



May 12, 2021

REGISTERED MAIL

Jacob Jungreis
President
Refuah Yeshuah of / de Canada Inc.
11 Beth Halevy
Boisbriand, QC J7E 4H4

BN: 891563249RR0001
File #: 0982405

Dear Jacob Jungreis:

**Subject: Notice of intention to revoke
Refuah Yeshuah of / de Canada Inc.**

We are writing with respect to our letter dated November 12, 2019 (copy enclosed), in which Refuah Yeshuah of / de Canada Inc. (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from October 1, 2014 to September 30, 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.

This most recent audit was conducted as a follow-up to a past audit of the fiscal years ending 2007 and 2008. This resulted in the Organization's representative signing a compliance agreement, in which it agreed to resolve the non-compliance identified during that audit. The compliance agreement was signed by Jacob Jungreis, the Organization's President and representative, on November 3, 2011. Nonetheless, as outlined in our letter of November 12, 2019, the current audit revealed that the organization has not implemented the agreed upon corrective measures.

During a telephone conversation on December 13, 2019, the Organization's authorized representative advised that the Organization would not be submitting a written response to our letter dated November 12, 2019. As such, the concerns outlined in our letter have not been alleviated.

Audit Conclusion

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. Notwithstanding the Organization's agreement to implement corrective measures to remedy the non-compliance identified in the previous audit, the current audit found serious and repeat non-compliance. In particular, it was found that the Organization failed to maintain direction and control over the use of its resources, failed to maintain adequate books and records, provided a personal benefit to a

proprietor, member, shareholder, trustee or settlor of the Organization, failed to file an information return as and when required by the Act and/or its Regulations, and failed to issue receipts in accordance with the Act and/or its Regulations. 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 November 12, 2019, and pursuant to subsections 168(1) and 149.1(2) 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, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d), 168(1)(e) and subsection 149.1(2), 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	Name
891563249RR0001	Refuah Yeshuah of / de Canada Inc. Boisbriand QC

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

Consequences of revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return Where Registration of a Charity is Revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix A. Form T2046 and the related Guide RC4424, Completing the Tax Return Where Registration of a Charity is Revoked, are available on our website at canada.ca/charities-giving;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Organization may be subject to obligations and entitlements under the Excise Tax Act that apply to entities other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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

Yours sincerely,



Tony Manconi
Director General
Charities Directorate

Enclosures

- CRA letter dated November 12, 2019
- Appendix A, Relevant provisions of the Act

c.c.: Chaim Mermelstein



November 12, 2019

Jacob Jungreis
President
Refuah Yeshuah of / de Canada
11 Beth Halevy
Boisbriand, QC J7E 4H4

BN: 891563249R0001
File #: 0982405

Dear Jacob Jungreis:

Subject: Audit of Refuah Yeshuah of / de Canada Inc.

This letter results from the audit of the Refuah Yeshuah of / de Canada Inc. (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from October 1, 2014 to September 30, 2016.

On November 7, 2019, the Organization was advised that the CRA identified specific 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. Lack of direction and control over the use of the Organization's resources	149.1(2), 168(1)(b)	
3. Failure to maintain adequate books and records	149.1(2), 230(2), 168(1)(b), 168(1)(e), 188.2(2)(a)	
4. Providing a personal benefit to a proprietor, member, shareholder, trustee or settlor of the Organization	149.1(2), 168(1)(b)	
5. Failure to file an information return as and when required by the Act and/or its Regulations	149.1(2), 149.1(14) 168(1)(c), 188.1(6)	
6. Failure to issue receipts in accordance with the Act and/or its Regulations	149.1(2), 168(1)(d), 188.1(7) Regulation 3500 and 3501	

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.

General legal principles

In order to maintain charitable registration under the Act, Canadian law requires that an organization demonstrate that it is constituted exclusively for charitable purposes (or objects), and that it devotes its resources to charitable activities carried on by the organization itself in furtherance thereof. To be charitable, a purpose must fall within one or more of the following four categories (also known as "heads") of charity and deliver a public benefit:

- relief of poverty (first category)
- advancement of education (second category)
- advancement of religion (third category) or
- certain other purposes beneficial to the community in a way the law regards as charitable (fourth category).

The public benefit requirement involves a two-part test:

- The first part of the test requires the delivery of a benefit that is recognizable and capable of being proved, and socially useful. To be recognizable and capable of being proved, a benefit must generally be tangible or objectively measureable. Benefits that are not tangible or objectively measureable must be shown to be valuable or approved by "the common understanding of enlightened opinion for the time being." To be socially useful, a benefit must have public value and a demonstrable impact on the public. In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved and of the activities that will be conducted to further the purpose, and reasonably achievable in the circumstances. An "assumed prospect or possibility of gain" that is vague, indescribable or uncertain, or incapable of proof, cannot be said to provide a charitable benefit.
- The second part of the test requires the benefit be directed to the public or a sufficient section of the public. This means a charity cannot:
 - have an eligible beneficiary group that is negligible in size or restricted based on criteria that are not justified based on the charitable purpose(s); or
 - provide an unacceptable private benefit. Typically, a private benefit is a benefit provided to a person or organization that is not a charitable beneficiary, or to a charitable beneficiary that exceeds the bounds of charity. A private benefit will usually be acceptable if it is incidental, meaning it is necessary, reasonable, and not disproportionate to the resulting public benefit.

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

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

A charity's own charitable activities may be carried out by its directors, employees or volunteers, or through intermediaries (a person or non-qualified donee that is separate from the charity, but that the charity works with or through, such as an agent, contractor or partner). If acting through an intermediary, the charity must establish that the activity to be conducted will further its charitable purposes, and that it maintains continued direction and control over the activity and over the use of the resources it provides to the intermediary to carry out the activity on its behalf.

Although there is no legal requirement to do so, and the same result might be achieved through other arrangements or means, entering into a written agreement can be an effective way to help meet the own activities test. However, the existence of an agreement is not enough to prove that a charity meets the own activities test. The charity must be able to show that the terms establish a real, ongoing, active relationship with the intermediary, and are actually implemented. A charity must record all steps taken to exercise direction and control as part of its books and records, to allow the CRA to verify that the charity's funds have been spent on its own activities. While the nature and extent of the required direction and control may vary based on the particular activity and circumstances, the absence of appropriate direction and control indicates that an organization is resourcing a non-qualified donee in contravention of the Act.

To summarize, the CRA must be satisfied that an organization's purposes are exclusively charitable in law, and that its activities directly further these charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information in order to assess its bona fides. Accordingly, the audit encompassed an enquiry into all aspects of the Organization's operations.

Background

The Organization was registered as a charitable organization effective October 1, 1993, with the following purposes:

1. Promouvoir la religion en enseignant les dogmes religieux, les doctrines, les rites et la culture associés aux traditions Juives;
2. Promouvoir la religion en établissant une installation qui sera utilisée pour des programmes religieux, des ateliers, de la musique et des études bibliques, prières, talmudiques ou autres;
3. Soulager la pauvreté en fournissant la nourriture et d'autres éléments essentiels à la vie aux particuliers ou aux familles qui sont pauvres, à faible revenu, ou dans le besoin.

While we recognize that the Organization's purposes is that with which it was originally registered, our consideration of both purpose and activities must be based on current legislation, court decisions, and Charities Directorate policies and procedures.

The activities of the Organization at the time of registration were the following:

- To organize religious services, Saturdays and on religious holidays. The services would be at 10A.M on Saturday and on Sunday; services would be at 9AM.
- There will be religious study including but not limited to Prayer, Bible, Mishna, Talmud, Kabbalah Religious Law and study of Jewish holidays. These lectures will sensitize the participants to the Jewish heritage and motivate them to their responsibility in the community and to their family.
- A synagogue will celebrate the Jewish calendar cycle. This will include participating in weddings, burials, circumcision and other religious rights that are connected with a synagogue.
- The Organization will promote and fund the publication of religious texts to be used in religious study and worship.

The Organization's Forms T3010, Registered Charity Information Return, for both the year ended 2015 and 2016 indicates that the Organization's current activities are to provide 24 hour prayer service for members in need, at the Wailing Wall in Jerusalem and to provide personal support & services to members - through counselling advice & services provided by specialists. - through a network of references that can provide help to members - Any related aid or crisis intervention for members.

Previous non-compliance

An audit of the years ended 2007 and 2008 was completed on December 29, 2010. It resulted in a Compliance Agreement. The Compliance Agreement was signed November 3, 2011, by Jacob Jungreis, the President of the Organization.

By signing the Compliance Agreement, the Organization indicated that it wanted to rectify all identified areas of non-compliance and would implement all corrective measures as outlined. Further, by signing the Compliance Agreement, the Organization certified that it read, understood, and agreed to, the terms of the Compliance Agreement. The Organization further acknowledged that should it fail to implement all corrective measures in accordance with the terms of the Compliance Agreement, the Minister of National Revenue (the Minister) may apply penalties and suspensions provided for in sections 188.1 and/or 188.2 of the Act, which include suspension of the Organization's authority to issue official receipts and suspension of its status as a "qualified donee". The Minister may, by registered mail, also give notice that the Minister proposes to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

The November 3, 2011 Compliance Agreement addressed the following areas of non-compliance:

1. Activities Outside Canada

- Money for the 24 hour free emergency hotline went directly to the agent. The Organization did not keep any documentation outlining the expenses incurred for that particular activity.
- The Charity's funds sent to the agent are not segregated from the agent's own funds.
- The Organization did not maintain proper books and records to substantiate the resources that were expended to its New York agent. The Organization was unable to provide financial reports from its agent substantiating the use of its funds. There was no audit trail that ensured that the funds were expended for the purposes they were intended. Therefore the Organization failed to prove the use and the final destination of the funds.

2. Books and Records
 - The Organization had recorded an amount for revenue and expenses to pay various organizational expenditures however, the income was not deposited in the Organization's bank account.
3. Gifts to non-qualified donees
 - The Organization paid five volunteers to reimburse for expenses and as a gift.
4. Travelling expenses
 - The Organization paid for car repairs and gas expenses for a manager and director of the Organization.
5. Form T3010 errors
 - There was a discrepancy between the amount reported on line 4500 and the actual total amount of receipts that were issued for the 2007 ending fiscal year.
6. Fundraising activities
 - The Organization was advised to follow Policy Statement CPS-028 when conducting fundraising.

The Corrective Measures as outlined by the November 3, 2011 Compliance Agreement were as follows:

Activities outside Canada

The Organization is to provide a copy of its agency agreement that it made with its New York agent.

The Organization will keep the following documentation for the 24 hour hotline service:

- The Organization's agent (the agent) will provide the Organization with regular progress reports (at least every 3 months);
- The agent will follow the instructions of the Organization;
- The New York agent will prepare a year-end financial report to show where and how the money received has been spent;
- The agent will provide a financial report every year;
- The agent will provide the Organization with copies of invoices (copies of invoices and phone bills incurred by the agent for the Organization);

- The Organization will pay the agent after receiving the above invoices in satisfactory form;
- The agent will keep separate books and records for monies received and disbursed on behalf of the Organization;
- With a reasonable prior notice, the Organization can inspect the activity and related books and records for the activity;
- Minutes and inspection reports will be prepared to show the amounts approved and sent to Israel for all projects. Policies and procedures will be kept for all projects.

Books and records

- The agent will not keep any money from the income of the Organization. All income will be deposited into the Organization's account.
- The expenses will be authorized by the Organization and be paid by cheque from the bank account of the Organization.

Gifts to non-qualified donees

- The Organization will refrain from making gifts to non-qualified donees.
- On request by volunteer, the Organization will reimburse the expenses of incurred by volunteers on behalf of the Organization upon presentation of back-up support with sufficient details.

Travelling expenses

The Organization is to reimburse volunteer travel costs based on distances covered at a reasonable cost per kilometre. Sufficient detail should be provided.

Form T3010

The Organization will apply its utmost care to minimize the risk of mistakes in its T3010 form.

Fundraising activities

The Organization will follow the guidelines in Policy Statement CPS-028.

The Organization will maintain ongoing direction and control over its resources and over the conduct of its charitable activities outside Canada, and will retain, and make available to the CRA upon request, books and records substantiating compliance with this requirement. To this end, the Organization will enter into a structured arrangement, with any intermediary through which it carries out its charitable activities/programs.

Prior review of an arrangement by the CRA does not confer ongoing approval of the Organization's activities. Each activity conducted by the Organization will be judged on its own merits to determine whether it is in compliance with legislative and common law requirements and, in particular, with those requirements pertaining to:

- a) its charitable nature and;
- b) the exercise of adequate direction and control over its actual implementation.

The Organization must be able to demonstrate, at all times, that each activity furthers one of its charitable purposes, and that the terms of all structured arrangements are put into practice and adhered to.

Identified areas of non-compliance

1. Lack of direction and control over the use of the Organization's resources

Subsection 149.1(1) of the Act defines a charitable organization, which reads in part as:

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

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

Accordingly, a charitable organization must be careful about how it carries on its activities and it must ensure that it keeps sufficient direction and control over its resources, or it could possibly be transferring money to non-qualified donees, which is not a charitable activity.

Though made in reference to an agency relationship, the underlying principles enunciated by the Federal Court of Appeal in Canadian Committee for the Tel Aviv Foundation v Canada are applicable to most intermediary arrangements:

Under the scheme of the Act, it is open to a charity to conduct its overseas activities either using its own personnel or through an agent. However, it cannot merely be a conduit to funnel donations Overseas.¹

And

Pursuant to subsection 149.1(1) of the Act, a charity must devote all its resources to charitable activities carried on by the organization itself. While a charity may carry on its charitable activities through an agent, the charity must be prepared to satisfy the Minister that it is at all times both in control of the agent, and in a position to report on the agent's activities.²

As re-iterated by the Court in Lepletot v MNR³, an organization may carry on charitable activities through an agent if the activities are conducted on behalf of the organization. However, it is not enough for an organization to fund an intermediary that carries on

¹ Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 30, [2002] 2 CTC 93.

² Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 40, [2002] 2 CTC 93.

³ Lepletot v MNR, 2006 FCA 128 at para 5, [2006] 3 CTC 252.

certain activities. The Act requires that the intermediary actually conduct those activities on the organization's behalf. Likewise, the Court in Canadian Magen David Adom for Israel mentions the importance of monitoring the activities when it stated that:

[A] charity that chooses to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any acts that purport to be those of the charity are effectively authorized, controlled and monitored by the charity.⁴

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

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

To this end, the Organization is required to establish that it maintains continued direction and control over the substantive charitable activities that are ostensibly being carried out on its behalf. In this regard, the existence of an arrangement with an intermediary, written or otherwise, is not enough to prove that a charity meets the own activities test. The Organization must be able to show that the terms of any arrangement establish a real, ongoing, active relationship with the intermediary,⁵ and are actually implemented.

During the audit period, the Organization carried out its activities with Refuah Yeshuah New York (RYNY), an intermediary outside Canada. Although the Organization provided a signed agreement with RYNY, the audit found that the activities that the Organization conducts with RYNY does not meet the own activities test for the following reasons:

- a) Failure to prove the terms in the agreement have actually been implemented
According to the agreement, RYNY will provide a financial itemized report to prove the expenses they incurred for the Organization. Upon request, full details and backup of invoices charged will be available. This includes providing copies of invoices and phone bills incurred by RYNY for services to the Organization.

⁴ Canadian Magen David Adom for Israel v MNR, 2002 FCA 323 at para 66, [2002] FCJ no 1260.

⁵ See notably Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 40, [2002] 2 CTC 93.

During the audit period, the Organization paid service fees to RYNY for a total amount of \$7,420 USD in 2016 and \$1,340 USD in 2015. Although the Organization provided invoices from RYNY to support program expenditures, the invoices contain very few details. As such, the invoices that were provided during the course of the audit do not work to confirm that the Organization's resources were in actuality devoted to the activities that the intermediary is supposed to be conducting on the Organization's behalf according to the signed agreement.

Additionally, the Organization was not able to provide supporting documents such as financial reports, annual reports, progress reports, detailed phone bills, list of phone calls received, list of phone calls transferred to RYNY and, minutes of any meetings.

For all of the reasons mentioned above, the Organization failed to prove that the terms of its agreement with RYNY have been implemented and are being followed. As such, it did not demonstrate that it has a real, ongoing, active relationship with RYNY.⁶

It should be noted that in the audit for the 2007 and 2008 years, it was found that the expenses for the 24 hour free emergency hotline went directly to the agent and that the Organization did not keep any documentation outlining the expenses incurred for that particular activity. Specifically, the Organization did not maintain proper books and records to substantiate the resources that were expended by the Agent.

As such, at that time it was explained to the Organization that, through documented evidence, it must be able to demonstrate the continued existence of the principal-agent relationship. Further, the Organization must be able to provide the CRA with the means of examining the internal decision making mechanisms within the charity's own structure through records such as: minutes of board meetings; inspection reports; internal communications; as well as, policies and procedures that show that the charity, by directing and controlling each of its activities, acted as the guiding mind in the principal-agent relationship. Additionally, the Organization should be able to provide copies of cheques, phone bills and, invoices for activities like the 24 hour hotline that illustrate that the Organization's resources worked to serve its objective.

As a result, one of the corrective measures outlined in the 2011 signed compliance agreement, was that the Organization keep supporting documentation such as, quarterly progress reports from the agent, annual reports from the agent outlining how the Organization's resources were used, copies of invoices and phone bills.

⁶ See notably *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72 at para 30. [2002] FCJ no 315 [Canadian Committee for the Tel Aviv Foundation].

The current audit found that the Organization did not apply the corrective measures as outlined in the signed compliance agreement. Specifically, documentation provided during the course of the audit does not work to confirm that the Organization's resources were devoted to the activities that the intermediary is supposed to be conducting on the Organization's behalf. Further, the Organization did not provide supporting documentation such as phone bills, meeting minutes, progress reports, annual reports and financial reports from RYNY, as outlined in the agency agreement. Given that the Organization failed to implement the corrective measure of the 2011 Compliance Agreement, this is considered to be a demonstration of continuous and repeated non-compliance.

b) Donation receipts issued by an intermediary on behalf of the Organization
During the audit, the Organization explained that when calls are referred to RYNY, RYNY will suggest that the caller make a donation to the Organization. When such callers make a donation to the Organization, the Organization receives the funds however, the donation receipts are prepared and sent by RYNY. The results of the audit revealed that some donation receipts issued during the audit period were signed by the principal officer of RYNY, [REDACTED] who is not an administrator of the Organization.

According to Policy commentary CPC-026⁷, Third party fundraisers, the tax-receipting privilege is not to be casually farmed out to third parties, even if some of the resulting funds will be flowing back to the charity. A charity that substantially relinquishes to a third party its receipt-issuing function or the control over the funds that are donated to it, can jeopardize its registered status.

The Organization should also ensure that official donation receipts are signed by an authorized individual in conformity with ss. 3501(1)(i), 3501(2), 3501(3) and 3502 of the Income Tax Regulations.

In summary, it is our position that the Organization lacks direction and control over the use of its resources, based on its:

a) Failure to prove the terms in the agreement are actually implemented
b) Donation receipts issued by an intermediary on behalf of the Organization

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.

⁷ <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/policy-commentary-026-third-party-fundraisers.html>

2. Failure to maintain adequate books and records

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

- 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 failure to maintain adequate books and records in accordance with the requirements of the Act is itself sufficient reason for the CRA to revoke an organization's charitable registration.⁸ The policy of the CRA relating to the maintenance of books and records, and books of account, is based on several judicial determinations.

The court has established that:

- the onus is on the registered charity to provide that its charitable status should not be revoked.⁹
- 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 books and records at some later date.¹⁰
- paragraph 168(1)(e) of the Act provides that the Minister may propose to revoke registration of a charitable organization if it fails to comply with, or contravenes, any of sections 230 to 231.5 of the Act, and the Federal Court of Appeal has determined that non-compliance with section 230(2) of the Act is a proper basis upon which the Minister may issue such a notice.¹¹

⁸ *College Rabbinique de Montreal Oir Hachaim D'Tash v. Canada (Minister of Customs and Revenue Agency)* 2004 FCA 101, and *Ark Angel Foundation v. Canada (National Revenue)* 2019 FCA 21

⁹ *The Canadian Committee for the Tel Aviv Foundation v. Canada* 2002 FCA 72

¹⁰ *ibid*. See also *The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada* 2004 FCA 397

¹¹ *Opportunities for the Disabled Foundation v. Canada (National Revenue)* 2016 FCA 94; and *Ark Angel Foundation v. Canada (National Revenue)* 2019 FCA 21

- The requirement to keep proper books and records is foundational and non-compliance with the requirement is sufficient to justify revocation.¹²

Furthermore, the Federal Court of Appeal has held that there exists a serious obligation for registered charities to maintain adequate books and records,¹³ and that material or significant, and/or repeated, non-compliance with the requirements of subsection 230(2) of the Act constitutes sufficient grounds for revocation.¹⁴

A review of the Organization's books and records found a number of deficiencies. The audit found the following:

- The Organization reported an amount of \$10,307 on line 4500 of its Form T3010 Registered Charity Information Return (T3010) for 2015. However, according to its official donation receipt listing, the total amount of all gifts for which the Organization issued donation receipts is \$9,770. As such, there is a discrepancy of \$537.
- The Organization reported an amount of \$10,022 on the line 4500 of its T3010 for 2016. However, according to the list of donation receipts, the total amount of all gifts for which the Organization issued donation receipts is \$10,407. There is a discrepancy of \$385.
- During the 2016 fiscal year, the Organization issued donation receipt #58954 to [REDACTED] The amount indicated on the donation receipt is \$180, but the amount indicated on the cheque from the donor was \$100.
- The Organization was not able to provide minutes of any meetings including board meetings.
- On the list of official donation receipts issued by RYNY on behalf of the Organization, the Organization did not indicate the serial number of each receipt. therefore, we are not able to validate if receipts were issued in a reasonable manner with respect to the unique serial numbers.
- With respect to its agency agreement and intermediary relationship with RYNY, the Organization did not provide supporting documentation that works to confirm that its resources have been devoted to activities that the intermediary has been contracted to be conducting on the Organization's behalf.
- The Organization did not provide copies of loan agreements and or supporting documentation demonstrating repayment of loans made to its President Jacob Jungreis in 2002 and 2007 and repayment in 2017.

¹² Jaamiah Al Uloom Al Islamiyyah Ontario v. Canada (National Revenue) 2016 FCA 49, paragraph 15; Ark Angel Foundation v. Canada (National Revenue) 2019 FCA 21, paragraph 43; and Many Mansions Spiritual Center, Inc. v. Canada (National Revenue) 2019 FCA 189, paragraph 10

¹³ Humane Society of Canada for the Protection of Animals and the Environment v. Canada (National Revenue) 2015 FCA 178, paragraph 80

¹⁴ Ark Angel Foundation v. Canada (National Revenue) 2019 FCA 21, paragraph 43

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. Providing a personal benefit to a proprietor, member, shareholder, trustee or settlor of the Organization

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 boundaries.¹⁵ 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 benefit¹⁶.

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.¹⁷ Reasonable means related to the need and no more necessary to achieve the purpose,¹⁸ and fair and rational. Proportionate to the resulting public benefit means a private benefit must be secondary and subsidiary to a charitable purpose.¹⁹ 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.²⁰

¹⁵ See for example *Prescient Foundation v MNR*, 2013 FCA 120 at para 36, [2013] FCJ no 512.

¹⁶ For more information, see CRA Policy Statement CPS-024, Guidelines for Registering a Charity: Meeting the Public Benefit Test.

¹⁷ 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.

¹⁸ 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).

¹⁹ *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.

²⁰ 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.

In most cases, private benefits that are more than incidental under the common law will also be an “undue benefit”²¹ 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.²²

A review of the Organization's assets found that, it conferred a private benefit to its president. Specifically, in its financial statements for 2015 and 2016, the Organization declared an amount of \$4,999 in the asset account - “Loan receivable”. This represented 51% and 93% of total declared assets for the 2015 and 2016 fiscal years. The Organization stated that it provided loans for an amount of \$2,000 in 2002 and \$3,000 in 2007 to the Organization's president Jacob Jungreis. It did not provide any applicant criteria for its loan program.

Further, we note that although the Organization claimed that Mr. Jungreis repaid the loan amounts in 2017 by, paying an invoice from RYNY on the Organization's behalf. The Organization was not able to provide any supporting documents pertaining to the repayment, such as, a cheque from Jacob Jungreis to RYNY, that demonstrated that such a payment had been made. Furthermore, it also could not provide supporting documents such as loan agreements as it did not establish loan agreements and/or payment terms including, interest rates.

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 file an information return as and when required by the Act and/or its Regulations

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

²¹ An “undue benefit” is defined in subsection 188.1(5) of the Act.

²² See CSP-1102, Undue Benefits.

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.²³

In the compliance agreement signed by the Organization in 2011, it was explained that it is the responsibility of the Organization to ensure that the information provided on its return, schedules and statements, is factual and complete in every respect. Further, the Organization should endeavour to report figures and related information that genuinely reflects the reality of its operations and take utmost care to minimize mistakes in its T3010. The current audit found that the Organization did not apply the corrective measures. Specifically, the following errors were found during the course of the audit:

- The Organization carried activities outside Canada however, it did not complete Schedule 2, Activities Outside Canada. (of the T3010) for the 2015 and 2016 fiscal years respectively.
- In its financial statements for the 2016 fiscal year, the Organization declared a total amount of \$5,372 in the account entitled--“Asset”; the Organization did not declare any amount in the liability account. However, in its T3010 for the 2016 fiscal year, the Organization indicated the amount \$5,372 on the line 4350- ‘Total liabilities’, and \$0 on the line 4200-‘Total assets’.
- For both the 2015 and 2016 fiscal years, the Organization did not indicate the date of birth for the directors it listed on the T1235 Directors/Trustees and Like Officials Worksheet.

As mentioned above, in the compliance agreement signed by the Organization in 2011, it was explained that it is the responsibility of the Organization to ensure that the information provided on its return, schedules and statements, is factual and complete in every respect. Given that the current audit also found that the Organization failed to file an information return as and when required by the Act and/or its Regulations, the Organization did not meet the corrective measures regarding its T3010 as outlined in the 2011 Compliance Agreement. This is considered to be a demonstration of continuous and repeated non-compliance.

Under subsection 168(1)(c) of the Act, the registration of a charity may be revoked if it fails to file a charity information return when 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.

5. Failure to issue receipts in accordance with the Act and/or its Regulations

²³ Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 48-51.

The law provides various requirements with respect to issuing official donation receipts (ODRs) by registered charities. These requirements are contained in Regulations 3500 and 3501 of the Act. In particular, subsection 3501(1) of the Regulations provides that each official donation receipt that a registered charity issues must include, in a manner that cannot be readily altered, the prescribed contents of a receipt.

The audit revealed that the donation receipts issued by the Organization during the audit period do not contain all the required elements as outlined under Regulations 3500 and 3501. Specifically, the audit found that:

- The Organization's receipts included the statement "Official receipt" instead of the required "official receipt for income tax purposes".
- The Organization's address recorded with the CRA is 11 Beth-Halevy, Boisbriand, Québec. However, the Organization's address indicated on its donation receipts is [REDACTED]
- The Organization did not indicate the date on which receipts were issued where that date differs from the date of the donation.

Accordingly, it is our position that the Organization has failed to meet the requirements of sections 3500 and 3501 of the Regulations about ensuring that its official donation receipts contain all of the required information. For this reason, it appears there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) 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.

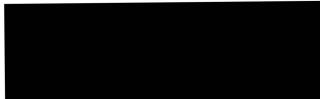
b) Do not respond

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.

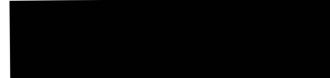
Yours sincerely,



Han Tao
Charities Auditor
Montreal TSO

Telephone: 514-434-9369
Toll Free: 1-888-892-5667
Facsimile: 514-283-8208
Address: 305 boul René-Lévesque Ouest
7e étage, section 445-1-3
Montréal (QC) H2Z 1A6

c.c.: Chaim Mermelstein



APPENDIX A

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

$$\mathbf{A} - \mathbf{B}$$

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.