



June 25, 2021

REGISTERED MAIL

Joseph Antonacci
President
Action Faim Inc.
Suite 1404
5075 Jean Talon East
Montreal, QC H1S 3G5

BN: 873254635RR0001
File #: 3012250

Dear Joseph Antonacci:

**Subject: Notice of intention to revoke
Action Faim Inc.**

We are writing with respect to our letter dated August 30, 2018 (copy enclosed), in which Action Faim Inc. (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2015 to December 31, 2016. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered your written response dated September 28, 2018. Your reply has not alleviated our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity. Our concerns are explained in Appendix A attached.

Conclusion

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization failed to devote its resources to charitable activities carried on by the Organization itself, failed to maintain adequate books and records as required, is not constituted and operated exclusively for charitable purposes, and failed to complete an accurate charity information return. For these reasons, it is our position that the Organization no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated August 30, 2018, and pursuant to subsections 168(1), 149.1(1), 149.1(2), and 149.1(14) of the Act, we hereby notify you of our intention 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), and 168(1)(e), and subsections 149.1(2) and 149.1(14) of the Income Tax Act, of our intention 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
873254635RR0001

Name
Action Faim Inc.
Montréal QC

Should the Organization choose to object to this notice of intention to revoke the its 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 B, attached.

Consequences of revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) 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 B. Form T2046 and the related Guide RC4424, Completing the Tax Return Where Registration of a Charity is Revoked, are available on our website at canada.ca/charities-giving;

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

Finally, we advise that subsection 150(1) of the 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 August 30, 2018
- Organization's representations dated September 28, 2018
- Appendix A, Comments on representations
- Appendix B, Relevant provisions of the Act

c.c.: Angelo Mattiocco



August 30, 2018

Mr. Joseph Antonacci
President
Action Faim Inc
Suite 1404
5075 Jean Talon East
Montreal, QC H1S 3G5

BN: 873254635RR0001
File #: 3012250

Dear Joseph Antonacci:

Subject: Audit of Action Faim Inc

This letter results from the audit of the Action Faim Inc (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from 2015-01-01 to 2016-12-31.

On August 29, 2018, the Organization was advised that the CRA identified areas of non-compliance with the provisions of the Income Tax 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	149.1(1), 149.1(2), 149.1(6.2), 168(1)(b)
2.	Failure to maintain adequate books and records as required	149.1(2), 168(1)(b), 168(1)(e), 188.2(2)(a), 230(2), 230(4)
3.	Failure to be constituted for exclusively charitable purposes	149.1(2), 168(1)(b), 188.1(4), 188.1(5)
4.	Failure to complete an accurate charity information return	149.1(2), 149.1(14), 168(1)(c), 188.1(6)

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

a) Devotion of resources (fundraising expenses)

All charitable organizations registered under the Act are required by law to devote their resources to exclusively charitable purposes and activities. Although a charity can use some of its resources for fundraising to support the charitable activities that further its charitable purposes, it is the CRA's position that fundraising is not a charitable purpose in itself, nor is it a charitable activity that directly furthers a charitable purpose.

Where the resources of a charity devoted to fundraising exceed the resources devoted to charitable activities it is a strong indicator that fundraising has become a collateral non-charitable purpose. This may happen whether fundraising is done internally through staff or externally through a contractual arrangement. Merely showing that the costs associated with fundraising are at reasonable or market rates will not alleviate concerns in this regard, and, regardless of the cost of fundraising, a registered charity must devote its resources to charitable activities. If a registered charity's total resources devoted to fundraising exceed those devoted to charitable activities, it is unlikely that this legal requirement will be met.

Fundraising should be ancillary and incidental, however, the Organization has allowed fundraising activities to become a focus of the Organization. The Organization is carrying out the following unacceptable fundraising activities:

- Fundraising that is a purpose of the Organization: as per the initial interview and a third party verification, approximately 90% of the gross revenues obtained through fundraising are paid back to the fundraisers. Our review and analysis of the reported amounts show that only 3% to 4% of total disbursements were used for charitable purposes. These low percentages point to a serious lack of devotion of resources for charitable purposes.

Although the reported amounts were accepted as charitable activities, it should be noted that the Organization has not established a clear beneficiary selection criteria.

See Schedule A – Devotion of Resources Review – Charitable Activities

In addition, the analysis of bank statements for the same period confirms that roughly 89% of the gross revenue was paid to fundraisers.

See Schedule B – Devotion of Resources Review – Fundraising

The CRA generally considers devoting this much of an Organization's resources to fundraising to be a strong indicator that the Organization has adopted fundraising as a purpose. Fundraising is not a charitable purpose. Therefore, the Organization is considered to have a non-charitable purpose and does not meet the requirement of having been established exclusively for charitable purposes.

- Fundraising that is deceptive:
 - Misrepresentation in financial information: Fundraising expenses have not been correctly reported in form T3010 since part of the expenses were reallocated to a charitable activities GL account (Nourriture & Activité). As per promotional material obtained from the Organization, it is advertised that 37% of the revenues go to marketing while in reality roughly 89% of the gross revenue is paid to the fundraisers. The Organization does not disclose the real cost of its fundraising activities.
 - Misrepresentation in fundraising solicitations: As per the telemarketing script obtained from the Organization, fundraisers identify themselves as volunteers. This is potentially misleading as the word "volunteer" implies that the telemarketer is not being compensated. This in turn may lead to the belief that the full amount of the donation is used for the operations of the Organization.

Whether intentional or negligent, deceptive fundraising is unacceptable.

b) Gifts to non-qualified donees

The Act permits a registered charity to carry out its charitable purposes both inside and outside Canada in only two ways: it can make gifts to other organizations that are on the list of qualified donees set out in the Act, and it can carry on its own charitable activities under its own direction and control. In contrast to the relatively passive transfer of money or other resources involved in making gifts to qualified donees, carrying on one's own activities implies that the charity is an active and controlling participant in a program or project that directly achieves a charitable purpose.

A "qualified donee" means a donee defined in subsection 149.1(1). Qualified donees are as follows:

- a registered charity (including a registered national arts service organization);
- a registered Canadian amateur athletic association;
- a listed housing corporation resident in Canada constituted exclusively to provide low-cost housing for the aged;
- a listed Canadian municipality;
- a listed municipal or public body performing a function of government in Canada;
- a listed university outside Canada that is prescribed to be a university, the student body of which ordinarily includes students from Canada;

- a listed charitable organization outside Canada to which Her Majesty in right of Canada has made a gift;
- Her Majesty in right of Canada or a province; and
- the United Nations and its agencies.

As the Act specifically states what constitutes a qualified donee, applying the maxim “expressio unius est exclusio alterius” means that entities not expressly stated in this list are not considered qualified donees.

Gifts to non-qualified donees are not considered charitable expenditures for the purposes of the Act. During the audit period, the Organization transferred a substantial amount of its resources without any written agreement or contract. The Organization claimed that the payments were made to fundraisers.

By not implementing an agreement or contract, the Organization has failed to demonstrate any relationship between the fundraiser and the Organization. Ultimately, the result is the same as a gift to a non-qualified donee.

Summary

In summary, it is our position that the Organization does not devote its resources to charitable activities carried on by the Organization itself, based on its:

- a. Devotion of resources (fundraising expenses)
- b. Gifts to non-qualified donees

Therefore, the result of the audit indicates that the main activity of the charity is fundraising (via telemarketing).

Accordingly, it is our position that the Organization has failed to meet the requirements of subsections 149.1(1) and 149.1(6.2) of the Act that it devote substantially all its resources to charitable activities carried on by the Organization itself. For 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.

2. Failure to maintain adequate books and records as required

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

- a) information in such form as will enable the Minister to determine whether there are any grounds for revocation of its registration under the Act;
- b) a duplicate of each receipt containing prescribed information for a donation received by it;

- c) other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under this Act.”

In addition, subsection 230(4) also states “Every person required by this section to keep records and books of account shall retain:

- a) the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such a period as is prescribed;
- 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 end of the last taxation year to which the records and books of account relate.”

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

- i. it is the responsibility of the registered charity to prove that its charitable status should not be revoked;¹
- ii. 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;² and
- iii. 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.³

The audit of the Organization’s records revealed the following deficiencies:

- lack of internal controls relating to Official Donation Receipts:
 - during 2016, duplicates for pre-signed booklets given to one of the fundraisers were never returned to the Organization. Therefore, the Organization does not know the details (donors, amounts, date) of roughly 800 donation receipts issued.

The Organization estimated the amounts of the lost donation receipts issued as follow:

¹ See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

² 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.

³ See Prescient Foundation v MNR, 2013 FCA 120 at para 51, [2013] FCJ no 512.

Receipt #	Estimated Value
8501 - 8600	Estimated at \$10k for 100 receipts
8601 - 8700	Estimated at \$10k for 100 receipts
8701 - 8800	Estimated at \$10k for 100 receipts
8801 - 8850 8876 - 8900	Estimated at \$6k for 75 receipts
8901 - 9000	Estimated at \$10k for 100 receipts
9001 - 9100	Estimated at \$10k for 100 receipts
9176 - 9200	Estimated at \$2.5k for 25 receipts
Unknown	Amount of \$20k (possibly 200 receipts) added to Total Donation Receipts and reported on Line 4500 of form T3010

- a gift is a voluntary transfer of money or property to a registered charity. As per the Organization, starting in 2016, official donation receipts were issued to donors at the time the cheques were collected. Therefore, official donation receipts were issued before cheques cleared in the bank account of the Organization. The amount of dishonoured cheques in 2016 was \$850. If a check is dishonored for insufficient funds, no gift is deemed to have been made and an official donation receipt should not have been issued.
- the Organization has reimbursed donated gifts in the amount of \$270.00 in 2015 and \$150.00 in 2016. As a general rule, a registered charity cannot return a gift. In the event that a donated gift is later returned, an information return must be filed by the charity within 90 days after the day the property is returned. The Organization did not file the required information return. Guidance CG-016 – Qualified donees – Consequences of returning donated property outlines the procedures to follow.
- lack of internal controls relating to the maintenance of books and records:
 - the entire accounting process is handled by Mr. Joseph Antonacci, the President of the Organization. As per the initial interview, Mr. Antonacci is the only person of the board actively involved with the Organization's activities and administration. The Organization may be too small to implement control, however, there are no visible efforts from the Organization to safeguard assets. For example, the Organization did not match cheque donations with the pre-signed donation receipts issued by the fundraisers.
 - the Organization was not clear about details related to online donations. During the initial interview, the Organization replied that online donations were linked to the Organization's bank accounts. The Organization then mentioned that nobody donates through the website. While examining the books and records of the Organization, we have found two donations received through the website. The donations do not appear as deposits in

the bank accounts of the Organization. The Organization did not provide the bank account statements linked to the online donations.

- there is no proper audit trail or documentary evidence to corroborate payments to fundraisers. According to our analysis, \$349,735 and \$297,808 was paid out in cash in 2015 and 2016, respectively. The Organization and the third party fundraisers have not signed contracts. Since cash is untraceable, we are unable to determine the identity of the recipients. Therefore, we cannot validate the cash expenses paid to fundraisers.
- duplicate copies of the official donation receipts and temporary receipts to support the revenue reported were not made available to us for review as the Organization did not keep them. The Organization did not keep journal entries of the deposits and did not issue ODRs for all the donations received. Therefore, we are unable to trace ODRs issued to their corresponding cheque deposit.
- duplicate official donation receipts for the audit period were not provided. A blank sample of a carbonless copy donation form was provided. However, there is no evidence that the same type of receipt was actually used during the audit period. Therefore, we are unable to evaluate the conformity to the Requirements of Section 3501 of the Regulations, the Act and IT-110R3 of the donation receipts issued during the audit period.
- persons required to maintain books and records are responsible for retaining them in a manner that will ensure the trustworthiness and readability of the information recorded. The Organization maintains its records in a handwritten, paper format. However, certain sections of the general ledger, such as for the GL account "PC Joseph" and [REDACTED] AP" for 2015, are difficult to read and understand due to several amounts and notes being squeezed in the same lines.
- a reconciliation of the Form T3010 – SCH06 Statement of Operations shows a discrepancy of \$5,000 in 2016. As per the general ledger, the total amount of the expenses for the year was \$383,167. The amount reported as total expenses on SCH06 was \$388,167.00
- the Organization did not maintain a proper journal listing of donors. The names and addresses of the donors are sometimes illegible.
- the general ledger is prepared once a year based on supporting source documents. No journal entries details are maintained, except for the GL account "Due to Non-Arm's Length."
- the Organization reimbursed Mr. Antonacci for travel expenses incurred on behalf of the Organization. However, no logbook has been provided to justify the expenses.

- the numerous transactions between the charity and the personal expenses of Mr. Joseph Antonacci blurs the line dividing charity business with personal life. The accounting records are difficult to read and follow. Therefore, there could be potential misuse of the charity resources because we cannot easily validate the balance of this GL.
- the Organization did not maintain official minutes of board meetings.

Under paragraph 168(1)(e) of the Act, the registration of a charity may be revoked if it fails to comply with or contravenes subsection 230(2) of the Act dealing with books and records. It is our position that the present case consists of material non-compliance. For this reason, it appears to us that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act.

3. Failure to be constituted for exclusively charitable purposes

Delivery of non-incidental private benefits

As indicated above, to be charitable at law, a purpose must fall within a category of charity and deliver a public benefit. However, it is not enough that a purpose, on its face, falls within one or more of the four categories of charity and delivers a charitable benefit to a properly defined eligible beneficiary group. The public requirement also means a charity may not provide private benefits as it advances and furthers a charitable purpose, except within legally acceptable boundaries⁴. The charity is responsible for establishing that any private benefit that may be delivered is acceptable.

Generally, a private benefit is a benefit or advantage provided to a person or organization that is not a charitable beneficiary, or a benefit provided to a charitable beneficiary that exceeds the bounds of charity. An acceptable private benefit is one that is incidental to achieving a charitable purpose. A private benefit will usually be incidental where it is necessary, reasonable, and proportionate to the resulting public benefit⁵.

Necessary essentially means legitimately and justifiably resulting from an action that directly contributes towards achieving a charitable purpose, or a required step in, or consequence or by-product of, an action taken only to achieve a charitable purpose.⁶ Reasonable means related to the need and no more necessary to achieve the purpose,⁷ and fair and rational. Proportionate to the resulting public benefit means a private benefit

⁴ See for example *Prescient Foundation v MNR*, 2013 FCA 120 at para 36, [2013] FCJ no 512.

⁵ For more information, see CRA Policy Statement CPS-024, Guidelines for Registering a Charity: Meeting the Public Benefit Test.

⁶ See for example *Incorporated Council of Law Reporting for England and Wales v AG*, [1972] Ch 73, [1971] 3 All ER 1029 (CA); *Royal College of Surgeons of England v National Provincial Bank*, [1952] AC 631; *Royal College of Nursing v St Marylebone Borough Council*, [1959] 1 WLR 1007 (CA); *IRC v Oldham Training and Enterprise Council*, [1996] BTC 539.

⁷ See for example *Joseph Rowntree Memorial Housing Association Ltd and Others v AG*, [1983] Ch 159 (Ch D); *In Re Resch's Will Trusts And Others v Perpetual Trustee Co Ltd*, [1969] 1 AC 514 (PC).

must be secondary and subsidiary to a charitable purpose.⁸ It cannot be a substantial part of a purpose, or form an additional or independent non-charitable end in and of itself. The public benefit cannot be too indirect, remote or speculative as compared to a more direct private benefit, particularly where the direct benefit is to private persons, entities or businesses.⁹

In most cases, private benefits that are more than incidental under the common law will also be an "undue benefit"¹⁰ under the Act. A registered charity cannot confer on a person an undue benefit including disbursements by way of a gift or the amounts of any part of resources, or otherwise make available for the personal benefit of any person who is a member of the charity, or who deals not at arm's length with the charity.¹¹

Providing a private benefit is an offence under the Act. A registered charity that confers an undue benefit is liable of a penalty equal to 105% of the amount of the benefit, increasing to 110% if the offence is reproduced within five years.¹²

The review of the Organization's disbursements indicates several instances where the Organization's funds may have been used to cover Mr. Antonacci's personal expenses:

- the analysis of the grocery receipts showed several instances where purchases made for grocery gift cards included cash withdrawals and other smaller grocery purchases. Grocery gift cards are given to beneficiaries as part of their charitable activities. Cash withdrawals and other smaller grocery charges lack the corresponding supporting documents to confirm their usage. Therefore, these expenses cannot be determined to have been spent on charitable programs or activities. The possibility exists that these expenses may have been utilized for personal ends.

See Schedule C – Unknown Expenses

- some expenses are shared between the Organization and Mr. Joseph Antonacci. Expenses that include a personal portion component are rent, phone, internet and vehicle expenses. The Organization uses an estimated percentage of reallocation. The same percentage is used to reallocate each of these expenses. In 2015, Mr. Antonacci personally assumed 55% of the expenses and in 2016, he assumed 60%. However, the allocation basis is not reasonable as it is not based on actual use. The Organization did not provide an explanation as to how the percentage of allocation was calculated. A fixed percentage may be convenient but raises

⁸ Incorporated Council of Law Reporting for England and Wales v AG, [1972] Ch 73, [1971] 3 All ER 1029 (CA); Inland Revenue Commissioner v City of Glasgow Police Athletic Association, [1953] AC 380 (HL); IRC v Oldham Training and Enterprise Council, [1996] BTC 539.

⁹ See for example IRC v Oldham Training and Enterprise Council, [1996] BTC 539; Canterbury Development Corporation v Charities Commission, [2010] NZHC 331; Hadaway v Hadaway, [1954] 1 WLR 16 (PC); Re Co-operative College of Canada et al and Saskatchewan Human Rights Commission, [1975] 64 DLR (3d) 531.

¹⁰ An "undue benefit" is defined in subsection 188.1(5) of the Act.

¹¹ See CSP-U02, Undue Benefits.

¹² See subsection 188.1(4) of the Act.

questions as to the reasonability of the allocation basis. Since personal expenses are involved, this could lead to potential misuse of resources because there is no direct relationship between the usage and the expenses charged. For example, vehicle expenses should have been expensed based on the actual mileage used for the Organization's business.

Accordingly, it is our position that the Organization has failed to meet the requirements of subsections 149.1(1) and 149.1(6.2) 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 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.

4. Failure to complete an accurate charity information return

Subsection 149.1(14) of the Act states that:

Every registered charity and registered Canadian amateur athletic association shall, within six months from the end of each taxation year of the charity or association and without notice or demand, file with the Minister both an information return and a public information return for the year in prescribed form and containing prescribed information.

It is the responsibility of the Organization to ensure that the information provided in its T3010 returns, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirements to file an information return in prescribed form if it fails to exercise due care with respect to ensuring the accuracy thereof. The Federal Court of Appeal has confirmed that major inaccuracies in a T3010 are a sufficient basis for revocation.¹³

The result of the audit indicates that the Organization did not disclose the real cost of its fundraising activities:

- Fiscal year 2015 – T3010 Form: The Organization reported fundraising expenses in the amount of \$176,845 on form T3010 – line 5020. Based on financial information provided by the Organization, we can observe that a year-end adjusting entry was made to reallocate 50% of the Total Marketing expenses to the GL account “Nourriture & Activité”. In addition, payments made by bank transfers from the [REDACTED] bank account to one fundraiser has been entirely recorded as “Nourriture & Activité”, a charitable activity. It should be noted that the 50% used to reallocate Fundraising expenses is close to the 55% used to reallocate certain expenses to the “Due to Non-Arm’s Length” account.

¹³ Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 48-51.

- Fiscal year 2016 – T3010 Form: The Organization reported fundraising expenses in the amount of \$124,891 on form T3010 – line 5020. Based on financial information provided by the Organization, we can observe that a year-end adjusting entry was made to reallocate 60% of the Total Marketing expenses to the GL account “Nourriture & Activité”. In addition, payments made by bank transfers from the [REDACTED] bank account to two fundraisers has been entirely recorded as “Nourriture & Activité”, a charitable activity. It should be noted that the 60% used to reallocate Fundraising expenses is also the same % used to reallocate certain expenses to the “Due to Non-Arm’s Length” account.

During the audit period, the Organization has effectively shifted portion of its fundraising expenses to charitable activity expenses. The year-end journal entries reallocated portion of the expenses that should have been reported in form T3010 – line 5020 (Total Fundraising) to form T3010 – line 5000 (Total Charitable). In addition, certain fundraising expenses have been entirely recorded in the wrong GL account. As a result, the amounts reported in form T3010 – line 5020 have been grossly under-reported.

See Schedule B – Devotion of Resources Review – Fundraising

Under paragraph 168(1)(c) of the Act, the registration of a charity may be revoked if it fails to file a charity information return as required under the Act. It is our position the Organization has failed to comply with the Act by failing to file an accurate T3010. For this reason, there may be grounds to revoke the registered status of the Organization under paragraph 168(1)(c) of the Act.

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,



Marisa Chen, CPA, CGA
Audit Division
Montreal Tax Services Office (TSO)

Telephone: (514) 229-0449
Facsimile: (514) 283-8208
Address: 305 René-Lévesque west, 7th floor
Montreal, QC H2Z 1A6

c.c.: Joseph Antonacci



Schedule A – Devotion of Resources Review – Charitable Activities

As per GL – Nourriture & Activité

EXPENSES:	2016-12-30	2015-12-30	DESCRIPTION
Nourriture & Activité	\$ 13,009	\$ 11,515	ACTIVITY
Nourriture & Activité - ■ debit transactions	\$ 53,319	\$ 22,590	Fundraising
Nourriture & Activité - Reallocation JE from Marketing Expenses	\$ 179,836	\$ 180,040	Fundraising
Nourriture & Activité - Reversal accrual previous YR	-\$ 5,088	-\$ 5,711	Journal Entry
Nourriture & Activité - Accrual current YR	\$ 6,300	\$ 5,088	Journal Entry
Nourriture & Activité - Reallocation JE from Marketing Expenses		\$ 3,195	Fundraising
Nourriture & Activité - Cr to "Due to JA"		\$ 1,300	Journal Entry
Total Nourriture & Activité expenses as per GL	\$ 247,376	\$ 218,017	
Less			
Nourriture & Activité - ■ debit transactions	-\$ 53,319	-\$ 22,590	Fundraising
Nourriture & Activité - Reallocation JE from Marketing Expenses	-\$ 179,836	-\$ 180,040	Fundraising
Nourriture & Activité - Reallocation JE from Marketing Expenses		-\$ 3,195	Fundraising
Total Charitable Activities Expenses	\$ 14,221	\$ 12,192	
Total Expenses per T3010	\$ 388,167	\$ 412,266	
Total Charitable Activities Expenses /Total Expenses (%)	3.66%	2.96%	

Schedule B – Devotion of Resources Review – Fundraising

FUNDRAISING EXPENSES PAID TO	2016-12-30		2015-12-30		BANK
	AMOUNT	# OF TRANSACTIONS	AMOUNT	# OF TRANSACTIONS	
J ANTONACCI	\$ 297,808	85	\$ 349,735	142	
	\$ 12,620	55	\$ 17,205	93	
	\$ 33,530	89	\$ -		
TOTAL FUNDRAISING EXPENSES	\$ 343,958	229	\$ 366,940	235	
TOTAL REVENUE	\$ 387,773		\$ 411,642		
TOTAL FUNDRAISING EXPENSES / TOTAL REVENUE (%)	88.70%		89.14%		

- 1) J ANTONACCI: a total of 142 and 85 cheques were issued for an amount of \$349,735 and \$297,808 in 2015 and 2016 respectively. Cheques were all issued to Mr. Antonacci from the [REDACTED] account of the Organization. Mr. Antonacci explained that cheques issued to himself were for the purpose of paying the fundraisers. As per Mr. Antonacci, he cashed these cheques at the bank.
- 2) [REDACTED] a total of 93 and 55 transfers were made to this fundraiser for an amount of \$17,205 and \$12,620 in 2015 and 2016 respectively. Transfers were made from the [REDACTED] bank account of the Organization.
- 3) [REDACTED] a total of 89 transfers were made to this fundraiser for an amount of \$33,530 in 2016. Transfers were made from the [REDACTED] bank account of the Organization.

Cash withdrawals from the [REDACTED] and [REDACTED] bank accounts of the Organization were not included in the above analysis. During the audit period, cash was used to pay credit cards and to reduce the non-arm's length GL account. Since cash is untraceable, we do not know the exact source of the funds. For simplicity of analysis, cash withdrawals are assumed to be used to pay for expenses other than the fundraisers.

CASH WD FROM	2016-12-30		2015-12-30	
	AMOUNT	# OF WD	AMOUNT	# OF WD
[REDACTED]	\$ 3,600	11	\$ 13,620	40
[REDACTED]	\$ 8,150	31	\$ 5,280	19
TOTAL CASH WITHDRAWAL	\$ 11,750	42	\$ 18,900	59

Schedule C – Unknown Expenses

– Fiscal Year 2015

Grocery Gift Card/ Food purchases

MM DD	DESCRIPTION	TOTAL	GIFT CARDS	CASH	GROCERIES
2015-01-16	C/PURCHASE	\$ 265 27	\$ 250 00		\$ 15 27
2015-01-16	C/PURCHASE	\$ 143 90	\$ 100 00		\$ 43 90
2015-02-09	C/PURCHASE	\$ 268 13	\$ 100 00		\$ 168 13
2015-02-13	C/PURCHASE	\$ 66 00			\$ 66 00
2015-02-20	C/PURCHASE	\$ 126 47			\$ 126 47
2015-03-03	C/PURCHASE	\$ 255 74	\$ 250 00		\$ 5 74
2015-04-09	C/PURCHASE	\$ 227 76	\$ 200 00		\$ 27 76
2015-04-30	C/PURCHASE	\$ 139 33	\$ 100 00		\$ 39 33
2015-05-04	C/PURCHASE	\$ 150 00	\$ 150 00		\$ -
2015-06-09	C/PURCHASE	\$ 106 00	\$ 100 00		\$ 6 00
2015-06-09	C/PURCHASE	\$ 102 99	\$ 100 00		\$ 2 99
2015-06-09	C/PURCHASE	\$ 100 00	\$ 100 00		\$ -
2015-06-26	C/PURCHASE	\$ 32 32	\$ -		\$ 32 32
2015-06-26	C/PURCHASE	\$ 89 08	\$ -		\$ 89 08
2015-06-26	C/PURCHASE	\$ 116 38		\$ 100 00	\$ 16 38
2015-06-30	C/PURCHASE	\$ 67 87			\$ 67 87
2015-07-14	C/PURCHASE	\$ 123 85		\$ 100 00	\$ 23 85
2015-08-17	C/PURCHASE	\$ 150 00	\$ 150 00		\$ -
2015-09-14	C/PURCHASE	\$ 60 71			\$ 60 71
2015-09-21	C/PURCHASE	\$ 132 93			\$ 132 93
2015-09-23	C/PURCHASE	\$ 204 92	\$ 200 00		\$ 4 92
2015-09-29	C/PURCHASE	\$ 100 00	\$ 100 00		\$ -
2015-10-09	C/PURCHASE	\$ 105 48	\$ 100 00		\$ 5 48
2015-10-19	C/PURCHASE	\$ 117 24		\$ 80 00	\$ 37 24
2015-10-20	C/PURCHASE	\$ 135 28	\$ 100 00		\$ 35 28
2015-10-20	C/PURCHASE	\$ 61 02			\$ 61 02
2015-11-13	C/PURCHASE	\$ 100 00	\$ 100 00		\$ -
2015-11-23	C/PURCHASE	\$ 100 00	\$ 100 00		\$ -
2015-12-16	C/PURCHASE	\$ 110 00	\$ 110 00		\$ -
2015-12-18	C/PURCHASE	\$ 100 00	\$ 100 00		\$ -
TOTAL		\$ 3 858 67	\$ 2 510 00	\$ 280 00	\$ 1 068 67
		100%	65%	7%	28%

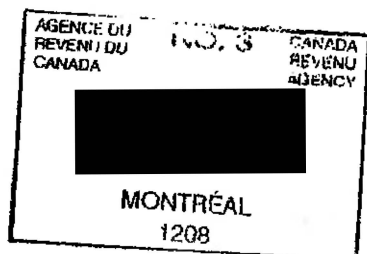
— Fiscal Year 2016

Grocery Gift Card/ Food purchases

MM DD	DESCRIPTION	TOTAL	GIFT CARDS	CASH	GROCERIES
2016-01-18	C/PURCHASE	\$ 137 88			\$ 137 88
2016-01-25	C/PURCHASE	\$ 290 09	\$ 250 00		\$ 40 09
2016-02-05	C/PURCHASE	\$ 150 00	\$ 150 00		\$ -
2016-02-22	C/PURCHASE	\$ 131 49	\$ 100 00		\$ 31 49
2016-02-29	C/PURCHASE	\$ 126 47			\$ 126 47
2016-03-09	C/PURCHASE	\$ 201 66	\$ 200 00		\$ 1 66
2016-03-24	C/PURCHASE	\$ 210 15	\$ 200 00		\$ 10 15
2016-04-15	C/PURCHASE	\$ 200 00	\$ 200 00		\$ -
2016-05-02	C/PURCHASE	\$ 106 49	\$ 100 00		\$ 6 49
2016-05-05	C/PURCHASE	\$ 100 00	\$ 100 00		\$ -
2016-05-31	C/PURCHASE	\$ 100 00	\$ 100 00		\$ -
2016-06-03	C/PURCHASE	\$ 206 07	\$ 200 00		\$ 6 07
2016-06-03	C/PURCHASE	\$ 100 00	\$ 100 00		\$ -
2016-06-21	C/PURCHASE	\$ 111 52	\$ 100 00		\$ 11 52
2016-06-21	C/PURCHASE	\$ 200 00	\$ 200 00		\$ -
2016-07-04	C/PURCHASE	\$ 200 00	\$ 200 00		\$ -
2016-07-04	C/PURCHASE	\$ 200 00	\$ 200 00		\$ -
2016-07-29	C/PURCHASE	\$ 200 00	\$ 200 00		\$ -
2016-08-01	C/PURCHASE	\$ 130 49	\$ 100 00		\$ 30 49
2016-08-17	C/PURCHASE	\$ 200 00	\$ 200 00		\$ -
2016-08-23	C/PURCHASE	\$ 115 16	\$ 100 00		\$ 15 16
2016-09-02	C/PURCHASE	\$ 100 00	\$ 100 00		\$ -
2016-09-02	C/PURCHASE	\$ 143 51	\$ 100 00		\$ 43 51
2016-09-09	C/PURCHASE	\$ 155 19	\$ 100 00		\$ 55 19
2016-09-29	C/PURCHASE	\$ 100 00	\$ 100 00		\$ -
2016-09-29	C/PURCHASE	\$ 100 00	\$ 100 00		\$ -
2016-09-30	C/PURCHASE	\$ 254 35	\$ 200 00		\$ 54 35
2016-10-07	C/PURCHASE	\$ 135 64	\$ 100 00		\$ 35 64
2016-10-13	C/PURCHASE	\$ 104 44	\$ 100 00		\$ 4 44
2016-10-19	C/PURCHASE	\$ 134 19			\$ 134 19
2016-10-31	C/PURCHASE	\$ 113 95	\$ 100 00		\$ 13 95
2016-10-31	C/PURCHASE	\$ 300 00	\$ 300 00		\$ -
2016-11-14	C/PURCHASE	\$ 123 49	\$ 100 00		\$ 23 49
2016-11-29	C/PURCHASE	\$ 130 18	\$ 100 00		\$ 30 18
2016-12-13	C/PURCHASE	\$ 164 72		\$ 100 00	\$ 64 72
2016-12-16	C/PURCHASE	\$ 135 28			\$ 135 28
2016-12-19	C/PURCHASE	\$ 100 00	\$ 100 00		\$ -
TOTAL		\$ 5 712 41	\$ 4 600 00	\$ 100 00	\$ 1 012 41
		100%	81%	2%	18%



Action-faim inc.



Joseph Antonacci
Président
Directeur Général

Gloria Girondi
Secrétaire
Directrice

Angelo Mattiocco
Marketing

Comite - Committee

ACTION FAIM INC.

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(Numéro d'enregistrement de bienfaisance : 87325 4635 RR0001)



September 28, 2018

File # 3012250

Robert Bill, B. Sc. CPA, CGA- Team Leader – Charities
Marisa Chen, Auditor
Ali Ansari , Charity Education Officer
Canada Revenue Agency (CRA)

Subject : Responding to Audit of Action Faim Inc.

I would like to thank you for clarifying all the non-compliance areas.

With all the theories during my studies at [REDACTED]

In practice, since [REDACTED] all what I learned came handy & my skills [REDACTED] increased with the challenges during the years. Spent a lot of time with the Auditors verifying the year end results. I understood what they were doing and showed me many things to improve my skills.

When I took over Action Faim Inc. in 2003 not much activity was happening. Got a team together to get Action Faim moving.

Meeting not possible – everyone working , busy
CLSC – Social workers good to have on team, for servicing lots of services. All was done individually. Joseph has to put up the money. Buy the food and bring to the families.

ilp # 102-1

Before taking over Action Faim Inc. in 2003 , had helped another charity (1998) before & had met [REDACTED] He was doing fundraising by phone & I was going to the bank depositing the cheques & giving the funds. Everyday 7 DAYS , had to have the funds before. When I got there , a bunch of people were waiting to receive money from [REDACTED] Lasted for a while but then I had to work. Volunteer is fun but cost money.

Participated in seminars and learned that its like a business. Takes money to make money. There many manners to raise, made contacts had meetings and money began to come in.

In 2007 [REDACTED] called me & said he had time to help Action Faim to raise Funds. As the Social workers increased in volume in helping out , we needed Funds to meet the demand. Groceries = Gift Cards, Hot lunch in Schools, School Supplies Etc.

[REDACTED] was bringing in Money & We were helping out the Community. Everything was being done Outside. I Had opened an Office paid rent for 1 year. No one was coming in.

My CA offered space for 500.00/ mth Lawyer also 500.00 / mth
For a small desk 9:00 to 5:00 5 days a week

I decided on Home Office 24 Hrs 7 Days

Never expected to be busy that way. Wife was working – paid the bills & you Seen all the advances cam to help Action Faim operation.

[REDACTED] had experience in Fundraising .

Had a phone room , was using Street People , I had learned that it was perfect & O K to do. We were Fundraising & helping people at the same time.

[REDACTED] was guiding Garanteed an amount per week.

Social workers were happy, Children were Fed in school , Gift card were given to the needy to buy food.

When checks were given everyday , [REDACTED] needed the funds everyday to give to the needy waiting.

Action Faim account didn't always have the Funds. Saving time Cheques were done to Joseph Antonacci name to withdraw. Then deposit of Cheques was done. I had been advancing funds since the beginning for all the Expenses.

Phone, Marketing Etc.--- Joseph , Gloria even [REDACTED] was being used. Being the President & doing all the work. Was being calculating the portion of the personal expenses on the Money owed to Joseph Antonacci from the Beginning.

[REDACTED]

Others were helping him.

Donations were coming in:

Donners would call for A Official Receipt & I would send one. Placing on the list.
I would send all three copies & control with the sequence Number.

[REDACTED] would be giving an Official Receipt at the door for Donations \$ 40. & over. Requested the booklet back for a long time never got them, was always delaying.

In 2016 [REDACTED] He had introduced [REDACTED] as helping him out. Soon [REDACTED] took over. As [REDACTED] was almost living in the street, [REDACTED] kept him around but outside of the Office.

[REDACTED] was officially in - [REDACTED]

[REDACTED] was asked by [REDACTED] to Stop his Calls to Donners because the Donners were complaining. See Copies What [REDACTED] was doing in 2017.

What I had learned from the Seminar's & other Information Lecture's was placed in practice.

All my Accounting experience was used. Computerized was not required. Manually seemed to be the best. Info are in the Bank Statements, attached are all the back up. On the spread sheets you have all the information required.

Since the beginning we Never had an official Meeting. Meeting we One on One. On a weekly basis I used to have coffee or lunch with each member of Action Faim.

Same with members of the committee used to visit them.
Everyone always busy.

I have noticed that the - Areas Of Non- Compliance - are Based on Professional Experience on Charities.

My Experience was based on the Experience of Others.

Accounting is my Field of Experience.

Using a CA to do my returns was a mistake. Had and still has no experience in the field of Charities. If he did ,I would have been well guided since the beginning.

When we met in May 2018. The first thing I said was that I was happy to see you. For me the Accounting was Perfect and everything Balanced. If I needed guidance to let me know.

I was upset from that day unknowing all that has been mentioned. Giving Cash to the Marketer's. Was always done.

A few things were understood differently but were recorded O.K..

Have accepted and digested everything mentioned and Reorganising all.

Since we met on September 17, 2018

1. Wrote [REDACTED] a letter to Stop His Services as of September 30, 2018.
 2. Advised [REDACTED] to Stop Also September 30, 2018.
 3. Closing the [REDACTED] account foe Action Faim Inc.
 4. All Fund raising is going to be done in house as You Have Mentioned.
 5. Deposit of Cheque = Receipt After clearance at bank.
 6. Cheques prepared going to have 2 signatures.
 7. Will not be using the C A anymore.
 8. Will need guidance , Marisa gave me the Manual the day we met.
- I will call for information if not Clear.

I would like to thank you for looking at these pages with copies of info which is a repetition of what was said since the beginning. Along with events that let to the decision made from your Audit. Many changes have already begun and more will follow.

Being retired along with everyone on the bored that are also. Mostly on my part it is a pass time, it is a Charity & Volunteer.

Thank You.

Sincerely yours,

[REDACTED]
Joseph Antonacci,
President, Director General

Action Faim Inc.

Comments on representations

In our administrative fairness letter (AFL) dated August 30, 2018, we explained that the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2015 to December 31, 2016, identified that Action Faim Inc. (the Organization) is not operating in compliance with the provisions of the Income Tax Act in the following areas:

1. Failure to devote resources to charitable activities carried on by the Organization itself
2. Failure to maintain adequate books and records as required
3. It is not constituted and operated exclusively for charitable purposes
4. Failure to complete an accurate charity information return

We have reviewed and considered your written response dated September 28, 2018, and we maintain our position that the non-compliance identified during the audit represents a serious breach of the requirements of the Act. As a result of this non-compliance, the Organization's registration as a charity should be revoked.

The basis for our position is described in detail below, which includes:

- a summary of the issues raised in our AFL dated August 30, 2018;
- the Organization's representations dated September 28, 2018; and
- the CRA's response to the representations.

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

a) Devotion of resources (fundraising expenses)/unstated collateral non-charitable purpose

The audit found that fundraising activities became a focus of the Organization and that it was carrying out the following unacceptable fundraising activities:

Fundraising as an unstated collateral non-charitable purpose of the Organization

As outlined in Schedule B of our letter dated August 30, 2018, we identified that approximately 90% of the gross revenues obtained through fundraising are paid back to the fundraisers, and that only 3% to 4% of total disbursements reported were used for charitable purposes. In addition, we provided a further breakdown of the Organization's devotion of resources in Schedules A and B attached to the AFL. The audit found that fundraising accounted for about 90% of total expenditures in 2015 and 2016, and that charitable activities accounted for on average 3% of total expenditures for the audit period.

Fundraising that is deceptive

- *Misrepresentation of financial information*

Based on promotional material obtained from the Organization, it appears as though it

does not disclose the real cost of its fundraising activities. Specifically, the Organization reallocated 50% and 60% of its fundraising expenses to charitable expenses in 2015 and 2016, respectively. As a result, the amounts reported on its Form T3010 – line 5020 (Total Fundraising) have not been reported correctly as they have been grossly under-reported.

- *Misrepresentation of fundraising solicitations*

During the audit, the telemarketing script obtained from the Organization indicated that fundraisers identified themselves as volunteers. This is misleading as the word "volunteer" implies that the telemarketer is not being compensated. Furthermore, this may lead to the belief that the full amount of the donation is being used for the charitable operations of the Organization.

Whether intentional or negligent, deceptive fundraising is unacceptable.

b) Gifts to non-qualified donees

During the audit period, the Organization transferred a substantial amount of its resources to fundraising entities without any written agreements or contracts. The Organization claimed that the amounts transferred were for payments to the fundraisers. However, the Organization was unable to demonstrate any relationship between it and the fundraisers, such as through a written agreement or contract. As such, the result is the same as gifting funds to non-qualified donees, which are not considered charitable expenditures for the purposes of the Act.

Organization's response

With respect to the Organization's fundraising practices, its representations dated September 28, 2018, stated it "was using [s]treet [p]eople" for fundraising, and that it was: "fundraising & helping people at the same time." Furthermore, the Organization believed that the manner in which it was operating was acceptable. The Organization indicated that at the time it needed funds to meet the demand, it had been approached by an individual named [REDACTED] to help it raise funds. The Organization advised that "[REDACTED] was bringing in [m]oney & [w]e were helping out the [c]ommunity." In its representations, the Organization stated that since its meeting with the CRA auditor on September 17, 2018, it requested the fundraising entities to stop as of September 30, 2018. In addition, with respect to the Organization's financial information, it explained that its financial information has been misrepresented because the chartered accountant responsible for completing its information return was inexperienced in the field of charities.

CRA's response

All charitable organizations registered under the Act are required by law to devote their resources to exclusively charitable purposes and activities. Although a charity can use some of its resources for fundraising to support the charitable activities that further its charitable

purposes, it is the CRA's position that fundraising¹ is not a charitable purpose in itself, nor is it a charitable activity that directly furthers a charitable purpose.

Where the resources of a charity devoted to fundraising exceed the resources devoted to charitable activities it is a strong indicator that fundraising has become a collateral non-charitable purpose, and unlikely that the charity will have met its requirement to devote its resources to exclusively charitable purposes and activities.

a) Devotion of resources (fundraising expenses)/unstated collateral non-charitable purpose

In its letter dated September 28, 2018, the Organization states that people working in the fundraising centre are "street people", and therefore, it is working to raise funds and help "street people" at the same time. The Organization's response did not include any detailed information or documentation regarding how its employment/fundraising program operates or how this activity is in furtherance of exclusively charitable purposes. In particular, the Organization did not provide information regarding beneficiary/participant criteria. The Organization should note that the courts have not recognized "providing employment," or "helping people find employment" as charitable purposes in and of themselves when the beneficiary group is the general public.² However, either providing employment, or helping individuals find employment, could be a charitable activity if it directly furthers a charitable purpose such as:

- relieving poverty by relieving unemployment of the poor
- advancing education by providing employment-related training
- benefiting the community in a way the law regards as charitable by:
 - relieving unemployment of individuals who are unemployed or facing a real prospect of imminent unemployment and are shown to need assistance³
 - relieving conditions associated with disability
 - improving socio-economic conditions in areas of social and economic deprivation
 - promoting commerce or industry

Further, each charitable purpose has specific requirements relating to eligible beneficiaries.⁴ For example:

- for a purpose that relieves poverty, eligible beneficiaries must be poor;
- for a purpose that relieves conditions associated with disability, eligible beneficiaries are individuals with conditions associated with the disability;
- when unemployment is relieved to further a purpose beneficial to the community in a way the law regards as charitable, the beneficiaries must be unemployed or facing a real prospect of imminent unemployment and be shown to need assistance.

¹ For more information, see CRA Guidance CG-013, Fundraising by Registered Charities.

² See, for example, Vancouver Society, *supra* note 1.

³ In this context, eligible beneficiaries are those who do not have the resources or skills to help themselves.

⁴ See, for example, Vancouver Society, *supra* note 1, where the Society's program included certain non-educational services for its students, such as networking, soliciting job opportunities, maintaining a job skills directory, liaising for accreditation of foreign credentials, and offering referral services. These were ruled to be non-charitable largely because those receiving them could have included those who were not eligible charitable beneficiaries.

Regarding the fundraising activities, the Organization's representations state that it advised the fundraising entities that they had until September 30, 2018, to stop fundraising activities for the Organization. However, the representations did not include detailed information or documentation regarding how the Organization plans to operate once it ends its collaborations with fundraisers. The Organization's fundraising costs greatly exceeded the total expenditures on charitable activities. Given that fundraising accounted for 89.14% of total expenditures in 2015 and 88.7% in 2016, while charitable activities only accounted for 2.96% of total expenditures in 2015 and 3.66% in 2016. Therefore, information and documentation regarding the Organization's new method of operation is imperative, and without such information, we are unable to determine that the Organization is devoting its resources to charitable activities that further exclusively charitable purposes.

Moreover, the Organization's representations also state that the financial information regarding its fundraising activities is not well maintained because its accountant is inexperienced in the field of charities. If a charity hires a third-party to maintain its records, such as a bookkeeper or accountant, the charity is still responsible for meeting all requirements. Therefore, the Organization is responsible for ensuring that the information contained in its books and records, which includes information returns and financial statements, is factual and complete, thereby meeting the requirements of the Act.

b) Gifts to non-qualified donees

In its representations, the Organization states that its collaboration with external fundraisers will be stopped as of September 30, 2018, and that "all fundraising is going to be done in house". However, the Organization did not provide additional information or documentation to support the disbursements made to the external fundraisers during the period under audit. As such, absent any supporting documentation, such as agreements or contracts, to substantiate the significant amount of the Organization's resources transferred to the fundraisers, these disbursements are considered to be gifts made to non-qualified donees, which is in contravention of the Act.

For the reasons stated above, the Organization's representations have not alleviated our concerns regarding the devotion of its resources to charitable activities and gifting to non-qualified donees. Accordingly, it is our position that the Organization has failed to meet the requirements of subsections 149.1(1) and 149.1(2) of the Act and our position remains that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

2. Failure to maintain adequate books and records as required

The audit found that the Organization failed to maintain adequate books and records with respect to the following facets of its operations:

- There was a lack of documentation to demonstrate that the Organization had internal controls in place. For example, the Organization provided one of the fundraisers with a pre-signed official donation receipt booklet that was never returned, nor did it have a duplicate copy of the approximately 800 receipts that were issued. The Organization

estimated that the total value of these donation receipts could be up of \$78,500. Further, the Organization issued donation receipts for cheques prior to confirming the funds were deposited in the bank account, and did not maintain a proper listing of donors.

- There was a lack of documentation to substantiate payments made to the fundraisers. Based on the information provided, \$349,735 and \$297,808 were paid in cash to fundraisers in 2015 and 2016, respectively. However, the Organization did not provide any contracts or agreements regarding its relationship with the fundraisers.
- The Organization did not maintain minutes for board meetings.
- Inadequate documentation was provided to support the numerous transactions between the Organization and Joseph Antonacci, the Organization's president. For example, there was no logbook to support the travel expenses incurred by Joseph Antonacci, or documentation to explain the use of charitable resources to pay for personal expenses.

Organization's response

In its representations, the Organization indicated that it had asked the fundraising entity in possession of the donation receipt booklet, to return the booklet. However, the fundraising entity did not return the booklet to the Organization.

The Organization stated that the president used all his accounting skills to maintain its books and records, and that for him "the [a]ccounting was [p]erfect and everything [b]alanced". Further, the Organization stated that it will no longer be using the chartered accountant to complete its information returns.

With respect to the disbursements made to the Organization's president, the representations stated this was reimbursement for travel expenses based on kilometers travelled. However, no supporting documentation was provided to substantiate the expenditures. Further, in its representations, the Organization clarified that it has never had any official board meetings, and as such, there are no minutes from board meetings available. The Organization's president, conducts one-on-one meetings with its directors, however, the Organization did not provide minutes for the individual meetings.

CRA's response

The Organization's representations did not alleviate our concerns with respect to maintaining adequate books and records, and the safeguarding of the Organization's assets such as donation receipt booklets. A registered charity can enroll a third-party organization or retain a fundraiser or other contractor as an agent to organize a fundraising event. However, the Organization should always maintain direction and control over all monies that are earned as a part of the event, and maintain books and records as per the requirements of the Act.⁵ Ultimately, it is the Organization's responsibility to maintain its own donation receipts, not that of the fundraiser. As a result, the Organization's explanation that the fundraiser would not return its donation receipt booklet does not sufficiently address our concerns regarding the safeguarding of its assets.

⁵ <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/policy-commentary-026-third-party-fundraisers.html>

With respect to the maintenance of the Organization's books and records, the representations provided do not alleviate our concerns. It is the Organization's responsibility to maintain books and records that meet the requirements of the Act. Specifically, its books and records must allow the CRA to verify revenues, including all charitable donations received; to verify that resources are spent on charitable programs; and, to verify that the charity's purposes and activities continue to be charitable. Even when a charity hires a third-party to maintain its records, the charity is still responsible for meeting all requirements.

The Organization's representations regarding the reimbursements made to its president, Mr. Antonacci, did not include any supporting documents. In the absence of such documentation, the reimbursements cannot be substantiated and our concerns have not been alleviated. Further, the Organization indicated that it does not hold board meetings but rather, that it conducts one-on-one meetings between its president and board members. However, the Organization was unable to demonstrate how it makes operational decisions, such as through the provision of minutes for the meetings.

As a result, our position remains that the Organization does not maintain adequate books and records, and therefore, does not meet the requirements of subsection 230(2) of the Act. For the reasons indicated above, it is our position that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act.

3. It is not constituted and operated exclusively for charitable purposes

The audit found several transactions that appear as though the Organization disbursed funds for the president's personal expenses. An analysis of grocery receipts provided demonstrated several instances where the president purchased grocery gift cards, made cash withdrawals, as well as other grocery purchases. There was a lack of supporting documentation provided for the cash withdrawals and the other grocery charges to illustrate the charitable purpose of these expenditures.

Moreover, the audit found that personal expenses including rent, phone, internet, and vehicle expenses were paid by the Organization. In 2015, the president personally assumed 55% of the expenses and in 2016, he assumed 60%. The expenses were calculated based on an estimated percentage for the portion of the Organization's use of the president's personal residence. However, the amounts expensed were based on estimated use and not based on actual use, and the Organization did not provide an explanation to detail how it calculated the allocation rate. A fixed percentage may be convenient but raises questions as to the reasonability of the allocation basis. Since personal expenses are involved, this could lead to potential misuse of resources because there is no direct relationship between the usage and the expenses charged. For example, vehicle expenses should have been calculated based on the actual mileage used for the Organization's purposes.

Organization's response

In its representations, the Organization provided the following information regarding its disbursements:

- grocery related expenses that were purchased with cash were given to beneficiaries of its grocery program. However, the Organization did not provide any other supporting documentation for these grocery expenses.
- 30% of Mr. Antonacci's apartment is used for its work space. The Organization's use of space specifically includes the office room, the living room, and the apartment washroom. A blueprint of the president's apartment, along with a rough calculation of the allocation for rent, telephone, hydro, gas and insurance, used by the Organization was provided. In addition, the Organization provided copies of bills/account statements to illustrate the actual costs, such as: a hydro bill of \$1,177.37 for the period of June 13, 2018 to August 13, 2018; a telecommunications bill (for internet and landline) of \$83.00 for the period of April 21, 2018 to May 20, 2018; a mobile phone bill \$40.77 for the period of July 17, 2018 to August 16, 2018; and a bank statement for the pre-authorized payment of insurance of \$92.23 for the month of July 2018.

CRA's response

The Organization provided copies of invoices for 2018 to illustrate the calculation of some of the disbursements made to the president for use of his personal residence. However, the date of the invoices were outside of the audit period. Further, the representations specify that the Organization used an allocation of 30% of rental expenses related to the president's apartment. The audit found that the Organization allocated 55% of the total usage of the residence in 2015, and 40% in 2016, and the Organization did not provide any additional information or documentation to support how the allocation of 30% was calculated, or to dispute the allocation of 55% and 40% indicated in our letter dated August 30, 2018. As such, we are unable to assess if the allocation percentage of 30% was actually expensed and if it is reasonable.

In addition, the Organization did not provide any supporting documentation to substantiate the rental expenses of \$7,047 in 2015 and \$6,336 in 2016, nor did it provide any information or documentation to support expenditures made for "insurance" (as listed in the Organization's financial statements for 2015 and 2016) or to verify this expense and any possible beneficiaries.

In its representations, the Organization provided the list of beneficiaries for its grocery program and clarification that it provides grocery gift cards, hot lunches in schools, and school supplies. However, the representations did not provide detailed information or documentation regarding how the grocery program operates, such as information to support the beneficiary/participant criteria used when providing funds or information for the grocery related expenses that were purchased with cash for the period under audit.

As such, the Organization's representations have not alleviated our concern that it is not constituted and operated exclusively for charitable purposes. As a result, our position remains that the Organization has failed to meet the requirements of subsections 149.1(1) and 149.1(2) of the Act. For this reason, it is our position that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

4. Failure to complete an accurate charity information return

The audit found that the Organization allocated portions of its fundraising expenses to charitable expenses, and amounts reported on line 5020 – Total fundraising of the Form T3010, Registered Charity Information Return, had been under-reported. For the 2015 fiscal year, the Organization reported fundraising expenses for the amount of \$176,845, and based on information provided by the Organization, there was a year-end adjusting entry made to reallocate 50% of the Organization's total marketing expenses to the general ledger account Nourriture & Activité. In addition, documentation provided by the Organization demonstrated that payments made (via bank transfers) to one fundraiser had been entirely recorded under Nourriture & Activité, as a charitable activity.

For the 2016 fiscal year, the Organization reported fundraising expenses in the amount of \$124,891, and had made a year-end adjusting entry to reallocate 60% of its total marketing expenses to the general ledger account Nourriture & Activité. Further, payments made via bank transfers to two fundraisers had been entirely recorded under Nourriture & Activité, as a charitable activity.

Organization's response

In its representations dated September 28, 2018, the Organization explained that its financial information had been misrepresented because its chartered accountant was inexperienced in the field of charities. However, the Organization did not provide any additional information or documentation to support the amounts reported on the Form T3010.

CRA's response

While we acknowledge the Organization's assertion that the chartered accountant responsible for completing its Form T3010s was inexperienced in the field of charities, it did not address the specific issues of non-compliance regarding the amounts reported on its Form T3010 for the 2015 and 2016 fiscal years. It is a charity's responsibility to ensure that the information contained in its books and records, including the Form T3010 and financial statements, are factual and complete. As such, our concerns have not been alleviated.

As a result, it remains our position that the Organization failed to meet the requirements of subsection 149.1(14) of the Act, that it file its information returns as and when required by the Act and/or its Regulations. For this reason, it is our position that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(c) of the Act.

Conclusion

Consequently, for the reasons explained above and in our letter dated August 30, 2018, it is the CRA's position that the Organization has failed to meet the requirements for registration as a charitable organization as outlined in subsections 168(1), 149.1(1), 149.1(2) and 149.1(14) of the Act. As such, the Organization should have its registration as a charity revoked pursuant to subsection 168(1) of the Act.

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.