



REGISTERED MAIL

MAR 11 2015

Bnei Chesed Foundation



BN: 86054 3768RR0001

Attention: Aaron Mizrahi

File #: 3034651

**Subject: Notice of Intention to Revoke
Bnei Chesed Foundation**

Dear Mr. Mizrahi:

I am writing further to our letter dated May 13, 2014 (copy enclosed), in which you were invited to submit representations as to why the registration of Bnei Chesed Foundation (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act*.

We have now reviewed and considered your written response dated June 10, 2014. However, notwithstanding your reply, our concerns with respect to the Organization's failure to devote all its resources to its charitable purposes, transfers made to non-qualified donees and failure to maintain adequate books and records have not been alleviated. Additionally, the Organization was advised in writing and orally¹ of the two years being audited and our audit proceeded on the basis that the records for the second year were not provided. The basis for our concerns is explained below.

Failure to devote resources to charitable purposes and gifting to non-qualified donees

Our audit revealed that the Organization lacked adequate documentation to support that its funds were used for charitable programs carried on by the Organization or gifted to qualified donees. As outlined in our previous letter, the Organization distributed significant funds for a variety of reasons which, as revealed during our audit, could not be adequately supported. According to the representations, the Organization maintains the position that it has furnished adequate detail, reaffirms that all the beneficiaries were in fact needy and that transfers to Yeshiva Imrei Aish were for charitable purposes. We disagree.

¹ A query letter was issued to the Organization on January 23, 2012 indicating the records for the 2011 period were required and the issue was discussed on February 14, 2012. The Organization provided records to CRA on February 28, 2012 and noted the records provided were sufficient per our requests.

The Organization was unable to or failed to maintain documentation to support that the funds were ever in fact paid to the beneficiaries or that the beneficiaries were proper objects of charity. The beneficiary information was incomplete and thus inadequate at properly illustrating who the beneficiaries were, that the funds were both transferred to and received by the beneficiaries and that the funds were used for charitable purposes.

Regarding the \$1,050,000 purportedly transferred to Yeshiva Imrei Aish, the Organization represents it provided the CRA with details on the use of the funds such as names and addresses of the beneficiaries, yet as outlined in our previous letter, the information provided was not sufficient to determine the funds were used for charitable activities carried on by the Organization using an agent or by gifting funds to a qualified donee. The school is not a qualified donee as defined by subsection 149.1(1) of the Act nor could we determine the existence of the school based on our research.

Our position also remains unchanged regarding the insufficient documentation provided concerning the Sefer Torah's acquired for \$210,000.

It is our opinion that the Organization has not been able to support, through its representations, that its resources were used exclusively for its charitable programs. No additional documentary evidence has been provided to support the claims made in the representations. Therefore, by failing to demonstrate that the Organization devoted its resources to charitable activities, it has pursued non-charitable activities. As a result, the Organization has failed to satisfy the criteria that permit it to be registered by virtue of subsection 149.1(1) of the Act as a charitable organization. Consequently, this constitutes one of the reasons to recommend revocation of registration of the Organization by virtue of paragraph 168(1)(b) of the *Income Tax Act*.

Failure to Maintain Adequate Books and Records

The Organization failed to provide adequate supporting documents for both periods audited that would support the activities of the Organization and the expenses reported on their annual information returns. Of the \$4,606,532 in charitable expenses reported for 2010, our review found books and records to support \$186,000 in charitable expenses. In addition to this, there was discrepancy of \$10,000 between the amounts reportedly paid to Yeshiva Imrei Aish on the T3010 and the amount recorded in the documents provided.

The representations, although not specifically addressing the failure to maintain and provide adequate records, reiterate several times that details were furnished, that the transactions did take place and were for charitable purposes². We remain of the

² The representations also indicated the Organization's records may have been destroyed due to a break in at the office of [REDACTED] yet the document provided does not list any effects stolen nor was this incident brought to the auditor's attention during the audit period.

position that the Organization has not maintained nor provided adequate records demonstrating it operates for charitable purposes.

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 under paragraph 168(1)(e) of the Act.

Conclusion

The audit by the Canada Revenue Agency (CRA) has revealed that the Organization is not complying with the requirements set out in the *Income Tax Act*. In particular, it was found the Organization did not devote all its resources to charitable purposes and activities, gifted resources to non-qualified donees and failed to maintain proper books and records. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements necessary for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letter dated May 13, 2014, I wish to advise you that, pursuant to subsection 168(1) of the Act, I propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

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

Business Number	Name
8604543768RR0001	Bnei Chesed Foundation Boisbriand Québec

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 "A", attached.

Consequences of Revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form 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 "A". 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, I wish to advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered charity throughout the year)



REGISTERED MAIL

Bnei Chesed Foundation
[REDACTED]

Attention: Mr. Aaron Mizrahi

BN: 86054 3768 RR0001

File #: 3034651

May 13, 2014

Subject: Audit of Bnei Chesed Foundation

Dear Sir:

This letter is further to the audit of the books and records of the Bnei Chesed Foundation (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the registered charity for the period from February 1 2009 to January 31, 2011¹.

The results of this audit indicate that the Organization appears to be in non-compliance of certain provisions of the *Income Tax Act* (the Act) or its Regulations. The CRA has identified specific areas of non-compliance with the provisions of the Act or its Regulations in the following areas:

AREAS OF NON-COMPLIANCE:	
Issue	Reference
1. Failure to devote all of its resources to its charitable purposes	149.1(1), 168(1)(b)
2. Transfers made to non-qualified donees	149.1(2), 168(1)(b), 188.1(4) and (5)
3. Failure to Maintain Adequate Books and Records	149.1(2), 168(1)(b), 168(1)(e), 230(2)

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.

¹ The Organization only provided records for the fiscal periods ending January 31, 2010 and no records were provided for the fiscal period ending January 31, 2011. As such, the audit findings outlined in this letter, only discuss issues that were discovered during our review of FPE January 31, 2010.

In order for a registered charity to retain its registration, legislative and common law compliance is mandatory, absent which the Minister of National Revenue (the Minister) may revoke the Organization's registration 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:

A. Failure to devote all of its resources to its charitable purposes

Legislation:

In order for an organization to be recognized as a charity, it must be constituted exclusively for charitable purposes, and devote all its resources to charitable activities in furtherance thereof.² In the Supreme Court decision of *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.* [1999] 1 S.C.R. 10, Iacobucci J. speaking for the majority, summarized the requirements for charitable registration at paragraph 159, as follows:

"In conclusion, on the basis of the Canadian jurisprudence, the requirements for registration under s. 248(1) come down to two:
(1) the purposes of the organization must be charitable, and must define the scope of the activities engaged in by the organization; and
(2) all of the organization's resources must be devoted to these activities."

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

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

- It can carry out its own charitable activities. These activities are usually carried out by persons under the registered charity's immediate control (for example -

² *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)

members, employees, or volunteers), or by its intermediaries (for example - agents or contractors). 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; and

- It can make gifts to other organizations that are qualified donees as defined by the Act. Qualified donees include Canadian registered charities, certain universities outside Canada, the United Nations and its agencies and a few charitable organizations outside Canada that have received a gift from Her Majesty in right of Canada. Note that individuals and most organizations outside Canada, such as foreign charities and international aid agencies, are **not** qualified donees. (See section "B." below)

In both cases, a charity must maintain a record of steps taken to direct and control the use of its resources, as part of its books and records, to allow the CRA to verify that all of the charity's resources have been used for its own activities.

We refer to the comments of the court in *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*³:

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

And

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

As re-iterated by the Federal Court of Appeal, it is not enough for a charity to fund an agent that carries on certain activities. The Act requires that the agent actually conduct those activities *on the organization's behalf*⁴:

"...A charity that chooses to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any

³ *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, 2002 FCA 72 at paragraphs (FCA) at paragraphs 40 and 30

⁴ *Bayit Lepletot v. Minister of National Revenue*, [2006] FCA 128

acts that purport to be those of the charity are effectively authorized, controlled and monitored by the charity.⁵

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

Audit Findings:

The Organization was registered as a charitable organization effective September 24th, 2008. As stated in its governing documents, the Organization was established to relieve poverty, advance religion (specifically Judaism), and advance education through the operation of Jewish schools.

As part of its objective to further the education of those involved in the Jewish faith, the Organization stated that during fiscal period end (FPE) January 31, 2010, it provided scholarships of \$2,301,400, to students attending rabbinical school in Canada. A list was provided to us, which the Organization claimed contained detailed personal information for all of the scholarship's beneficiaries, including the amount that they received.

The Organization explained that to finance the scholarships, it would withdraw funds from its bank account, and provide the funds to the beneficiaries in cash. However, it could not provide documentation to support that the funds were ever in fact paid to the beneficiaries. This is due to the fact that the beneficiary information is incomplete and thus inadequate at properly illustrating both who the beneficiaries are and that the funds were both transferred to and received by the beneficiaries.

The list contained the following details of each beneficiary: the family name, the first initial of the given name, a partial address (street name and house number were provided, city and postal code was not provided), and the amount received. A search of CRA internal databases was made to verify the accuracy of the list of beneficiaries; however, we were unable to identify any of the beneficiaries chosen in our sample, and therefore unable to confirm the income or information about the beneficiaries. The information provided regarding the purportedly approved beneficiaries was inadequate and prevented us from verifying the beneficiaries existed.

In addition, the Organization failed to demonstrate they had established criteria as to:

- whom the beneficiaries of its scholarships should be – is it a means or merit based test? What are the means or merit applicants are to be evaluated against?;
- that the beneficiaries applied for the scholarship(s);

⁵ Canadian Magen David Adom for Israel v. Minister of National Revenue, [2002] FCA 323 at paragraph 66

assist people who have financial difficulties. Included in this listing are payments of \$102,000 to someone for "special bed \$15,000", "nurses around the clock \$70,000", and "medication and treatment \$17,000"; \$50,000 to another person for "cancer treatments for himself and support to his family"; \$36,000 to another person for "sick children and hearing problem". We also identified that six persons were provided \$63,000 yet the listing provided contains no details on why funds, averaging \$10,000/person, was provided. Additionally, we found three instances wherein persons residing at the same residence were provided funding and six persons with no residential information listed obtaining \$130,000 in funding. The Organization stated that it withdrew the funds in cash from its bank account, and made the payments⁸. As can be viewed from this listing, the details are quite vague yet the sums of cash given are quite large and were all purportedly given in cash⁹.

A concerning element of these particular gifts, is that the Organization could neither show that there were any pre-determined criteria to help them determine who to give these funds to, nor was the Organization able to show that they maintained any direction or control over how the people spent the funds once received.

In an attempt to support the \$739,000 given to various people, the Organization provided us with a document listing the names of those receiving funds, a brief description of the reason the money was given to each recipient (e.g., wedding), and the specific amount paid to each person. In spite of these documents, the Organization could not provide us with any documentation to clearly support that the beneficiaries were sent the funds nor that they were used for charitable purposes. Furthermore, the Organization failed to provide the criteria used in the calculation as to how beneficiaries were determined.

Therefore, it is our opinion that the Organization has not demonstrated that it was devoting these particular resources (i.e., of \$739,000) to charitable activities to support its charitable purposes.

B. Transfers to non-qualified donees

Legislation:

Under the Act and Policy Statement CSP-N01, *Funding a Non-qualified Donee* a registered charity that transfers resources to a non-qualified donee is liable to a penalty equal to 105% of the amount of the benefit. This penalty increases to 110% and the suspension of tax-receiving privileges for a repeat infraction within 5 years. A registered charity that contravenes or continues to contravene the Act could also have its registration revoked.

⁸ This information was provided to us in a T-997 form, received on January 23rd, 2012.

⁹ A review of this listing reveals 13 persons were provided \$262,000 in wedding assistance alone which is an average of \$20,000 given to each person; three persons were provided \$88,000 in financial assistance to aid with debts (debts or groceries); and five persons were provided \$92,000 for assistance with sick children.

Audit Findings:

During our audit, we noted that the Organization issued cash to the following non-qualified donees (details follow):

Recipient (Entity)	Amount	Year
Yeshiva Imrei Aish	\$1,050,000	2010

Recipient (Individuals)	Amount	Year
[REDACTED]	\$210,000	2010
Scholarships and Distributions	\$2,301,400	2010
Tutoring and weddings and help	\$739,000	2010
Montreal Distribution	\$130,000	2010
Total Payments	\$3,380,400	

Entity

The Organization stated that it provided \$1,050,000 of financial support to YIA, a non-qualified donee school during FPE January 31, 2010. To support that these funds were being used for charitable purposes, the Organization provided us with a list containing: a brief description of the expenses, the partial names and addresses of the beneficiaries of the donations made to the school, signed confirmation from [REDACTED] [REDACTED] (the direct recipient of the funds allocated to YIA), that the Organization had gifted the funds to the school in cash and a copy of an itinerary of the scheduled school day.

The CRA also noted as a concern that, after conducting research and using various tools available internally to the CRA, as well as publicly available research tools, no information could be found on the YIA. Additionally, no information identifying YIA as a school could be found.

The Organization also stated that it paid \$40,000 to 21 different students of YIA (i.e., \$840,000 in total) for scholarships, and that the balance of \$200,000 was paid for various amenities such as food & lodging, transportation for field trips, teachers and tutors, miscellaneous religious texts, etc. The Organization did not provide any information regarding the remaining \$10,000 transferred to YIA. To fund these amounts, the Organization stated that it would withdraw the funds from its bank account, and make the payments, to YIA, in cash¹⁰.

Despite these claims, the only supporting documentation that the Organization could provide to us as support was the aforementioned confirmation letter from [REDACTED] [REDACTED] acknowledging that he had received funds (\$1,050,000 cash) from the Organization. Furthermore, other than [REDACTED] letter, YIA could not substantiate

¹⁰ This information was provided to us in the T-997 form, which we received on January 23rd, 2012.

that they had either received or deposited these funds. Moreover, as no documentary evidence was provided to support that YIA and its students received the funds, it is impossible to determine if the Organization maintained any direction or control over these funds once (and if) they were transferred to YIA.

Even if we consider the possibility that the funds were received by YIA, YIA is not a qualified donee and as such the Organization is not able to transfer funds directly to them as part of their charitable programs without on-going direction and control.

It is therefore our opinion that the Organization has not able to demonstrate that they were ensuring funds were being devoted to charitable activities to support its charitable purposes.

Individuals

As indicated above, the Organization stated that it paid \$2,301,400 for scholarships to individuals for religious studies, during FPE January 31, 2010. To support that these funds were being used for charitable purposes, the Organization provided us with a list containing the partial names and addresses of the beneficiaries of the payments. The Organization did not provide us any other supporting documents (e.g., supporting documentations to clearly illustrate that the beneficiaries were students, received the cash funds, proof of the amount of tuition fees, the criteria used to award the scholarship, and a copy of the T4A issued as result of the taxable benefit paid to the beneficiaries, etc.).

The Organization stated that during the FPE January 31, 2010, it paid \$739,000 for tutoring, weddings and to provide other help to individuals. To support that these funds were being used for charitable purposes, the Organization provided us with a list containing a brief description of the expense, the partial names and addresses of the beneficiaries of the payments (e.g., supporting documentations to clearly illustrate that the beneficiaries met the criteria to establish poverty, and how these activities further the Organization's charitable purposes).

The Organization stated that it paid \$130,000 for an unspecified reason to individuals, during FPE January 31, 2010. To support that these funds were being used for charitable purposes, the Organization provided us with a list containing: the partial names and addresses of the beneficiaries of the payments.

Additionally, the Organization provided a list with signatures of approximately 320 beneficiaries confirming that each of them received \$100 from the Organization, two letters of gratitude from the beneficiaries personally thanking [REDACTED] Mizrahi for his financial assistance of an undisclosed amount of money, and a thank you letter/plea (written in Hebrew, and signed by 160 people) for past services rendered and to ensure future donations from [REDACTED] Mizrahi.

Although these letters help illustrate that the intended beneficiaries received the funds, and were grateful to receive them, no information or documentation was provided to us to clearly illustrate that these beneficiaries met the charitable objective aiding the poor and how partaking in these activities further the Organization's charitable purposes.

Finally, the Organization stated that it paid \$210,000 in cash to [REDACTED] (a resident of Israel) for the purchase of three Sefer Torahs (i.e., a hand written version of the Torah, as part of its charitable programs during FPE January 31, 2010¹¹). However, the Organization could not adequately demonstrate that it used the \$210,000 to further its charitable activities. While the Organization provided a document, signed by [REDACTED] confirming that he sold the Organization three Sefer Torahs for a combined value of \$210,000, it did not provide us with any other supporting documents.

Examples of the type of information which was lacking include: supporting documentations to clearly illustrate that [REDACTED] was both sent and received the cash funds, documentation explaining both the nature/purpose of the three Sefer Torahs and how they would be used by the Organization, a written contract, import related documentation, and an appraisal supporting the fair market value of the Sefer Torahs. Our research indicates that it is common practice to have a formal agreement (i.e., a contract) between the buyer and the seller, due to the challenges which must be overcome when attempting to acquire a Sefer Torah.

Conclusion:

Based on the above findings, it is our view the Organization has failed to devote all of its resources to its own charitable activities or by way of gifts to qualified donees as required under subsections 149.1(1) and 149.1(2) of the Act. As such, there appears to be sufficient grounds to revoke the charitable registration of the Organization under paragraph 168(1)(b) of the Act.

2. 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

¹¹ Idem

the scheduled school day. The Organization failed to demonstrate that funds transferred to YIA for charitable purposes, or was there sufficient documentation to validate the payments to the beneficiary.

The Organization stated it paid \$210,000 to [REDACTED] (residing in Israel) for three Sefer Torahs as part of its charitable programs, in FPE 31/01/10. The Organization also stated that it paid these amounts in cash to [REDACTED] yet no further documentation was provided confirming the value of the items.

The Organization reported on its *Registered Charity Information Return*, Form T3010 that during FPE January 31, 2010 it incurred \$4,606,532 in expenditures on charitable programs. However, during the review, the Organization could only provide sufficient documentary evidence for \$186,000 of expenditures. This discrepancy demonstrates the inadequacy of the Organization's books and records. Furthermore, the Organization failed to provide any records for FPE January 31, 2011 thereby limiting our ability to verify the Organization's activities for this period as well as auditing its revenue and expenses.

Furthermore, in the supporting documents provided by the Organization on February 28, 2012, the Organization indicated it paid \$1,050,000 to YIA, but arrived to this total by improperly calculating the amounts written in the documentation. The amount that should have been written was \$1,040,000.

As can be seen, there are many deficiencies in the books and records of the Organization. The Organization therefore does not appear to be meeting the requirement to exercise due care with respect to ensuring that these books and records are accurate.

Conclusion:

It is our view that the Organization's books and records are not sufficient to support the Organization's activities or to demonstrate that the Organization is involved in charitable activities. Therefore it is determined that the Organization failed to maintain adequate books and records as required under subsection 230(2) of the Act. Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to the charity that she proposes to revoke its registration because it fails to comply with or contravenes any sections 230 to 231.5 of this Act. For this reason alone there are grounds for revocation of the Organization's registered status.

The Organization's Options:

a) No Response

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

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

b) Response

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

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

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

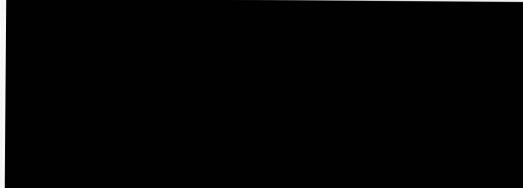
If you have any questions or require further information or clarification, please do not hesitate to contact me at the numbers indicated below.

Yours sincerely,



Jason Flemming
Audit Division
Montreal TSO
Telephone: 514-618-4690
Toll Free: 1-800-267-2384
Facsimile: 514-283-8208
Address: 305 René-Lévesque Boulevard
West
Montreal (Quebec) H2Z 1A6

c.c.:



2.....

Individuals:

We were surprised that you were not satisfied with the details regarding the purchase of the Sefer Torahs from [REDACTED] We thought that we had given you the proper details.

Acte Criminel

On or about November 21, 2012, our office was broken into (see enclosed). Among other things, records pertaining to back-up details of our transactions are missing. It is very hard for us to give you more proof since those documents are missing.

All of our deposits and withdrawals were properly recorded. We tried our best to have all details to your satisfaction.

We would be glad to meet with you and to explain in person your various concerns.

We hope that we have explained our situation. We certainly welcome any additional questions or concerns.

Yours truly,
BNEI CHESED FOUNDATION

[REDACTED]
Per: A. Mizrahi

cc [REDACTED]

Section 149.1 Qualified Donees

149.1(2) Revocation of registration of charitable organization

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

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

149.1(3) Revocation of registration of public foundation

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

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

149.1(4) Revocation of registration of private foundation

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

- (a) carries on any business;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (b.1) makes a disbursement by way of a gift, other than a gift made

- (i) in the course of charitable activities carried on by it, or
- (ii) to a donee that is a qualified donee at the time of the gift;
- (c) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

149.1(4.1) Revocation of registration of registered charity

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

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

Section 168:

Revocation of Registration of Certain Organizations and Associations

168(1) Notice of intention to revoke registration

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

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

(f) in the case of a registered Canadian amateur athletic association, accepts a gift the granting of which was expressly or implicitly conditional on the association making a gift to another person, club, society or association.

168(2) Revocation of Registration

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

(a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the *Canada Gazette*, and

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

168(4) Objection to proposal or designation

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

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

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

Where the Minister

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

(a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for

registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,

(a.2) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.3), (22) and 168(1) by the Minister, to a person that is a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1) that is or was registered by the Minister as a qualified donee or is an applicant for such registration, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

(b) refuses to accept for registration for the purposes of this Act any retirement savings plan, (c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,

(d) [Repealed, 2011, c. 24, s. 54]

(e) refuses to accept for registration for the purposes of this Act an education savings plan,

(e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,

(f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,

(f.1) refuses to accept an amendment to a registered pension plan,

(g) refuses to accept for registration for the purposes of this Act any retirement income fund,

(h) refuses to accept for registration for the purposes of this Act any pooled pension plan or gives notice under subsection 147.5(24) to the administrator of a pooled registered pension plan that the Minister proposes to revoke its registration, or

(i) refuses to accept an amendment to a pooled registered pension plan,

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

180(1) Appeals to Federal Court of Appeal

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

(a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),

(b) [Repealed, 2011, c. 24, s. 55]

(c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),

(c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1),

(c.2) the mailing of notice to the administrator of the pooled registered pension plan under subsection 147.5(24), or

(d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan or pooled registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person, as the case may be, or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiration of those 30 days, fix or allow.

Section 188: Revocation tax

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

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

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

188(1.1) Revocation tax

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

$$A - B$$

where

A

is the total of all amounts, each of which is

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

B

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

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

188(1.2) Winding-up period

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

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

188(1.3) Eligible donee

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

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

188(2) Shared liability — revocation tax

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

188(2.1) Non-application of revocation tax

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

- (a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and

(b) the charity has, before the time that the Minister has so registered the charity,

- (i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the *Excise Tax Act* in respect of taxes, penalties and interest, and
- (ii) filed all information returns required by or under this Act to be filed on or before that time.

188(3) Transfer of property tax

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

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

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

188(4) Transfer of property tax

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

188(5) Definitions

In this section,

“net asset amount”

« montant de l'actif net »

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

$$A - B$$

where

A

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

B

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

“net value”

« valeur nette »

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

$$A - B$$

where

A

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

B

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

189(6) Taxpayer to file return and pay tax

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

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

189(6.1) Revoked charity to file returns

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

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

189 (6.2) Reduction of revocation tax liability

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

- (a) the amount, if any, by which
 - (i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period

(referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was sent and ends at the end of the one-year period exceeds

- (ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and
- (b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

189(6.3) Reduction of liability for penalties

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

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

189 (7) Minister may assess

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