



March 18, 2021

REGISTERED MAIL

Neil Raymond
Director
108-200 Lansdowne Avenue
Westmount QC H3Z 3E1

BN: 118934934RR0001
File #: 0285833

Dear Neil Raymond:

**Subject: Notice of intention to revoke
Fondation Gamma-Rho / Gamma-Rho Foundation**

We are writing with respect to our letter dated November 28, 2019 (copy enclosed), in which Fondation Gamma-Rho / Gamma-Rho Foundation (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from April 1, 2013 to March 31, 2015, and explain why the registration of the Organization should not be revoked in accordance with subsection 168(1) of the Income Tax Act (Act).

In response to our letter of November 28, 2019, the Organization informed the CRA through a telephone conversation on December 17, 2019, that it would not be contesting the audit findings or the revocation of its registration.

Audit Conclusion

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

For each of the reasons above, and as fully described in our letter dated November 28, 2019, pursuant to subsection 168(1) and 149.1(4) of the Act, we propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d), 168(1)(e), subsection 149.1(4) and paragraph 149.1(4)(b), (b.1) of the Income Tax Act, that I propose to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration is effective on the date of publication of this notice in the Canada Gazette.

Business number	Name
118934934RR0001	Fondation Gamma-Rho / Gamma-Rho Foundation Montréal QC

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

Assistant Commissioner
Appeals Branch
Canada Revenue Agency
13th Floor
250 Albert Street
Ottawa ON K1A 0L5

Should the Organization choose not to file an objection to this notice of intention to revoke with the CRA within this period, 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. As such, the Organization's registration will be revoked on the date of publication.

A copy of the relevant provisions of the Act concerning revocation of registration, including appeals from a notice of intention to revoke registration, can be found in Appendix 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) and paragraph 110.1(1)(a) of the Act respectively;

- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return Where Registration of a Charity is Revoked. Form T2046 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 website at canada.ca/charities-giving;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Organization may be subject to obligations and entitlements under the Excise Tax Act that apply to entities other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

Finally, we advise that subsection 150(1) of the 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

Enclosures

- CRA letter dated November 28, 2019
- Appendix A, Relevant provisions of the Act

c.c.: James Raymond





Agence du revenu
du Canada

Canada Revenue
Agency

REGISTERED MAIL

November 28, 2019

James Raymond
Director
Fondation Gamma-Rho / Gamma-Rho Foundation

BN: 118934934RR0001
File #: 0285833



Dear James Raymond:

Subject: Audit of Fondation Gamma-Rho / Gamma-Rho Foundation

This letter results from the audit of the Fondation Gamma-Rho / Gamma-Rho Foundation (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from April 1st, 2013 to March 31th, 2015. We also reviewed the books and records of the Organization with respect to the loan made in 2011.

On November 26, 2019, the Organization was advised that the CRA identified specific areas of non-compliance with the provisions of the Income Tax Act (Act) and 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: The Organization's resources was not devoted to the activities of the Organization	149.1(1), 168(1)(b), 188.1(4), 188.1(5)
2.	Failure to be constituted for exclusively charitable purposes: Broad and vague purposes	149.1(1), 168(1)(b)
3.	Failure to issue official donation receipts in accordance with the Act 3.1. Failure to issue donation receipts in accordance with the Regulation 3501 3.2. Issuance of a donation receipt where no gift was made	149.1(2), 168(1)(d), Reg. 3501

4.	Failure to file an information return as required by the Act	149.1(2), 168(1)(c)
5.	Failure to maintain adequate books and records	230(2), 230(4),
5.1.	No loan agreement and written request for loan repayment between the borrower and the Organization	168(1)(b), 168(1)(e)
5.2.	Minutes of Board of Directors meetings	
5.3.	Dissolution clauses	

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements that apply to registered charities, and offers the Organization an opportunity to respond and present additional information. The Organization must comply with the law; if it does not, its registered status may be revoked in the manner described in section 168 of the Act.

Identified areas of non-compliance

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

General legal principles

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

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

As the term "charitable" is not defined in the Act, whether or not an organization qualifies as such is determined by reference to the common law; that is court decisions. 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.

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

It is the pursuit of objects that are exclusively charitable at law that allows an organization to maintain its registration as a charity. When an organization pursues non-charitable objects, undertakes activities in support of non-charitable objects, or undertakes activities that are illegal or improper in nature, it cannot maintain its registration as a charity in spite of the fact that some of its activities may support otherwise charitable purposes.

To comply with the requirement that it devote all of its resources to charitable activities carried on by the organization itself; a registered charity may only use its resources (funds, personnel and/or property) in two ways:

- for its *own charitable activities* - undertaken by the charity itself under its continued supervision, direction and control; and
- for gifting to “qualified donees” as defined in the Act.²

The CRA must be satisfied that an organization’s activities directly further charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information. Accordingly, the current audit encompassed an enquiry into all aspects of the Organization’s operations. The fact that some of the areas of non-compliance identified in this letter may, or may not, have been evaluated in preceding audits does not preclude the need for compliance with existing legal requirements. Furthermore, the CRA may take a position that differs from that reached previously based on reconsideration of the pertinent facts and law.³

The Organization’s resources were not devoted to the activities of the Organization

It is the pursuit of objects that are exclusively charitable at law that allows an organization to maintain its registration as a charity. When an organization pursues non-charitable objects, undertakes activities in support of non-charitable objects, or undertakes activities that are illegal or improper in nature, it cannot maintain its registration as a charity in spite of the fact that some of its activities may support otherwise charitable purposes.

Per above, the Organization was registered for the purposes exclusively for religious, charitable or educational purposes. In order to carry out this activity, the Organization provides funds to qualified donees.

² A “qualified donee” means a donee described in subsection 149.1(1) of the Act.

³ See for example *Canadian Magen David Adom for Israel v MNR*, 2002 FCA 323 at para 69, [2002] FCT no 1260, Sharlow JA.

We reviewed the Organization's assets, revenues and expenses as at March 31, 2015. We observed that the Organization had an account receivable of \$107,000 as at March 31, 2015.

The account receivable is a loan made by the Organization to a corporation. Regarding the \$107,000 loan granted by the Organization, we obtained the following information:

- On May 20, 2010, the Organization withdrew \$100,000 from its [REDACTED] account for the deposit in its current account.
- On May 20, 2010, an amount of \$100,000 was received in the bank account of the Organization from its investment account.
- On May 20, 2010, the Organization issued cheque # [REDACTED] in the amount of \$107,000 to [REDACTED]
- On May 20, 2010, [REDACTED] transferred by wire payment an amount of \$107,000 to [REDACTED]
- The Organization submitted 3 notifications regarding the amount of \$107,000. The two first notifications are dated March 15, 2011.

The first notification states:

"Please accept this as notification from [REDACTED] that its interest in [REDACTED] including all accrued interest, has been transferred into the name of GAMMA-RHO FOUNDATION, effective March 15, 2011."

The second notification states:

"Please accept this as notification from GAMMA-RHO FOUNDATION that the assignment of the loan including all accrued interest in [REDACTED] back to GAMMA-RHO FOUNDATION from [REDACTED] is accepted as payment in full and there is no remaining indebtedness from [REDACTED]"

The third notification dated March 30, 2011, states:

"Please accept this as notification from GAMMA-RHO FOUNDATION that its interest in [REDACTED], including all accrued interest, has been transferred into the name of [REDACTED], effective March 30, 2011."

As of March 31, 2011, the account of the General Ledger # [REDACTED] - Loan [REDACTED] had a balance of \$107,000.

For the years 2012 and 2013, we observe that the summary of accounting transcripts shows that the \$107,000 loan is: Loan receivable - [REDACTED] (GL # [REDACTED]).

For the years 2014 and 2015, the description of the G/L [REDACTED] account is Loan [REDACTED]

[REDACTED] paid to the Organization an amount of \$1,070 on each the following dates: March 26, 2012, August 27, 2012 and November 28, 2013.

The Organization told us that there was no loan agreement between the borrower and the Organization. The loan was non-interest bearing and there were no repayment terms. The only documents are the notifications of both March 15, 2011 and March 30, 2011. The minutes of the Organization do not mention the loan.

The Organization mentioned that the borrower of the \$107,000 is [REDACTED]. The explanations provided by the Organization as to why the beneficiary of the check is [REDACTED] are provided in the chronology section of the Organization's letter dated September 11, 2017. Also, the chronology provides explanations of why the interest was paid by [REDACTED] when they are not the borrower according to the Organization.

It is mentioned:

"- In May 2010, the [REDACTED] received an urgent call on a Friday afternoon from the [REDACTED] that if no money was available imminently, that [REDACTED] was unlikely to reopen for business the following Monday morning, hence the urgency to advance money to [REDACTED]. At that time Gamma Rho had approximately \$100,000 US on hand and the [REDACTED] family decided to invest this money in [REDACTED] with the expectation to earn a reasonable return. Therefore, Gamma Rho wrote a cheque for \$107,000 (\$100,000 USD) to [REDACTED] who in turn wired the \$100,000 US to [REDACTED] on May 20, 2010.

-The reason that the money had to be advanced by [REDACTED] to [REDACTED] at the time was because the other investors in [REDACTED] would only accept "new" money to help, so that the existing investment balances between the lead investors would stay the same. [REDACTED] is wholly owned by [REDACTED] who is married to [REDACTED] but as an investor, it would be seen as "new" money. Therefore, Gamma Rho had to invest in [REDACTED] via [REDACTED].

-When Gamma Rho made this investment in [REDACTED] it truly believed that the investment of \$100,000 USD at that time would be repaid with reasonable return.

Up to this point, the [REDACTED] had invested millions of dollars, together with several other large investors from the United States, in the belief that this growing company could be sold off successfully, repay all the debtors and with the proceeds each investor could move on to their next project.

- [REDACTED] was a private US company based in New York City - with many different investors, mostly located in the United States and Europe.

- The bookkeeper at the time, with no clear instructions from management, booked the cash paid out [REDACTED] as a loan to [REDACTED] in the books of Gamma Rho (instead of a loan to [REDACTED]). When [REDACTED], the family accountants, did the Notice To Reader for the March 2001⁴ year-end, they also thought that the loan was made to [REDACTED]. As a result, they recommended that [REDACTED] paid interest of 1% for its fiscal 2012 and 2013 and 2014 year- ends ([REDACTED] year-end is November 30th)."

The Organization uses accounting software to record transactions. The 2014 and 2015 ledgers show that the amount of \$107,000 was erroneously entered in the expenditure section instead of an asset account because it is at the expense level. For the years 2012 to 2015, the Organization made an adjustment entry to re-enter the amount of \$107,000 in the same expense item since at the beginning of the year the account balance was \$0.

The General Ledger for the year 2016 shows a balance of \$0 for the account # [REDACTED] - [REDACTED]. For the years 2011 to 2018, the amount of \$107,000 is recorded in the balance sheet of the Organization's financial statements.

For the years 2013 to 2018, the amount recorded in the financial statements is lower since the Organization has grouped the amount with the accounts payable and receivable from related persons with the Organization.

The table below shows the amounts of Loans receivable reported on the balance sheet of the Organization.

Balance sheet amount of Loans receivable	
Fiscal year ending March 31	Balance sheet amount
2011	\$109,051
2012	\$107,851
2013	\$106,651
2014	\$106,551
2015	\$106,551
2016	\$106,611
2017	\$106,558
2018	\$105,426

⁴ It should be 2011 instead of 2001.

On May 20, 2010, we are of the opinion that the \$107,000 loan was made to [REDACTED]

[REDACTED] Subsequently, [REDACTED]
[REDACTED] used the funds to make a loan to [REDACTED]

On March 15, 2011, when the recovery of [REDACTED]
[REDACTED] \$107,000 loan to [REDACTED] became uncertain, [REDACTED]
[REDACTED] transferred the loan it had made to [REDACTED] to the Organization for
the loan it had been granted by the Organization.

On March 30, 2011, a third notification indicates that [REDACTED]
becomes the borrower instead of [REDACTED]

The 3 directors of the Organization are: Mr. James D. Raymond, Ms. Shirley Scullion
and [REDACTED]

Mr. James D. Raymond and Ms. Shirley Scullion [REDACTED]
[REDACTED] Mr. James D. Raymond. [REDACTED]

Ms. Shirley Scullion is [REDACTED]
[REDACTED] is related to the
Organization since it is owned by a [REDACTED]
[REDACTED]

The [REDACTED] of [REDACTED] is Neil Raymond. Mr.
Neil Raymond is [REDACTED] Mr. James D. Raymond.

The main investment of [REDACTED] consists of venture
investments in [REDACTED]

[REDACTED] was a company listed on the TSX Venture Exchange.

On May 5, 2011, [REDACTED]
[REDACTED]

Since May 5, 2011, [REDACTED]
[REDACTED].

On July 21, 2017, the representative sent a letter to [REDACTED]
[REDACTED] to answer our questions concerning the recovery of the
loan of \$107,000. She said in her letter:

"It is my understanding that [REDACTED] is still supervising [REDACTED]
attempt to liquidate its assets and return some monies to its various stakeholders, one
of which is Gamma Rho Foundation, for \$107,000 CDN (\$100,000 USD).

The monies were originally advanced directly to [REDACTED] on May 20, 2010 by
[REDACTED] On March 15, 2011, the loan to [REDACTED] was

assigned to Gamma Rho from [REDACTED] On March 30, 2011, Gamma Rho assigned the loan to [REDACTED] to [REDACTED]

I would appreciate it if you could confirm my understanding and be assured of my ongoing support of your efforts."

Following the request of the Organization, the CFO of [REDACTED] replied on August 14, 2017:

"Thank you for your letter dated July 21, 2017. [REDACTED] management is in ongoing contact with [REDACTED] and I can substantiate your understanding that [REDACTED] most viable assets, including logos, trademarks, blogs, legacy technologies, articles written for [REDACTED] have been made available for sale with monies recouped to be distributed to debtholders and other stakeholders. With the passage of time since [REDACTED] has become inactive, the prospect of such sales generating considerable funds for distribution lessen, but a considerable effort is being made."

We asked the Organization what steps it took to recover the loan. On September 11, 2017, the Organization replied to us:

"As the Raymond family, including Neil Raymond -the [REDACTED] was actively involved in not only [REDACTED] but Neil Raymond was also playing an active role with [REDACTED] Gamma Rho Foundation was kept apprised of the status of the file.

[REDACTED] on behalf of various [REDACTED] as well as other external investors in [REDACTED] and as one of the investors in [REDACTED] to sell off part of its business. This was designed to provide a liquidity event for its stakeholders, including [REDACTED] ..."

The Organization has not provided us with documentation demonstrating the recovery claims made for the loan and does not appear to have taken steps to recover the loan.

As at March 31, 2010, the Organization's total assets are \$147,162. During 2011, the Organization made a loan of \$107,000 to a related person, [REDACTED]

[REDACTED] The loan made to [REDACTED] represents 93.28% of the assets of the Organization as at March 31, 2011.

The table below shows the ratio of the loan to the total assets over the years.

Ratio of loan to total assets			
Fiscal year ending March 31	Loan receivable amount	Total assets as of March 31	% of loan on total assets
2010	\$107,000	\$147,162	72.71%
2011	\$107,000	\$114,708	93.28%
2012	\$107,000	\$110,045	97.23%
2013	\$107,000	\$107,612	99.43%
2014	\$107,000	\$107,895	99.17%
2015	\$107,000	\$106,717	100.27%
2016	\$107,000	\$106,611	100.36%
2017	\$107,000	\$106,558	100.41%
2018	\$107,000	\$105,426	101.49%

By making this loan to a related corporation, the Organization was depriving itself of a large portion of its resources that could no longer be used to carry out charitable activities.

Since there is no interest on the loan, it is not an investment that can earn income. In addition, there is no contract to stipulate repayment terms. The Organization received 3 installments of \$1,070. These payments were paid by [REDACTED]

[REDACTED] to comply with subsection 189 (1) of the Act and not pursuant to a contract between the Organization and [REDACTED]

[REDACTED] The Organization has to receive the market value of interest income for the loan it made.

The Organization has not acted prudently and with diligence in accepting the creditor transfers. During the various transactions concerning the loan, we did not obtain documentation of the means taken by the Organization to ensure that the loan would be repaid.

For all loan transactions, the Organization did not require a written loan agreement containing repayment terms and did not request repayment of the loan in writing.

To date, there has been no return of capital on the loan that the Organization has granted. It should be noted that although the loan was transferred to another creditor in 2011, [REDACTED] continued to pay interest. The last notification for the creditor transfer is March 30, 2011. [REDACTED] paid \$1,070 for the following dates: March 26, 2012, August 27, 2012 and November 28, 2013.

It is our view that the Organization did not act prudently in lending \$107,000 to a related company. The loan was non-interest bearing with no repayment terms. The resources of a charity must be devoted to charitable activities. The \$107,000 interest-free loan and without repayment terms do not allow the Organization to meet this objective.

It should also be noted that when the loan of \$107,000 was made, in 2011, this amount represented 73% of the Organization's assets of the year 2010 and this compromised the Organization's future charitable activities.

Furthermore, if we consider it a loan, it is a non-qualifying investment and the Organization no longer has the funds to meet its disbursement quota (DQ).

For the years under audit (2014 and 2015), we have calculated the DQ. Based on our calculations, the Organization failed to meet its DQ requirement for 2014 and 2015 (\$831 and \$827 respectively).

Following the subsection 3702(1)(a), for the disbursement quota (DQ) calculation, the value of a non-qualifying investment of a private is the greater of its fair market value on that day and its cost amount to the private foundation.

In this case, the greater amount of the non-qualifying investment is the cost for the Organization as \$107,000. From the year 2016 and after, the DQ will be constituted of a shortfall of \$3,745 for each year (\$107,000*3.5%).

Conclusion

For purposes of the Act, when a registered charity merely transfers its resources to another entity (assuming the entity is a non-qualified donee) and fails to maintain effective direction and actual control over those resources, the result is the same as a gift to a non-qualified donee.

Under section 149.1(1) of the Act, a charitable foundation must be constituted and operated exclusively for charitable purposes. A charitable foundation must devote all of its resources to charitable activities it conducts itself or give funds to qualified donees. For the years 2014 and 2015, the non-arm's length loan was at 99% and 100%, respectively, of the total resources of the Organization. The recovery of this loan is uncertain and the Organization did not make sufficient effort to recover the funds. Under paragraph 168(1)(b) of the Act, the Minister may, by registered mail, give notice to the Organization that it proposes to revoke the Organization's registration because it fails to demonstrate that it meets the test for continued registration under subsection 149.1(1) of the Act as a private foundation. It appears there are grounds to revoke the Organization under paragraph 168(1)(b) of the Act.

2. Failure to be constituted for exclusively charitable purposes: Broad and vague purposes

To be registered as a charity under the Act, Canadian law requires that an organization's purposes be exclusively charitable, and define the scope of the activities that can be engaged in by the organization.⁵

⁵ See *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 S.C.R. 10 at para 158; *Travel Just v Canada Revenue Agency*, 2006 FCA 343 at para 8, [2007] 1 C.T.C. 294.

To be exclusively charitable in law, a purpose must fall within one or more of the four categories of charity and deliver a charitable public benefit. If a purpose is worded in broad or vague language that could permit non-charitable activities and/or result in the delivery of non-charitable benefits (where, for example, the words used may be interpreted in different ways and/or encompass concepts that go beyond the scope of charity),⁶ it will not be clear that it is charitable in law (falls within a charitable purpose category and provides a public benefit), or that it defines the scope of the organization's activities.

The objects of the Organization indicated with the letters patent of October 23, 1961 are:

1. To receive and maintain a fund or funds and apply from time to time all or part thereof and/or the income therefrom exclusively for religious, charitable or educational purposes, and not for the benefit, gain or profit of any person, member or shareholder thereof."
2. To do all such things as are incidental or conducive to the attainment of the above objects and, in particular:
 - a) To hold, manage, sell or convert any the real or personal property from time to time owned by the corporation and to invest and reinvest any principal in such investments as the directors in their discretion may deem advisable and to retain any real or personal property in the form which it may be when received by the corporation as permanent investments or for such length of time as may be deemed best.
 - b) To draw, make, accept, endorse, execute and issue cheques, promissory notes, bills of exchange and other negotiable or transferable instruments,
 - c) To acquire by purchases, leases, devise, gift and other title and to hold any property necessary for the carrying on of its undertaking and for the purpose of drawing a revenue therefrom, and to sell, lease, mortgage, dispose of and convey the same or any part thereof as may be considered advisable.

Relating the foregoing principles to the Organization, it is our opinion that objects (a) through (c) are both broad and vague. The imprecise terminology fails to sufficiently define, or confine, the Organization's activities.

Moreover, and of equal importance, it is our view that the objects do not reveal the primary activities of the Organization is to make gifts to registered charities.

Accordingly, it is our position that the Organization has failed to meet the requirements of subsections 149.1(1) of the Act that it be constituted for exclusively charitable purposes, with all its purposes falling within one or more of the four categories of charity

⁶ See for example *Re Tetley*, [1941] Ch 308 (where the court held that the word *philanthropy* can encompass purposes and activities that go beyond the realm of charity).

and delivering a public benefit, without conferring an unacceptable private benefit. For these reasons, and each of these reasons, it appears there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

3. Failure to issue Official Donation Receipts in accordance with the Act

The Act provides various requirements with respect to the issuing of official donation receipts by registered charities. These requirements are contained in Regulation 3500 and 3501 of the Act and are described in some detail on the CRA's website.

Also, it is important for a registered charity to maintain the control over their donation receipts issued. Internal controls must be in place to ensure that:

- Official donation receipts are safeguarded against loss and unauthorized use;
- The issuing of official receipts is properly authorized and executed; and
- All official receipts issued, and corresponding donations received, have been properly recorded.

The audit noted the following deficiencies with regard to official donation receipts issued by the Organization during the audit period.

3.1. Failure to issue donation receipts in accordance with the Regulation 3501

The audit revealed that the donation receipts issued by the Organization did not comply with Regulation 3501 because the following information was missing or incorrect:

- A statement that it is an "official receipt for income tax purposes".
- The Organization's name as recorded with CRA. The name indicated on the official donation receipts is Gamma-Rho Foundation. The name that should be indicated is Fondation Gamma-Rho / Gamma-Rho Foundation.
- The registration number of the organization as registered with the CRA. The Organization has indicated on the donation receipts the registration number: 0285833-53-08. This is not the registration number that should appear on the official receipt. The registration number of the organization that should be indicated is: 118934934RR0001.
- The name, Canada Revenue Agency, and the website address www.cra-arc.gc.ca/charities.
- A unique serial number.
- The date on which the receipt was issued where that date differs from the date of the donation.

In addition, the Organization changed its name to Fondation Gamma-Rho / Gamma-Rho Foundation. We did not find these changes in the letters patent in the permanent file. The Organization must send to the CRA all additional letters patents.

3.2. Issuance of a Donation Receipt where no gift was made

For the year 2014, the Organization did not enter an amount on line 4500, "Total eligible amounts of all donations for which the organization issued a receipt for tax purposes" of the T3010 return. The Organization did not record any amount as donations in the general ledger or financial statements.

For the year 2014, the Organization issued official donation receipts for a total of \$500.

During the year ending March 31, 2014, the Organization received two electronic fund transfers of \$200 and \$300, respectively. To register the two deposits (\$200 and \$300) for a total of \$500, the Organization reported the total in the general ledger account # [REDACTED] - Loan-[REDACTED] (Account payable). Subsequently, entries were made and the amount of \$500 was reassigned to other accounts, an amount of \$400 in Ledger Account # [REDACTED] - Accts Receivable - [REDACTED] and another \$100 in the account of ledger account # 1410 - Loan [REDACTED]

The Organization issued two official donation receipts to Mr. James D. Raymond, one for \$200 and the other \$300 for a total of \$500.

The Organization should not have issued the two official donation receipts for a total of \$500 since these amounts are not donations, but a reduction of an account receivable (GL # [REDACTED]) of \$400 and an increase of the amount to pay \$100 since the general ledger (GL # [REDACTED]) was negative.

The Organization did not report the total of \$500 as revenue in the financial statements or the T3010 return.

Conclusion

It is the CRA's position that the Organization's donation receipts and receipting practices caused it to issue donation receipts other than in accordance with the Act. Therefore, under subsection 149.1(2) of the Act, the Minister may revoke the registration of the Organization because it has failed as described at paragraph 168(1)(d) to issue donations receipts in accordance with the Act and its regulations or, under subsection 188.1(7) and paragraph 188.2(2)(c) of the Act, the Organization may be subject to a sanction or the suspension of its receipting privileges. Given the level of severity of the Organization's non-compliance in this regard, we are not considering applying a sanction or suspension at this time.

4. Failure to file an information return as required by the Act

Legislation

Subsection 149.1(14) of the Act requires that the return must be in prescribed form and contain prescribed information. A charity is not properly meeting its information return

filing requirements when it fails to exercise due care with respect to insuring the accuracy thereof. It is the responsibility of the charity to ensure that the information that is provided in its return, schedules and statements, is factual and complete in every respect.

Audit Findings

The audit revealed the Organization had improperly completed the T3010, *Registered Charity Information Return* in that many of the items reported were incorrectly identified or omitted.

The Organization improperly completed the T3010 for the fiscal periods ending March 31, 2014 and March 31, 2015 in respect of the items noted below:

a) T1235 form – Directors / Trustees and Like officials worksheet:

We observed that the following information was not recorded on Form T1235, "Directors / Trustees Worksheet":

- For the years 2011 to 2018, the name of [REDACTED] is not indicated on Form T1235. It is [REDACTED] James Raymond, who is indicated. [REDACTED] should not be indicated on the form T1235 as he is not a director of the Organization.

The three directors of the Organization are James Raymond, [REDACTED] and Shirley Scullion. These are the people who should be on Form T1235.

Furthermore, it was [REDACTED] who signed the T3010 statements for the years 2011 to 2018. The T3010 should be signed by a person who has authority to sign on behalf of the Organization, normally a director.

- For the years 2011 to 2018, the Organization did not indicate the start of the mandate for the three directors.

b) Schedule 6 – Assets:

For the years 2014 and 2015, the Organization has indicated the loan receivable on line 4120, Amounts receivable from all others, of the T3010 return. This amount should be shown on line 4110 Amounts receivable from non-arm's length persons since the loan was made to a related person.

The \$107,000 loan was made to [REDACTED], a corporation whose shares are held by a director of the Organization.

c) Distribution of expenses between lines 5000 to 5040

For the years 2014 and 2015, the Organization did not allocate its total expenditures (line 4950) on lines 5000 to 5040.

For 2014 and 2015, the Organization should have reported \$787 and \$324, respectively, on line 5010 of its T3010, Total Management and Administration Expenses.

The amount of \$787 represents the total expenses reported on line 4950 of the 2014 T3010 return. The amount of \$324 corresponds to the total expenses reported on line 4950 of the 2015 T3010 return.

Conclusion

Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because the charity fails to file a *Registered Charity Information Return* as and when required under the Act or a Regulation. For this reason, there may be grounds for revocation of the charitable status of the Organization.

5. Failure to maintain adequate books and records

Section 230(2) of the Act requires every registered charity to maintain adequate records and books of account at an address in Canada recorded with the Minister. The purpose of this requirement is to enable the charity to accurately provide CRA with the information required by the Act as well as enable CRA to verify the accuracy of reported information through the conducting of audits.

In addition to the retention of copies of the donation receipts that section 230(2) explicitly requires, section 230(4) also states that "every person required by this section to keep books of account shall retain

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

A charity is not meeting its requirement to maintain adequate books and records if it fails to exercise due care with respect to ensuring the accuracy thereof.

5.1. No loan agreement and written request for loan repayment between the borrower and the Organization

During the year ending the March 31, 2011, the Organization granted a loan of \$107,000 to a related company. We observed the following transactions concerning this loan:

- On May 20, 2010, the Organization granted a loan of \$107,000 to [REDACTED]
- On March 15, 2011, the Organization accepted a borrower change in the loan it had made to [REDACTED]. From this date, the borrower of the amount of \$107,000 becomes [REDACTED]
- On March 30, 2011, the Organization accepted a borrower change regarding the loan. From this date, the borrower of the amount becomes [REDACTED]

For each of the transactions listed above, the Organization does not have a loan agreement with the borrower. The Organization has not acted prudently with due diligence in not requiring the terms of repayment, the interest rate and the term of the loan to be included in a written loan agreement.

In addition, the Organization did not maintain a written request for loan repayment. The CRA can not assess that the measures taken by the Organization to recover the amount are sufficient and that the Organization has acted with due diligence to recover the amount which represents a large part of its assets.

5.2. Minutes of Board of Directors Meetings

The minutes of the meetings of the Organization provided little information on its charitable activities. The minute book is not up to date. We did not obtain minutes for board meetings after September 24, 2015. It is possible that no meeting was held. We did not observe any minutes concerning the loan that the Organization granted in 2011 which constituted the majority of its assets. No discussion is reported in the minutes concerning the recovery of this loan.

5.3. Dissolution clauses

In the registration notification letter of November 2, 1967, the following paragraph is indicated:

"We normally request before issuing a registration number that there be a clause inserted in either the constitution or by-laws of a charitable corporation to the effect that upon dissolution all the assets and property of the corporation shall, after payment of its just debts and obligations, be distributed to one or more charitable organisations in Canada. However, in view of the delay in considering the present application, the registration number is being issued conditional upon the By-laws of the Foundation being amended to include the required dissolution clause, if it is not already included and, a copy being forwarded to us as soon as it has been done."

The Organization did not change its dissolution clause and therefore did not provide a copy to the CRA.

Conclusion

Under paragraph 168(1)(b) of the Act, the Minister may, by registered mail, give notice to the registered charity that he proposes to revoke its registration if it ceases to comply with the requirements of the Act for its registration as such.

The Organization's options:

a) Respond

If the Organization chooses to respond, send written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter to the address below. After considering the response, the Director General of the Charities Directorate will decide on the appropriate course of action. The possible actions include:

- no compliance action;
- issuing an educational letter;
- resolving the issues through a Compliance Agreement;
- applying penalties or suspensions or both, as described in sections 188.1 and 188.2 of the Act; or
- issuing a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

b) Do not respond

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

If the Organization appoints a third party to represent it in this matter, send us a written request with the individual's name, the individual's contact information, and explicit authorization that the individual can discuss the file with us.

If you have any questions or require further information or clarification, do not hesitate to contact me at the numbers indicated below. My team leader, Robert Bill, may also be reached at 514-229-0589.

Yours sincerely,

[REDACTED]

Jean Dion
Audit & Enforcement Division
Montreal TSO
Telephone: (514) 229-0594
Facsimile: (514) 283-8208
Address: 305 René-Levesque Blvd West
Montreal (Quebec) H2Z 1A6

c.c.:

[REDACTED]
Shirley Scullion
[REDACTED]

Qualified Donees

149.1 (1) Definitions

charitable foundation means a corporation or trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof, and that is not a charitable organization

charitable organization, at any particular time, means an organization, whether or not incorporated,

(a) constituted and operated exclusively for charitable purposes,

(a.1) all the resources of which are devoted to charitable activities carried on by the organization itself,

(b) no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof,

(c) more than 50% of the directors, trustees, officers or like officials of which deal at arm's length with each other and with

(i) each of the other directors, trustees, officers and like officials of the organization,

(ii) each person described by subparagraph (d)(i) or (ii), and

(iii) each member of a group of persons (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)) who do not deal with each other at arm's length, if the group would, if it were a person, be a person described by subparagraph (d)(i), and

(d) that is not, at the particular time, and would not at the particular time be, if the organization were a corporation, controlled directly or indirectly in any manner whatever

(i) by a person (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)),

(A) who immediately after the particular time, has contributed to the organization amounts that are, in total, greater than 50% of the capital of the organization immediately after the particular time, and

(B) who immediately after the person's last contribution at or before the particular time, had contributed to the organization amounts that were, in total, greater than 50% of the capital of the organization immediately after the making of that last contribution, or

(ii) by a person, or by a group of persons that do not deal at arm's length with each other, if the person or any member of the group does not deal at arm's length with a person described in subparagraph (i)

qualified donee, at any time, means a person that is

(a) registered by the Minister and that is

a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i) that has applied for registration,

(ii) a municipality in Canada,

a municipal or public body performing a function of government in Canada that has applied for registration,

(iv) a university outside Canada, the student body of which ordinarily includes students from Canada, that has applied for registration, or

(v) a foreign charity that has applied to the Minister for registration under subsection (26),

(b) a registered charity,

(c) a registered Canadian amateur athletic association, or

(d) Her Majesty in right of Canada or a province, the United Nations or an agency of the United Nations

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;
- (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; and
- (f) of a registered charity, if it accepts a gift from a foreign state, as defined in section 2 of the State Immunity Act, that is set out on the list referred to in subsection 6.1(2) of that Act.

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.

Tax and Penalties in Respect of Qualified Donees

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) a registered charity
 - (i) 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,
 - (ii) that is not the subject of a suspension under subsection 188.2(1),
 - (iii) that has no unpaid liabilities under this Act or under the Excise Tax Act,
 - (iv) that has filed all information returns required by subsection 149.1(14), and
 - (v) 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; or
- (b) a municipality in Canada that is approved by the Minister in respect of a transfer of property from the particular charity.

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) Joint and several, or solidary, liability – tax transfer

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 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 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 described in paragraph 188(1.3)(a) 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.