



REGISTERED MAIL

Children's Joy Foundation
PO Box 33552, Central City Post Office
Surrey, BC V3T 5R5

JUN 30 2017

Attention: Mr. Dindo Maquiling, Executive Director

BN: 825438708RR0001
File #: 3049521

Subject: Notice of Intention to Revoke
Children's Joy Foundation

Dear Mr. Dindo Maquiling:

We are writing further to our letter dated September 8, 2016 (copy enclosed), in which you were invited to submit representations as to why the registration of Children's Joy Foundation (the Organization) should not be revoked in accordance with subsection 168(1) of the Income Tax Act (Act).

We have now reviewed and considered your written response dated October 5, 2016. However, notwithstanding your reply, our concerns with respect to the Organization's non-compliance have not been alleviated. The basis for our concerns is explained below.

1. Failure to devote resources to charitable activities:

a. Lack of direction and control over the use of resources

In our letter dated September 8, 2016, we advised you that a charity may only use its resources for charitable activities undertaken by the charity itself, or for gifting to qualified donees.

We discussed how a charity's own activities could be carried out through an intermediary, but that it must establish that the activity to be conducted would further its charitable purposes, and that it would maintain continued direction and control over the activity and the use of its resources. A charity cannot merely fund the activities of an organization that is not a qualified donee.

The Organization confirmed in its representations dated October 5, 2016 that the Organization erred in funding some of the projects it supported; the Kidawa water system project in particular. To demonstrate its corrective actions, the Organization

provided a copy of a Contract for Services it signed with Children's Joy Foundation, Inc. (CJFI) on March 25, 2013.

The Organization stated that program control is established in Section 2, paragraphs A through F of the Contract. In paragraph 2.01(a) of the agreement it states CJFI will provide services "...as are more particularly set out from time to time in a written designation(s) describing the specific Services to be provided...". On July 31, 2013, four months after signing the Contract for Services, the Organization signed a Project Designation agreement to fund the Kidawa project. The Organization confirmed that it was not in control of this project and therefore, it was not enforcing the project control elements included in the Contract for Services.

While a written agreement between a charity and an intermediary, for example the Organization's contract with CJFI, can help to illustrate that the charity has direction and control over its activities, the existence of a written agreement is not in and of itself adequate enough to prove that a charity maintains direction and control over the use of its funds on a continuous basis. The charity must be able to show that the terms of the agreement establish a real, ongoing, active relationship with the intermediary, and that the terms of the agreement are actually implemented. Despite providing the Contract for Services, the Organization has not demonstrated that it has, or will, direct and control its own charitable activities.

b. Resourcing non-qualified donees

In our letter dated September 8, 2016, we explained that due to a lack of direction and control over the assets, activities and programs that the Organization is providing funding to CJFI for, any resources that the Organization provides to CJFI are considered to be gifts to non-qualified donees. We also explained that gifting to non-qualified donees is a contravention of the Act and is a revocable offense under subsection 168(1).

The Organization confirmed in its representations that they are aware that CJFI is not a qualified donee, and that they are not allowed to fund non-qualified donees. However, the Organization has also indicated that it wishes to continue to rely on the Contract for Service to engage CJFI as an agent. As noted above, in spite of the contractual agreement it has with CJFI, the Organization has failed to demonstrate that it has been enforcing the direction and control elements of the Contract for Service; nor has the Organization adequately illustrated how it would enforce direction and control in the future. For this reason, we maintain that any funding that the Organization provides to CJFI will be treated as a gift to a non-qualified donee.

c. Operating against public policy

In our September 8, 2016 letter, we informed you that due to the members of the Organization's board of directors' failure to fulfill their responsibilities under the Canada Not-for-profit Corporations Act and the Income Tax Act, we were concerned that the Organization may have engaged in activities that are contrary to public policy. We also explained that this failure has resulted in the Organization being incapable of demonstrating that it meets the requirements of continued registration as a charitable organization under subsection 149.1(1) of the Act.

The Organization stated in its representations that it will provide assurance to the public that it will strive to use its resources for its registered purposes and to be transparent. It was also stated that the Organization will require CJFI to submit supporting documents, and that as an example of an increased level of diligence in this regard, the Executive Director of the Organization has travelled to the Philippines to inspect and evaluate CJFI. In addition, the Organization has stated that it has hired a bookkeeper and has contracted a public accountant to conduct audits.

The declarations provided in the representations do not alleviate our concerns that the Board of Directors will fulfill their responsibilities under the Canada Not-for-profit Corporations Act and the Income Tax Act and therefore, have engaged in activities that are contrary to public policy.

2. Failure to be constituted for exclusively charitable purposes

We stated in our September 8, 2016 letter that in order to maintain its charitable status an organization must be constituted exclusively for charitable purposes. Subsection 149.1(1) of the Act requires that a charitable organization devote its assets to its own charitable activities. The concern raised in our previous letter was that the Organization is not conducting its own activities. As an example, we indicated that information provided on websites maintained by the Organization and CJFI suggested that the Organization was not devoting its assets to its own activities. Rather, it was devoting its assets to CJFI's activities.

The representations provided state that the Organization will amend their websites to indicate that the charity is devoting its assets to its own charitable activities. This does not in and of itself address our concern that the Organization is not constituted exclusively for charitable purposes.

3. Failure to issue receipts in accordance with the Act and its Regulations

Regulation 3501 of the Act identifies specific information that must appear on every donation receipt issued by a qualified donee, which includes a registered charity.

In our letter dated September 8, 2016, we identified the following areas of non-compliance with respect to the issuance of donation receipts: 1) the date of donation was not recorded on the receipt; 2) the complete phrases "official receipt for income tax purposes" did not appear on the receipt; 3) the place of locality where the receipt was issued was not recorded on the receipt; and 4) the donor's full name, including their middle initial, was not recorded on the receipt. We identified more than 500 donors who had received two receipts for their single donation. In addition, the serial numbers of the receipts were both alpha and numeric or a combination of both and we were unable to determine the sequential order of the receipts being issued.

The representations stated that the Organization has addressed our concerns with respect to the information that was missing on the Organization's donation receipts; however, it did not address the concerns raised regarding the inconsistency with the serial numbers on the receipts and the issuance of duplicate receipts for the same donation. Therefore, our concerns still remain regarding the Organization's ability to issue donation receipts that are in accordance with the Act and its Regulations.

4. Failure to maintain adequate books and records

In our letter dated September 8, 2016, we discussed our concerns with respect to the lack of protection of the charity's assets, specifically, its cash. The current system allows volunteers to solicit donations, deposit any sum of money and then provide a list requesting donation receipts for donors with no form of reconciliation, which does not protect the charity's assets. The representations provided state that a bookkeeper has been hired to ensure that the recording of monies and the issuance of donation receipts are up to date and that an independent accountant had been chosen to ensure compliance.

The Organization has not addressed in its representations how it would revise its system for receiving donations to ensure that all donations are accurately accounted for and the Organization's assets are safeguarded. Hiring a bookkeeper alone would not fully address and alleviate our concerns. Therefore, the representations provided do not address our concerns with respect to the lack of internal controls present in the Organization.

Conclusion

The audit by the Canada Revenue Agency (CRA) has revealed that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization: 1) is not dedicating its resources to its own charitable activities; 2) is not constituted exclusively for charitable purposes; 3) is issuing donation receipts, which are not compliant; and 4) has poor internal controls, which have led to a failure to maintain adequate 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 September 8, 2016, we wish to advise you that, pursuant to subsection 168(1) of the Act, we propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to paragraphs 168(1)(b) and 168(1)(d) 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
825438708RR0001	Children's Joy Foundation Surrey, British Columbia

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 CRA receives an objection to this notice of intention to revoke within this timeframe.

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

Consequences of revocation

As of the effective date of revocation:

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



Tony Manconi
Director General
Charities Directorate

Attachments:

- Appendix A: Relevant provisions of the Act
- CRA letter dated September 8, 2016

c.c.: Sonia Jordan, Director,
Children's Joy Foundation
P.O. Box 33552, Central City Post Office,
Surrey, BC V3T 5R5

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.

Children's Joy Foundation
PO Box 33552
Central City Post Office, Surrey BC
V3T 5R5
Attention: Priscilla Abayon

WIAEJH

BN: 825438708

File #:3049521

September 8, 2016

Subject: Audit of Children's Joy Foundation

Dear Ms. Abayon:

This letter is further to the audit of the books and records of the Children's Joy Foundation (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2013 to December 31, 2013.

During our telephone conversation of August 18, 2016, you were advised that the CRA identified issues of non-compliance with the provisions of the *Income Tax Act* (the Act) and/or its *Regulations* in the following areas.

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to devote resources to charitable activities carried on by the Organization itself. a. Lack of direction and control over the use of resources b. Resourcing non-qualified donees c. Operating against public policy	149.1(1) 168(1)(b)
2.	Failure to be constituted for exclusively charitable purposes	149.1(1) 168(1)(b)
3.	Failure to issue receipts in accordance with the Act and its Regulations	Regulation 3501
4.	Failure to maintain adequate books and records	149.1(2), 230(2), 168(1)(b), 168(1)(e)

This letter describes 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 offer the Organization the opportunity to make additional representations or present additional information to address our concerns. All registered charities must comply with the law; failing to do so it may lead to the Organization's registered status being revoked in the manner described in section 168 of the Act.

General legal principles

In order to maintain charitable registration under the Act, Canadian law requires that an organization demonstrate it is constituted exclusively for charitable purposes (or objects), and it devotes its resources to charitable activities it carries on itself in furtherance thereof.¹

The question of whether an organization is constituted exclusively for charitable purposes cannot be determined solely by reference to its stated purposes, but must take into account the activities in which the organization currently engages. If an activity is, or becomes, a substantial focus of the organization, it may no longer be in furtherance of a stated purpose. Instead, the activity may further, or even itself form, a separate or collateral purpose.² An organization with a collateral non-charitable purpose is ineligible for registration under the Act.

Subsection 149.1(1) of the Act requires that a charitable organization devote its assets to its own charitable activities. According to the Act, a registered charity can only use its resources (for example, funds, personnel, and property) in two ways, whether inside or outside Canada:

- on its own activities (those which are directly under the charity's control and supervision, and for which it can account for any funds expended); and
- on gifts to qualified donees³.

¹ See subsection 149.1(1) of the Act, which requires that a charitable organization devote all of its resources to "charitable activities carried on by the organization itself" except to the extent that an activity falls within the specific exemptions of subsections 149.1(6.2) of the Act relating to political activities. Also see *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10 (Vancouver Society) at paras. 155-159. A registered charity may also devote some of its resources to activities that, while not charitable in and of themselves, are necessary to accomplish their charitable objectives (such as expenditures on fundraising and administration). However, any resources so devoted must be within acceptable legal parameters and the associated activities must not become ends in and of themselves.

² See *Alliance for Life v MNR*, [1999] FCA 658 at para 64, 3 FC 504.

³ Qualified donees are organizations that can issue official donation receipts for gifts that individuals and corporations make to them, as listed in subsections 110.1(1)(a) and 118.1(1) of the Act.

The CRA recognizes that a charity can carry out its activities through another entity, if the activities are conducted on behalf of the charity. However, it is not enough for a charity to fund an intermediary that carries on certain activities.

When a registered charity undertakes an activity through an intermediary, it must be able to substantiate that it has actually arranged for the conduct of that specific activity on its behalf and has not simply made a transfer of funds to a non-qualified donee. It must be able to demonstrate that it maintains direction and control over, and is fully accountable for, the use of its resources. To this end, we expect a charity to:

- select the activity that it will conduct with or through an intermediary based on the fact that it will further the charity's charitable purposes, and after being satisfied that the intermediary is capable of conducting the activity on the charity's behalf; and
- supervise/direct, and make significant decisions in regard to the conduct of, the activity on an ongoing basis.

The courts have held that an organization is not charitable in law if its activities are contrary to public policy. An activity cannot be held to be contrary to public policy unless there is a definite and officially declared and implemented policy (that is, found in an Act of Parliament, a regulation or other publicly available government document of any kind).

The notion that public policy has a role in the determination of charitable status was recognized by the courts in *Everywoman's Health Care Society*⁴ wherein Décar J.A., speaking for the court at paragraph 14 states:

It is well established that an organization will not be charitable in law if its activities illegal or contrary to public policy.

Regulation 3501 of the Act identifies specific information that must appear on every donation receipt issued by a qualified donee; which includes a registered charity. This information also be found on our Charities and Giving webpages⁵.

Section 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 section 230(2), section 230(4) provides that:

⁴ *Everywoman's Health Care Society (1988) v. Canada (Minister of National Revenue - M.N.R.)* (C.A.), [1992] 2 F.C. 52 (C.A.)

⁵ Information as to what must be on an official donation receipt can be found at www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcptw/whtnf-eng.html.

every person required by this section to keep books of account, who does so electronically, shall retain in an electronically readable format:

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

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

- it is the responsibility of the registered charity to prove that its charitable status should not be revoked;⁶
- a registered charity must maintain, and make available to the CRA at *the time of an audit*, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto;⁷ and
- the failure to maintain proper books, records, and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status in the case of material or repeated non-compliance.⁸

Background of the Organization

The Organization was registered as a charity January 21, 2013, with its purposes found in its governing document issued under the *Canada Not-for-profit Corporations Act*.

The Organization's Articles of Incorporation state that the purposes, or objects, of the Organization are:

- a) To relieve poverty as a practical manifestation of the Christian faith, regardless of race, gender or religious background by providing basic amenities, including food, clothing, and shelter to persons in need;

⁶ See *Canadian Committee for the Tel Aviv Foundation*, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

⁷ *Canadian Committee for the Tel Aviv Foundation*, 2002 FCA 72 at para 39, [2002] 2 CTC 93. Furthermore, failing to comply with the requirements of section 230 of the Act by refusing to make documents available can lead to a fine and imprisonment, in addition to the penalty otherwise provided. See subsection 238(1) of the Act.

⁸ See *Prescient Foundation v MNR*, 2013 FCA 120 at para 51, [2013] FCJ no 512.

- b) To assist underprivileged children through the establishment, construction, renovation, operation and/or maintenance of orphanages, schools, medical clinics, hospitals, and related facilities for the purpose of meeting their needs in and the areas of education, vocational training, care, support, shelter, food, clothing and medical attention;
- c) To establish, operate, and provide education programs and services for children in developing countries to access education, vocational training and life skills development; and
- d) To increase public awareness about the needs of underprivileged children and the need for the development and relief work throughout the world and related matters by providing related education programs for the public and other interested individuals.

At the time of registration, the Organization was advised to develop and implement sound internal governance and accountability procedures, financial controls, risk management systems and transparent reporting, and to keep these things under regular review.

Identified areas of non-compliance

1. Failure to devote resources to charitable activities carried on by the Organization itself:

a. Lack of direction and control over the use of resources

Our review of the Organization's activities determined that the Organization does not exercise the required level of direction and control over its resources. This lack of direction and control was clearly demonstrated through the funding of the replacement water system at the village of Kidawa.

On February 15, 2013, the Organization's board of directors met to discuss a project proposal from Children's Joy Foundation Inc. (CJFI)⁹. The proposal had four components to it, one of which was to replace the water system in the village of Kidawa. According to the meeting minutes, the board unanimously approved the proposal without discussion.

The Executive Director of CJFI sent a Project Designation agreement to the Organization in July 2013. In the agreement CJFI committed to build the water project between August 1, 2013 and December 30, 2013. The total contract was for \$42,000 CDN; of that, \$13,435.31 was for the water system replacement.

⁹ According to its website, <http://www.childrensjoyfoundation.org/profile/>, CJFI "is a non-profit organization born out of the vision of Pastor Apollo C. Quiboloy, the Executive Pastor of the Kingdom of Jesus Christ, to reach out to the destitute Filipino children whose miserable plight he could not ignore as he toured around the Philippines as an evangelist." It offers residential care and community-based support programs in the Philippines.

The Organization received an undated report from CJFI confirming the Project Designation agreement had been completed. The report included: the same project descriptions as the original agreement, an amount expended on each of the components, and some photos. The total project cost was \$39,900 CDN; \$12,819.31 of that was for the water system replacement.

However, on January 17, 2013, CJFI published on its website that it had vowed to replace the water system at Kidawa, and that a few weeks later the system was replaced. This statement makes it clear that the water system was replaced on or before January 17, 2013.

To summarize, the water system replacement project activities in 2013 were:

- 1) January—CJFI announced the project was complete.
- 2) February—the Organization received a request from CJFI to fund the project.
- 3) July—the Organization signed the agreement to fund the project.
- 4) December (assumed)—the Organization received a report from CJFI stating that the project was complete.

Meeting minutes were provided for only one board meeting held February 15, 2013. At that meeting the board voted on the CJFI project proposal. The minutes contained no discussion by the board about the project. Further, the board did not question the administration fee of \$11,435, which was 28% of the total project cost. Nor was it discussed that the contract fee of \$42,000 was \$1,042 more than the sum of the fees for the four project parts.

Had the board of directors sought additional information about the project, they may have learned that the project they were considering funding had already been completed.

Our review showed the Organization did not discuss the planning or implementation of the water project, exercised no oversight over the project, and did not request or receive ongoing budget details about the project.

b. Resourcing non-qualified donees

From our review of the Organization's activities we believe that the Organization does not conduct any of its own activities; rather it funds the activities of CJFI. CJFI is not a qualified donee under the Act. While the Organization and CJFI established a working agreement for these activities, it appears that the Organization failed to maintain **any** direction and control over the funds it sent to CJFI.

In the instance described above, the Organization simply reimbursed CJFI for a CJFI project; thus, this was not an activity of the Organization. The Organization made a \$42,000 gift to a non-qualified donee.

The Organization confirmed that the process followed for this project was the usual process followed by the Organization for its activities, simply considering project proposals received from CJFI. The Organization did not provide any materials that demonstrate the board discussed or decided on an activity for the Organization to undertake on its own.

Further, at the time of registration, CRA asked the Organization who would own the facilities the Organization was planning to construct. The Organization's representative, [REDACTED] confirmed that the Organization would hold title of all the physical establishments it creates or builds.

The Organization did not demonstrate that it owns any of the four daycare buildings that it paid to construct. In a telephone call on April 12, 2016, the Organization's President Priscilla Abayon, confirmed that CJFI owns all the buildings the Organization paid to build in the Philippines, and that the Organization's activities are limited to funding CJFI projects.

On its webpages, CJFI states that all the projects are CJFI projects. Reference is made to improvements to the Child Care Residential facility in Davao City, and "[t]he on-going improvement is part of the project proposal submitted by CJFI Philippines to CJF Canada for funding." The CJFI website also allows donations from Canada to be made to CJFI under the auspices of the Organization.

For these reasons we believe that the Organization is resourcing a non-qualified donee, in contravention of the Act. This is grounds for revocation of the Organization's registration as a charity.

c. Operating against public policy

The members of the Organization's board of directors are its stewards, and as such are responsible to direct the Organization in accordance with all applicable laws. This includes, but is not limited to, the *Income Tax Act*, and the *Canada Not-for-profit Corporations Act*. The books and records of the Organization serve to document the board's activities and compliance with the applicable legislation.

Paragraph 148(1) of the *Canada Not-for-profit Corporations Act* states:

Every director and officer of a corporation in exercising their powers and discharging their duties shall

- (a) act honestly and in good faith with a view to the best interests of the corporation; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Subsection 149.1(1) of the *Income Tax Act* states that a charitable organization must be operated exclusively for charitable purposes. Thus, between these two Acts, it is the obligation of every director of a charity to guide the Organization into exclusively charitable activities.

The minutes show that the members of the board:

- did not direct the Organization to conduct its own exclusively charitable activities;
- did not protect the Organization's assets; and
- directed the Organization to conduct activities which contravened subsection 149.1(1) of the Act.

The failure of the members of the board of directors to fulfill their responsibilities under the *Canada Not-for-profit Corporations Act* and the Act, raises a serious concern that the Organization may have engaged in activities that are contrary to public policy.

As a result, it appears that 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 and its registration may be revoked for this reason.

2. Failure to be constituted for exclusively charitable purposes

The Organization's webpages¹⁰, state that it has an "existing partnership with Children's Joy Foundation, Inc. in the Philippines that engage in various forms of charitable support undertakings that ensure child protection, welfare, and development for marginal and poor Filipino children." On the webpage "Projects", it states that the Organization "provides financial support to Children's Joy Foundation, Inc. in the Philippines to work with depressed communities for the construction, development and maintenance of Day Care Centers" and it "also assisted Children's Joy Foundation, Inc. in its relief efforts to families and communities affected by catastrophes like typhoons and floods."

It is our position, based upon the materials we have reviewed, and described above, that the Organization does not carry out any of its own charitable activities as required by the Act. It is our position that the activities it does undertake show that it has been established to fulfill a collateral non-charitable purpose, beyond those in its Articles of Incorporation; to fund CJFI, a non-qualified donee.

¹⁰ <http://cjfcanada.org/>

For this reason, we believe that the Organization has failed to meet the requirements of subsection 149.1(1) of the Act and there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b).

3. Failure to issue receipts in accordance with the Act and its Regulations

Regulation 3501 of the Act identifies specific information that must appear on every donation receipt issued by a qualified donee; which includes a registered charity. This information may also be found on our webpages at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/rcpts/whtnf-eng.html>.

A sample of the Organization's donation receipts was reviewed for compliance with the Regulation. The following areas of non-compliance were identified:

- The date of the donation is not recorded on the receipt.
- The complete phrase "official receipt for income tax purposes" does not appear on the receipt.
- The place or locality where the receipt was issued is not recorded on the receipt.
- The donor's full name, including their middle initial, was not recorded on the receipt.

There is also a concern regarding the serial numbers that are used on the receipts. The Organization used alpha characters with many of the numeric serial numbers. Where this is done, the original numeric number is not tracked, and it is not clear how many alpha characters are used. For example; the Organization issued 627-B to [REDACTED]

[REDACTED] It is not clear in the records what happened to receipts 627 and 627-A, or if a receipt was issued using a subsequent alpha character such as C. The range of serial numbers that are used makes it difficult to confirm that the series is complete and that all the issued donation receipts are accounted for.

The Organization identified more than 500 donors who received two receipts for their single donation. As an example; [REDACTED] made a \$100 donation on April 30, 2013, the Organization issued donation receipts 626-A and 627-B for this donation. The Organization calculated that in 2013 it double issued receipts totaling \$9,649. A review of the donation listing provided by the Organization identified additional, previously unnoted, donors who received two receipts for their donation. The Organization has issued a significant number of donation receipts in error potentially allowing the donor to claim a deduction greater than their donation.

The Organization's donation receipts do not meet all the requirements of Regulation 3501. Further, the Organization violated sections 110.1 and 118.1 of the Act by providing donors with a second receipt which could potentially be used to claim a

deduction in excess of their donation. This failure to meet the requirements of the Act is grounds for the revocation of the Organization's registration as a charity.

4. Failure to maintain adequate books and records

Our concerns with the Organization's books and records stem from the fundraising activities of the Organization. Fundraising is done primarily through volunteers going door to door requesting donations. These activities occur all across Canada. When a volunteer receives a donation they make a note of the donor's information; however, a temporary receipt is not provided to the donor. The volunteer deposits the collected donations into the Organization's bank account and sends a list of donors to the head office so a donation receipt can be generated. The Organization does not reconcile the deposit with the donor list provided by the volunteer.

The current system does not adequately protect the Organization's assets, specifically its cash. It includes no checks or balances to ensure that the donation receipts issued are for donations which were actually received by the Organization. Further, the system does not include adequate assurances that all donations made to the Organization are accounted for.

The Organization has contravened subsection 149.1(1) of the Act by failing to maintain adequate books and records to show that it is not putting its assets at risk of loss and thus not ensuring that all the Organization's assets are used exclusively for charitable purposes.

The Organization's options:

a) No response

You may choose not to respond. In that case, the Director General of the Charities Directorate may give notice of its intention to revoke the registration of the Organization by issuing a notice of intention in the manner described in subsection 168(1) of the Act.

b) Response

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

- no compliance action necessary;
- the issuance of an educational letter;

- resolving these issues through the implementation of a Compliance Agreement;
- the application of penalties and/or suspensions provided for in sections 188.1 and/or 188.2 of the Act; or
- giving notice of its intention to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

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

If you have any questions or require further information or clarification, please contact me at 250 363-6989. My team leader, Ross Thackray, may also be reached at 250 363-3141.

Yours sincerely,

[REDACTED]
Stephen Bastedo
Audit Division
Vancouver Island Tax Services Office

Telephone: 250 363-6989
Facsimile: 250 363-3000
Address: c/o 9755 King George Boulevard, Surrey BC V3T 5E1

c.c.: Sonia Jordan, Director
[REDACTED]