stamp the activity and expenditures incurred by Mr. O'Sullivan. The minutes did not include any discussion of the fundraising or charitable activity which Mr. O'Sullivan carried out during the audit period. Rather, the items contained in the minutes for the Board meetings and Annual General Meeting were primarily of an administrative nature. The fact that the Board functions in this manner supports our findings that it lacks genuine input into any decision-making processes. It was a single director, Mr. Michael O'Sullivan, who appeared to have absolute authority in all phases of the Organization's operations. In fact, the activity being carried out could be considered to be the personal activity of Mr. O'Sullivan, as opposed to the Organization's activity.

(b) Supporting Documentation -

Source documents generally supported the expenditure information in the books and records, and included such documents as invoices, credit card slips, cancelled cheques, etc. However, the mere existence of a credit card slip or any other supporting information does not qualify the expense as legitimate and which warrants reimbursement to the individual or payment to the credit card company. An expense only becomes legitimate when it is used by an organization to achieve its charitable goals. The Organization had no formal system to pay its expenses.

With respect to payments for consulting fees to Mr. O'Sullivan, it is our understanding that Mr. O'Sullivan was not an employee of the Organization; he was considered to be an independent contractor to all of the organizations. The Board did not enter into a written agreement with Mr. O'Sullivan, in order to establish a legal and binding agreement which would define his role within the Organization and measure his performance against pre-determined targets.

Furthermore, the invoices received from Mr. O'Sullivan as support for reimbursed expenses did not contain any detail as to the specific undertakings/results of his work for each time period. As a result, it could not be ascertained that the activities being carried out by Mr. O'Sullivan were those of the Organization, and whether the expenses incurred were personal expenses, or they were expenses incurred on behalf of another charity in the group.

(c) Internal control -

The Organization did not maintain an effective system of internal control designed to provide reasonable assurance that its assets were safeguarded from loss, and that the accounting records were a reliable basis for the preparation of the financial statements. Internal controls provide reasonable assurance for accurate and reliable records; safeguarding of a charity's assets; and, enhancing compliance with applicable legislation and administrative policies.

The Board did not establish and maintain effective controls in the following areas:

- Authorization and payment of invoices - the same individual (Mr. O'Sullivan) had responsibility for authorizing payments and for issuing (i.e. signing) the cheque. This included responsibility for the authorization and payment of his expenses related to travel, accommodation, meals and entertainment.
- Cheque signing authority - only one signature (Mr. O'Sullivan) was required on the cheques.

As a result of all of the above deficiencies, the Organization was unable to maintain and provide books and records to satisfy the statutory requirements contained in subsection 230(2) of the Act.

2. Failure to Devote Resources to Charitable Activity -

A registered charity may only use its resources (funds, personnel and/or property) in two ways, both inside and outside Canada - for charitable activities undertaken by the charity itself, and for gifting to "qualified donees" as defined in the Act.

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

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

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

The Organization's stated objects are as follows:

- To fund, facilitate, promote and carry out activities and programs as well as fund and supply equipment, materials and facilities that contribute to the protection, relief of suffering and enhancement of the quality of life of animals;
- To fund, facilitate, promote and carry out activities and programs as well as fund and supply equipment, materials and facilities that contribute to the conservation, restoration, preservation and enhancement of the natural habitats and environments of animals;
- To fund, facilitate, promote and carry out activities and programs as well as fund and supply equipment, materials and facilities that increase public awareness and appreciation of the significance and relatedness of public policy initiatives in

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

maintaining and protecting the environment as well as enhancing and protecting animal welfare;

- To receive gifts, bequests, trusts, funds, and property and beneficially, or as a trustee agent, to hold, invest, develop, manage, administer and distribute funds and property for the objects of the Corporation, for and to such other organizations as are "qualified donees" under the provisions of the *Income Tax Act* and for such other purposes and activities as are authorized for registered charities under the provisions of the *Income Tax Act*; and
- To conduct any and all activities and exercise any and all such powers as are necessary for the achievement and furtherance of the objects of the Corporation.

The Organization's programs/activities identified on its *Registered Charity Information Return*, form T3010 under Section C2 for the fiscal period ending November 30, 2010, indicated that its only program was that "*it received donations*".

Audit Findings -

(a) Non-charitable expenditures -

The Organization's expenditures for the fiscal period ending November 30, 2010, as reported in its T3010 are as follows²:

- Line 5010 - Expenditures on management and administration - \$7,102

For the year ending November 30, 2010, the Organization's reported total revenues of \$7,259. This was a gift from the Humane Society of Canada for the Protection of Animals and the Environment. The Organization used these funds to pay the consulting fees (\$5,264) and travel expenses (\$256) of Mr. O'Sullivan. Because of the inadequacy of the books and records, we could not clearly identify whether all of the expenses related to the charitable activity of the Organization, or if a portion of the expenses were Mr. O'Sullivan's personal expenses.

Consequently, the compensation and travel expenses related to Mr. O'Sullivan may not constitute a charitable expense in their entirety. As reported on Line 5010 of the T3010, consulting, travel, and management/administration expenses have consumed 100% of the financial resources of the Organization in the fiscal period ending November 30, 2010. For the period ending November 30, 2009, these areas consumed approximately 30%³ of the financial resources of the Organization. These percentages represent an unacceptable ratio of the Organization's devotion of resources to non-charitable purposes when compared to the total expenditures of the Organization.

² Note: The Organization did not report any expenditure for charitable programs on Line 5000 – Charitable expenditures per the T3010

³ \$10,919 Total management/administration expense divided by \$37,638 Total expense = 30%

Although a registered charity will incur management and administration expenses, and may engage in fund-raising activities to maintain its existence and to obtain funds for the achievement of its charitable purposes, the resources expended for these activities must be incidental and ancillary to the charitable objects of the charity. The CRA does not consider expenditures incurred for management/administration and fundraising to be in and of themselves charitable. When these expenses become so significant that a large portion of the charity's resources have been devoted to such non-charitable activities, we can only conclude that these activities have become an end in itself, and not merely a means to attain a charitable end.

It is a registered charity's responsibility to demonstrate that its resources have been expended for charitable purposes. The Organization was unable to demonstrate that it has devoted all of its resources to charitable purposes.

B. Sanction Proposed:

188.2(2) - Notice of suspension – general

The Minister may give notice by registered mail to a registered charity that the authority of the charity to issue an official receipt referred to in Part XXXV of the Income Tax Regulations is suspended for one year from the day that is seven days after the notice is mailed

(a) if the charity contravenes any of sections 230 to 231.5;

The sanction for books and records infractions is a one year suspension of the charity's right to issue official donation receipts or to accept gifts from other registered charities.

Due to the serious nature of the non-compliance described above, it is our view that a suspension under 188.2(2)(a) is warranted. It is our opinion this sanction is substantiated by the audit findings and the additional information provided to date. Please note that the CRA is proposing suspending the Organization's receipting privileges and qualified donee status in accordance with section 188.2 of the Act in lieu of issuing a Notice of Intention to Revoke.

The Organization's Options:

a) No Response

You may choose not to respond. In that case, the Director General of the Charities Directorate may proceed with the application of penalties and/or suspensions described in sections 188.1 and/or 188.2 of the Act or 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 make representations regarding this proposal, 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 in the manner described in subsection 168(1) of the Act.

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

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

Yours sincerely,

John Dumalski
Audit Division
Vancouver Island Tax Services Office
c/o 9755 King George Blvd.
Surrey, BC
V3T 5E1
Telephone: [REDACTED]
Facsimile: (250) 363-3000

cc: [REDACTED]

April 10, 2014

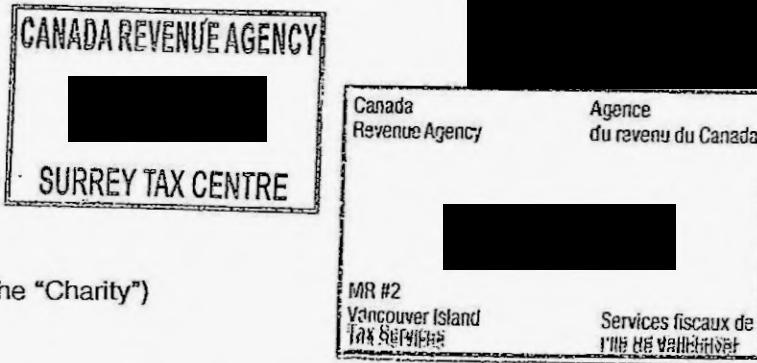
BY REGISTERED MAIL

Canada Revenue Agency
Vancouver Island Tax Services
c/o 9755 King George Blvd.
Surrey, BC
V3T 5E1

Attention: John Dumalski,
Audit Division

Dear Sir:

Re: Audit of Ark Angel Foundation (the "Charity")
BN# 89024 1227RR0001



We write in response to your Administrative Fairness Letter of March 7, 2014 (AFL) with regard to Canada Revenue Agency's (CRA) audit of the Charity for the period December 1, 2008 to November 30, 2010.

INTRODUCTION

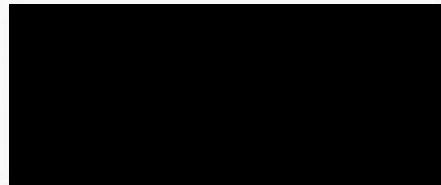
We begin by noting that CRA conducted an audit of the Charity for the Period December 200 to November 2006. At the conclusion of this audit, CRA sent what it characterized as an "education letter" to the Charity. This education letter was only 2 pages and did not raise any of the issues which are in your AFL. This is good news in that the Charity obviously had corrected the problems identified in the previous audit and you found no evidence of those particular problems continuing in the present audit. Since the Charity has demonstrated that it is responsive to an "education letter" it seems extreme to subject it to the sanction of suspension at this time.

The more important issue is that the Charity carried on its operations and was governed in the original audit much as it does in the current audit period. The Charity is mystified as to how CRA could go from issuing an education letter to threatening suspension with no explanation as to the radically different approach. The Charity is concerned that distinguishing factors relate to the AFL failing to be written with the requisite degree of fairness to be in accordance with the principles of fundamental justice for the determination of the Charity's rights and obligations guaranteed by subsection 2(e) of the Canadian Bill of Rights.

We will address the issues raised in the AFL.

Failure to Maintain Adequate Books and Records

The AFL's first alleged area of non-compliance is "Failure to maintain adequate books and records". The AFL cites subsection 230(2) and lists its 3 required areas of information. The only one which seems relevant is (a):



- (a) information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act;

The first reaction is to remind the Minister that Parliament set out the appropriate response to failure to maintain adequate books and records in the statute and it is not suspension. The appropriate response is set out in 230(3) which is self-explanatory and needs no elucidation:

(3) Where a person has failed to keep adequate records and books of account for the purposes of this Act, the Minister may require the person to keep such records and books of account as the Minister may specify and that person shall thereafter keep records and books of account as so required.

The appropriate response is for the Minister to specify such records and books of account as the Minister requires and only proceed to suspension if the Charity thereafter does not do as required.

The AFL then talks about the fiduciary responsibility of directors. The AFL does not acknowledge that the auditor was provided with the credentials of the 4 directors. These credentials, when considered, set out the fact that their combined experience in animal protection amounts to more than 100 years. The AFL makes the point that Mr. O'Sullivan is also a director of the Ark Angel Fund, Humane Society of Canada Foundation and Humane Society of Canada for the Protection of Animals and the Environment without disclosing the significance of this fact. We ask that you provide the Charity with all the documents you reviewed of these charities.

The AFL goes on at great length about the absence of meetings and minutes, supporting documentation and internal control. What the AFL is absolutely silent on is what provisions in the *Income Tax Act* set out the documentation required with regard to minutes of board meetings etc. Unless the absence of any of these documents is "grounds for the revocation of its registration under this Act", the Charity has not failed to comply with 230(2).

The Federal Court of Appeal in *Prescient Foundation v. MNR* 2013 FCA 120 very clearly disagreed with the Minister's contention that interpretation of the *Income Tax Act* should be determined on a standard of reasonableness. The Federal Court of Appeal held that "extricable questions of law, including the interpretation of the Act, are to be determined on a standard of correctness". The Court went on to say "in the normal course of litigation involving the Act, no deference is showed by the Tax Court of Canada, or this Court, to the CRA's or the Minister's interpretation of the Act..." It then held that "whether a charitable gift to a non-qualified donee is a valid legal ground to revoke a registration" was an extricable question of law which must be reviewed on a standard of correctness.

When formulating your response to this, please address the only case in which the courts have dealt with suspension, *International Charity Association Network v. the Queen*, 2008 TCC 3 in which Rip A.C. J. held at paragraph 76:

While the respondent is not a regulator of charities *per se*, the Act charges the CRA with the responsibility of protecting the public interest by ensuring the compliance of registered charitable organizations with the Act.

Judging from the AFL, it seems like the Minister is trying to act as "a regulator of charities *per se*" when she demands minutes of meetings etc. The Minister has been told by the Tax Court of Canada in a suspension hearing that her responsibility is confined to ensuring that registered charities comply with the *Income Tax Act*. We ask that the Minister demonstrate her willingness to operate under the rule of law by clearly articulating the basis in the Income Tax Act for the documents she is proposing to suspend the Charity for not having.

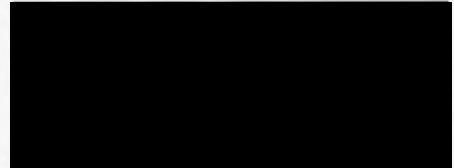
Determining whether the failure to document meetings and having the internal controls which CRA is demanding is a valid legal ground to revoke a registration is an extricable question of law just as "whether a charitable gift to a non-qualified donee is a valid legal ground to revoke a registration" is an extricable question of law. Until CRA provides some statutory basis to support the demand for documents that CRA is imposing on the Charity and establishes that those demands are "grounds for the revocation of its registration under this Act", the Charity has not failed to comply with subsection 230(2).

Being unable to find CRA's authority in the *Income Tax Act*, the Charity then proceeded to search CRA's website to obtain guidance on what level of bureaucratic documentation was required of a charity with \$7,000 annual income to avoid suspension. It was unable to find this information. Being a charity rather than government, its instincts are to reduce bureaucratic administration. Consequently, the Charity was surprised to learn that minutes of a board meeting that "indicated a lack of reporting by its Directors" is grounds for suspension.

Given that each one of the directors has decades of experience in animal protection work, it is absolutely critical that you explain the basis upon which you came to the "finding that [the Board] lacks genuine input into any decision-making processes". I have already been instructed to cross-examine Mr. Dumalski on this finding should the suspension proceed and this matter go to the Tax Court of Canada.

Most of the allegations seem to reflect a bias based upon the selective presentation of facts. Consequently, we ask that you provide us with copies of all the documentation which you, in your capacity as auditor preparing the AFL, took away from the Charity when you conducted this audit and made your determination. Fairness requires disclosing the documents you committed to this file as well as those you omitted.

Our concern stems significantly from the one concrete example you cited which was that with regard to cheque signing authority "only one signature (Mr. O'Sullivan) was required on the cheques". The directors of the Society had duly passed a board resolution requiring two signatures if the amount of the cheque was over \$25,000 or only one signature if it was under. To represent



that Mr. O'Sullivan is the only signatory and to neglect to mention the ceiling on the single signatory are both material misrepresentations which give rise to a significant apprehension of bias. When you allege both that the directors do not pass resolutions providing controls and then misrepresent the board resolution you do talk about specifically in the AFL, the Charity has grounds for its concern about CRA's motivation in moving to the drastic step of suspension at this time.

FAILURE TO DEVOTE RESOURCES TO CHARITABLE ACTIVITY

The AFL states that the Charity was registered as a public foundation, which it was. The AFL then goes on to allege failure to devote resources to charitable activity. It is not clear how this is relevant because this is a test for charitable organizations. There is no basis for alleging that the Charity "ceases to comply with the requirements of this Act for its registration". However, we note that the AFL does not seek to base its proposed sanction of suspension on ITA 168(1)(b) so will not waste further time on this issue.

CONCLUSION

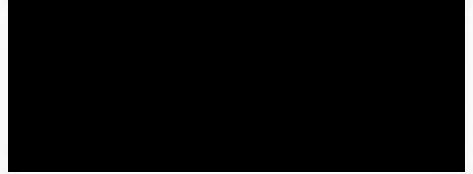
We realize that CRA is provided with unlimited funds by the taxpayer to conduct audits. Nevertheless, it is disturbing to think that the Charity has been through 2 audits covering 5 years when its revenues in the five fiscal years being audited was \$2,000 in 2004, \$12,030 in 2005, \$21,030 in 2006, \$38,017 in 2009 and \$7,259 in 2010. It would seem that the public interest and the charitable sector would be better served by CRA if its auditors applied their time and attention to conducting audits of registered charities that have not been recently audited and perhaps those charities with revenues substantive enough to merit the costs to taxpayers and to the charitable sector for CRA to conduct audits to ensure compliance of registered charities.

It is not reasonable for CRA to take the position that the problems alleged in the AFL justify suspension. The Minister has identified neither a pressing public policy basis for suspension nor a significant contravention of the *Income Tax Act*. In *International Charity Association Network v. the Queen*, 2008 TCC 3 Rip A.C. J. held at paragraph 77:

In ensuring compliance of registered charities with the Act, the CRA is acting in the interests of the public — by protecting a degree of public confidence in the charitable sector as well as by protecting potential taxpayer donors.

CRA is not protecting "a degree of public confidence in the charitable sector" unless it operates fairly and in accordance with the law. It undermines confidence in CRA as a regulator – and therefore the charitable sector as a whole – if CRA initiates a suspension which will have a catastrophic impact on a registered charity based on a vendetta against the charity rather than adherence to the rule of law.

Ark Angel Foundation



We ask that you address the questions of law raised in this letter before issuing any notice to the Charity. We also ask that you provide the documents requested before issuing any notice to the Charity.

Sincerely,



Appendix A

Gifts Between Ark Angel Fund (AAF); Ark Angel Foundation (AAFDN); Humane Society of Canada Foundation (HSCF); Humane Society of Canada for the Protection of Animals and the Environment (HSCPAE)

1. Ark Angel Fund (registered on October 1, 1998):

YEAR	GIFTS TO QD's (Note 1)
Sep. 30, 2010	800
Sep. 30, 2009	2,500
Sep. 30, 2008	Nil
Sep. 30, 2007	10,250
Sep. 30, 2006	Nil

Note 1:

2010: Humane Society of Canada Foundation - \$800

2009: Other - \$2,500

2008: Nil

2007: Other - \$10,250

2006: Nil

2. Ark Angel Foundation (registered on June 2, 1998):

YEAR	GIFTS TO QD's (Note 1)
Nov. 30, 2010	Nil
Nov. 30, 2009	26,719
Nov. 30, 2008	750
Nov. 30, 2007	7,000
Nov. 30, 2006	7,000

Note 1:

2009: Ark Angel Fund - \$24,969; Other - \$1,750

2008: Other - \$750

2007: Other - \$7,000

2006: Other - \$7,000

3. Humane Society of Canada Foundation (registered on March 26, 2009):

YEAR	GIFTS TO QD's (Note 1)
Feb. 28, 2011	330,566
Feb. 28, 2010	95,272

Note 1:

2011: HSCPAE - \$302,566; Ark Angel Fund - \$23,000; Ark Angel Foundation - \$5,000

2010: HSCPAE - \$80,272; Ark Angel Fund - \$15,000

4. Humane Society of Canada for the Protection of Animals and the Environment
(registered on June 25, 1993):

YEAR	GIFTS TO QD's (Note 1)
Dec. 31, 2011	4,555
Dec. 31, 2010	11,059
Dec. 31, 2009	65,500*
Dec. 31, 2008	58,272
Dec. 31, 2007	79,522
Dec. 31, 2006	82,426

Note 1:

2011: Ark Angel Fund - \$3,000; Ark Angel Foundation - \$1,055; Other - \$500

2010: Ark Angel Fund - \$11,059

2009: Ark Angel Fund - \$29,000; Ark Angel Foundation - \$33,000; Other - \$3,500

2008: Ark Angel Fund - \$30,500; Ark Angel Foundation - \$16,000; Other - \$11,772

2007: Ark Angel Fund - \$32,000; Ark Angel Foundation - \$31,000; Other - \$16,522

2006: Ark Angel Fund - \$23,000; Ark Angel Foundation - \$17,000; Other - \$42,426

* This amount excludes a specified gift of property valued at \$362,000 to Humane Society of Canada Foundation.

Ark Angel Foundation

In your representation letter of April 10, 2014, you noted that the Organization was previously audited for the fiscal years December 2004 to November 2006 resulting in the Canada Revenue Agency (CRA) issuing an education letter. Our education letter stated that "It should be noted that the review did not cover the full scope of your operation." Our audit for the periods December 1, 2008 to November 30, 2010 covered the full scope of the Organization's operation and the non-compliance issues identified as a result of this later audit were outlined in our letter dated March 7, 2014.

1. Failure to maintain adequate books and records

The audit revealed that the Organization was not complying with the requirements set out in the *Income Tax Act* with respect to its books and records. The Organization has a legal responsibility to maintain information which supports its charitable nature, which it has failed to do.

(a) Books and records to be maintained

Your representations state that the *Income Tax Act* does not describe the specific books and records to be maintained by a registered charity.

Response

We acknowledge that the Organization has provided what it considers to be its complete books and records for the purpose of our audit. The CRA has difficulty relying on the information provided, and having assurances as to the nature of payments made to the Organization's director. Our audit revealed a significant number of expenses related to consulting fees paid, yet the records provided fail to demonstrate what Mr. Michael O'Sullivan was consulting upon or how it related to the charitable mandate of the Organization.

Further, the invoices reviewed did not contain any detail as to the specific undertakings or results of the work being performed for the Organization and in the absence of minutes of board meetings or other documentation, we were unable to verify by other means the nature of the consulting undertaken. As a result, the CRA could not ascertain that the activities being carried out by Mr. O'Sullivan were those of the Organization or whether the expenses incurred were personal in nature. The representations have not further clarified the nature of these consulting fees nor have they provided additional details supporting that they were incurred for a charitable purpose.

While the *Income Tax Act* does not specify the exact records¹ that must be maintained by a registered charity, the Organization must maintain books and records that contain sufficient

¹ "Record" is broadly defined in subsection 248(1) of the *Income Tax Act*, and would include most types of information, whether in writing or any other form.

information to allow us to verify its compliance with the *Income Tax Act* and to support its continued qualification for registration.

It is our position that the Organization has failed to maintain complete and accurate records allowing the verification of the information contained in its Form T3010, *Registered Charity Information Returns* and its financial statements.

(b) Fiduciary responsibility of directors

The representations questioned the legality of our concerns in regard to the absence of informative board minutes and stated that the Organization provided the auditor with information on its directors and identified each individual's background respecting animal protection.

Response

We agree that the CRA cannot demand that an Organization keep board minutes² nor can the CRA demand that internal controls be implemented or maintained. However, the CRA has an obligation to ensure that there is compliance with the income tax legislation and regulations relating to charities, thereby contributing to the integrity of the charitable sector and the social well-being of Canadians. It is reasonable to assume that the Organization would have records and controls which demonstrate that due diligence is exercised in its charitable operations.

The records provided during the audit did not allow us to determine if the expenses reported on the information returns were incurred for the Organization's charitable activities. It is therefore our position the Organization did not exercise due diligence.

(c) Cheque signing

The representations state that a single authorized signer has responsibility for signing cheques where the value of the cheque is less than \$25,000, and two signatures are required where the cheque amount exceeds \$25,000.

Response

No documentation to support this claim was provided during the course of the audit or as part of the representations.

The Organization's records over a 10 year period (2004-2013) indicate that the individual line expense usually did not exceed \$25,000 with the only exceptions being in 2007 and 2009 when the Organization gifted to a qualified donee. Our concerns with respect to internal control as outlined in our correspondence dated March 7, 2014 are unchanged given the additional information recently provided.

² The Canada Business Act part IV, section 20.(1)(b) requires the keeping of minutes.

Under paragraph 168(1)(e) of the Act, a charity may be revoked because it fails to comply with or contravenes section 230 of the Act dealing with books and records. It is our position that the Organization has failed to comply with and has contravened section 230 of the Act. For this reason alone there are grounds to revoke the registered status of the Organization.

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

The representations state that the Organization fails to see how the “failure to devote resources to charitable activity” is a relevant test for a public foundation. Subsection 149.1(1) of the *Income Tax Act* states that a “public foundation, at a particular time, means a charitable foundation.” The subsection also provides the definition for a charitable foundation and charitable purposes as follows:

A “charitable foundation means a corporation or trust that is constituted and operated exclusively for **charitable purposes**, (emphasis added) 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, and that is not a charitable organization.”

Based on the above, it is our view that a public foundation must be established for exclusively charitable purposes and must devote its resources either to charitable activity carried on by it or as gifts to qualified donees. Subsection 149.1(3) also provides for the revocation of a public foundation.

CRA’s audit has revealed that the Organization was not complying with the requirements set out in the Act with respect to devoting all of its resources to charitable activities.

(a) Non-charitable activities

The representations deny that funds were expended on non-charitable activities or by way of conferring a personal benefit upon the directors.

Response

The transactions between the Organization and its directors primarily relate to consulting fees paid to Mr. O’Sullivan. This is a source of concern. It is our understanding that Mr. O’Sullivan was not an employee of the Organization; he was considered to be an independent contractor to all of the related organizations. The board did not enter into a written agreement with Mr. O’Sullivan. A legal and binding agreement which would define his role within the Organization and measure his performance against pre-determined targets did not exist. Furthermore, the invoices received from Mr. O’Sullivan did not contain any details as to the specific undertakings or results of his work for each time period. As a result, it could not be ascertained that the activities being carried out by Mr. O’Sullivan were those of the Organization or whether the related expenses incurred were personal in nature.



[REDACTED] As pointed out in the representations, the Organization's revenues for the fiscal periods were \$2,000 in 2004, \$12,030 in 2005, \$21,030 in 2006, \$38,017 in 2009 and \$7,259 in 2010. It is important to note that Mr. O'Sullivan had access to the revenue of [REDACTED] and was responsible for the day to day operations of these organizations.

The books and records which were provided for audit purposes do not provide a clear indication that the expenses were not personal in nature. Given that these transactions were not fully documented, the Organization was unable to demonstrate by any means that no personal or undue benefits were conferred to the directors by the Organization.

In conclusion, the Organization has failed to demonstrate that it meets the requirements for continued registration as a charitable organization under subsection 149.1(1) of the Act. Under paragraph 168(1)(b) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it fails to comply with the requirements of this Act for registration. The Organization has failed to comply with and has contravened paragraph 168(1)(b) of the Act and for this reason alone there are grounds to revoke the registered status of the Organization.

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.