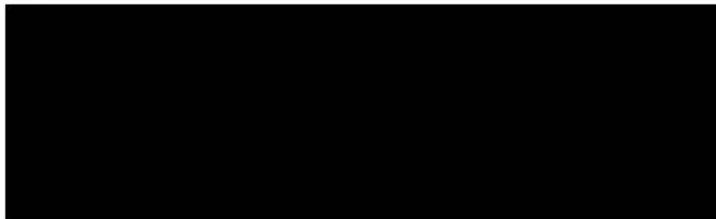




May 26, 2021

REGISTERED MAIL



BN: 88736 1194 RR0001
File #: 0400986

Dear: 

**Subject: Notice of intention to revoke
The Monthly Fund of Emes Charitable Foundation**

We are writing with respect to our letter dated November 14, 2019 (copy enclosed), in which The Monthly Fund of Emes Charitable Foundation (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from May 1, 2015 to April 30, 2017. Specifically the Organization was asked to explain why its charitable registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

The Organization responded to our letter in two telephone conversations on December 9, 2019 and December 10, 2019, respectively. During both conversations, the Organization stated that it had no further documentation or information to provide and would not be submitting any written representations in response to our letter of November 14, 2019.

Audit conclusion

The current audit conducted by the CRA found that the Organization has continued not to comply with the requirements set out in the Act. In particular, it was found that the Organization failed to devote its resources to charitable activities, failed to be constituted for exclusively charitable purposes, failed to maintain adequate books and records, failed to issue donation receipts in accordance for the Act and/or its regulations, and failed to file an information return (Form T3010) as required.

Furthermore, the above noted areas of non-compliance identified in the current audit were also found in a previous audit of the Organization conducted by the CRA in 2013 for the 2010 and 2011 fiscal periods. The previous audit resulted in a Compliance Agreement signed on November 7, 2013, in which the Organization agreed to implement corrective measures to rectify the areas of non-compliance. The current audit found that the Organization failed to implement those corrective measures. For all of these reasons,

and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

For each of the reasons mentioned in our letter dated November 14, 2019, pursuant to subsection 168(1) and 149.1(2) of the Act, we propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the Canada Gazette:

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

Business number
887361194RR0001

Name
The Monthly Fund of Emes Charitable Foundation
Toronto, ON

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

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

Should the Organization choose not to file an objection to this notice of intention to revoke with the CRA within this period, a copy of the revocation notice, described above, will be published in the Canada Gazette after the expiration of 90 days from the date this letter was mailed. As such, the Organization's registration will be revoked on the date of publication.

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

Consequences of revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return Where Registration of a Charity is Revoked (the Return). The 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 14, 2019
- Appendix A, Relevant provisions of the Act

c.c.: Sheila Gerendasi
Director
The Monthly Fund of Emes Charitable Foundation



November 14, 2019

Sheila Gerendasi
Director
The Monthly Fund of Emes Charitable Foundation
32 Stormont Avenue
Toronto, ON M5N 2B9

BN: 88736 1194RR0001
File #: 0400986

Dear Sheila Gerendasi:

Subject: Audit of The Monthly Fund of Emes Charitable Foundation

This letter results from the audit of The Monthly Fund of Emes Charitable Foundation (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from May 1, 2015 to April 30, 2017.

The current audit was a follow-up review to the audit performed on the 2010 and 2011 fiscal years, that had resulted in a Compliance Agreement, signed on November 7, 2013. Based on our audit findings, as outlined below, the Organization did not comply with the corrective measures outlined in the compliance agreement. Due to the serious nature and repeated demonstration of non-compliance we are proposing to revoke the Organization's registered status.

On June 19, 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.	Failure to devote resources to charitable activities - Gifts to non-qualified donees	149.1(1), 149.1(2), 168(1)(b)
2.	Failure to be constituted for exclusively charitable purposes	149.1(2), 168(1)(b)
3.	Failure to maintain adequate books and records and Issuing receipts not in accordance with the Act and/or its Regulations	168(1)(d), 168(1)(e), 230, Reg. 3501, Reg. 5800(1)
4.	Failure to file an information return (Form T3010)	149.1(14), 188.1(6), 168(1)(c)

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 exclusively charitable, a purpose must fall within one or more of the following four categories (also known as “heads”) of charity¹ 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.² 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.³ 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.⁴

¹ The Act does not define charity or what is charitable. The exception is subsection 149.1(1) which defines charitable purposes/objects as including “the disbursement of funds to qualified donees”. The CRA must therefore rely on the common law definition, which sets out four broad categories of charity. The four broad charitable purpose/object categories, also known as the four heads of charity, were outlined by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v Pemsel*, [1891] AC 531 (PC) [Pemsel]. The classification approach was explicitly approved of by the Supreme Court of Canada in *Guaranty Trust Co of Canada v MNR*, [1967] SCR 133, and confirmed in *Vancouver Society*, supra note 4.

² See generally *Vancouver Society*, supra note 4 at para 41, Gonthier J, dissenting; *Gilmour v Coats et al.*, [1949] 1 All ER 848 [Gilmour]; *National Anti-Vivisection Society v IRC*, [1947] 2 All ER 217 at 224 (HL), Wright LJ [National Anti-Vivisection Society].

³ See for example *In re Grove-Grady*, [1929] 1 Ch 557 at 573-574; *Plowden v Lawrence*, [1929] 1 Ch 557 at 588, Russell LJ; *National Anti-Vivisection*, supra note 6 at 49, Wright LJ; *IRC v Oldham Training and Enterprise Council*, [1996] BTC 539 [Oldham]; *Pemsel*, supra note 5 at 583.

⁴ See *National Anti-Vivisection Society*, supra note 6 at 49, Wright LJ; *In re Shaw decd.*, [1957] 1 WLR 729; *Gilmour*, supra note 6, Simonds LJ at 446-447.

- The second part of the test requires the benefit be directed to the **public** or a sufficient section of the public. This means a registered charity cannot:
 - o 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
 - o 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.⁵

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.⁶

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 there own activities test. The charity must be able to show that the terms establish a real, ongoing, active relationship with the intermediary,⁷ 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

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

⁶ For more information, see CRA Guidance CG-002, Canadian Registered Charities Carrying Out Activities Outside Canada and Guidance CG-004, Using an Intermediary to Carry Out Activities Within Canada.

⁷ 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].

and circumstances, the absence of appropriate direction and control indicates that an organization is resourcing a non-qualified donee in contravention of the Act.

The CRA must be satisfied that an organization's activities directly further charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information. Accordingly, the current audit encompassed an enquiry into all aspects of the Organization's operations. The fact that some of the areas of non-compliance identified in this letter may, or may not, have been evaluated in preceding audits does not preclude the need for compliance with existing legal requirements. Furthermore, the CRA may take a position that differs from that reached previously based on reconsideration of the pertinent facts and law.⁸

Background

The Organization was registered on May 1, 1972, as a charitable organization with the following purposes;

The purposes of the Organization are as follows:

- (a) to raise funds to help needy poverty stricken families from their financial burdens;
- (b) to distribute grants and scholarships to subsidize the education and schooling needed for the handicapped and underprivileged;
- (c) to distribute scholarships to students with the ability to continue their advanced studies in the field of research, technology, science theology and any field the board of directors may decide upon; and,
- (d) to provide hospital care, medicine, nursing care, meals and shelter to those needy people approved by the board.

While we recognize that the Organization's purpose 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 Organization's Form T3010, Registered Charity Information Return, for the year ended 2017 indicates the Organizations current activities are;

- The charity assists poor and needy families with the basic necessities of life.
- The charity assists needy people with aid to obtain medical treatment.
- The charity makes donations to qualified donees.

Previous non-compliance

An audit of the 2010 and 2011 fiscal years was completed on April 3, 2013. It resulted in a Compliance Agreement.⁹ The Compliance Agreement was signed on November 7, 2013, by the director of the Organization, Sheila Gerendasi.

⁸ See for example Canadian Magen David Adom for Israel v MNR, 2002 FCA 323 at para 69, [2002] FCJ no 1260, Sharlow JA.

⁹ Appendix A – Compliance Agreement

By signing the Compliance Agreement, the Organization agreed to rectify all identified areas of non-compliance and agreed to implement the corrective measures (attached hereto as Appendix A). The Organization 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) could apply penalties and suspensions provided for in sections 188.1 and/or 188.2 of the Act, and could also give notice 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.

In summary, the November 7, 2013 Compliance Agreement identified the following areas of non-compliance:

1. Failure to maintain adequate books and records
 - a. Proper and complete books and records of account were not maintained.
 - b. Minutes of meetings were not maintained.
 - c. Donation receipts issued could not be verified.
2. Charitable designation
 - a. The organization was gifting a majority of their funds to qualified donees which was not an approved object of the organization.
3. Charitable objects & activities
 - a. The organization was operating outside of their approved objects as it was gifting funds outside of Canada and gifting funds to qualified donees.
4. Issuing receipts not in accordance with the Act or its Regulations
 - a. The official donation receipts issued were not in compliance with Regulation 3501 of the Act and IT-110R3 as they did not contain the statements that it is an official receipt for income tax purposes, the name and address in Canada of the organization as recorded with the minister, the full name and address of the donor, and the name and Internet website of the Canada Revenue Agency.
 - b. All donation receipts were not accounted for.
 - c. Donation receipts were issued to charitable organizations.
 - d. A lack of internal controls surrounding the receipting system.
5. Failure to file an information return as required by the Act
 - a. T3010, Registered Charity Information Returns had been consistently filed late.
6. Activities outside of Canada
 - a. There was a lack of documentation maintained to support what the funds sent outside of Canada were spent on.
 - b. A list of beneficiaries was not maintained to support who received funds in Israel from the Emes program.

- c. In regards to the Bambi fund, the agent did not segregate the funds received from the organization from that of their own, did not segregate their own expenses from that of the organization, and did not specify or provide documentation to support how the funds were spent.

Identified areas of non-compliance as a result of the current audit

1. Failure to devote resources to charitable activities: making gifts to non-qualified donees

Legislation

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 on the list of qualified donees set out in the Act. Qualified donees include Canadian registered charities, certain universities outside Canada, the United Nations and its agencies and a few foreign charities.
- It can carry on its own activities. In contrast to the relatively passive transfer of money or other resources involved in making gifts to qualified donees, carrying on one's own activities implies that the Canadian charity is an active and controlling participant in a program or project that directly achieves a charitable purpose.

In order to give meaning and effect to the Act, a charity must continue to meet all of its obligations whether the activities are undertaken directly, through agency agreements or through any other arrangements. While we have never insisted on the absolute need for a written instrument, we recommend it as a means of meeting the requirements of the Act. Notwithstanding the manner by which a charity chooses to meet its obligations, it must provide documentation or other tangible evidence to substantiate that it met the requirements of the Act with respect to the direction and control of its resources.

Since the Act requires a charity to show that it effectively directs and actually controls its own activities, the agency agreement that a charity puts in place and the manner that the charity implements that agreement must allow the charity to discharge its statutory obligations.

From time to time the Charities Directorate has suggested certain guidelines for agency agreements in order to help charities understand all the requirements of the Act. For a number of years, we discussed these guidelines with individual charities on a case-by-case basis. As we identified a growing need in the charities sector for more information on this subject, guidelines have been made available to the public and the sector as a whole through our Internet site.

By observing these guidelines and by keeping proper books and records, a charity should be able to discharge its evidentiary burden of establishing that its principal-agent relationship existed in fact, and that it maintained effective direction and actual control over its resources at all times. In the final analysis, the true test of whether a charity was responsible in a direct, effectual, and constant manner over its resources and activities is not shown by how well it has crafted an agreement but rather, how well it has implemented it through time. Therefore, it is incumbent upon the charity to show that it has properly implemented any agreement it claims is in place.

The existence of either a written or verbal agency agreement is only one example of evidence required to show that a sufficient principal-agent relationship truly exists. The charity through documented evidence, must demonstrate that actual events transpired which prove the continued existence of the principal agent relationship. Thus, the charity must provide the CRA with a means of examining the internal decision making mechanisms within the charity's own structure through records, such as: minutes of board meetings; internal communications (i.e., memoranda); 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. In addition, the charity must provide source documentation, reports, and the various other instruments it received from its agent showing that throughout the life of the principal-agent relationship, the agent reported back to the principal in such a manner and frequency as to allow the principal to make informed decisions about the resources and projects for which the principal was responsible.

It is the CRA's view that this type of reporting mechanism is necessary for the charity to clearly demonstrate that it maintains an adequate level of control and accountability over the use of its funds. These reports would have to be kept with the charity's other records and books or account at the address recorded with the CRA.

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

Where an agreement exists only in verbal form, or where some of the elements outlined in the aforementioned guidelines are not explicitly expounded in a written agreement, the CRA will look at all supporting documentation as well as the conduct of both parties to ascertain whether or not the registered Canadian charity maintained effective direction and actual control through its relationship with the other organization. The registered Canadian charity must not only show that an appropriate agreement existed (written or otherwise), it must also show that the agreement was implemented in a manner that clearly demonstrates that the registered Canadian charity exercised direct, effectual, and constant responsibility for undertaking the charitable activities to which its resources

were applied. In effect, the registered Canadian charity must show that it acted as the principal through the implementation of the agreement.

Audit Findings

The current audit raised serious concerns with respect to the Organization's foreign activities. The audit revealed there was no documentation and evidence to demonstrate that the Organization had any control over its resources that were sent to Israel in support of the EMES program and the Bambi program. In the 2016 fiscal year, 80% of the resources were provided to volunteers / agents in Israel, and in the 2017 fiscal year, 88% of the resources were provided to volunteers / agents in Israel. In both years under audit, there were no source documents provided to show or verify that the resources furthered the charitable purposes of the Organization. There was no written agreement or any documentation provided during the audit to show that a sufficient principal agent relationship existed. Director, Sheila Gerendasi, advised during the audit that she had placed reliance on the agents and volunteers, individuals to act in the best interest of the charity. She informed the CRA during the audit that she had not interviewed the agents. The books and records of the organization provided to CRA did not demonstrate a means of examining the internal decision making mechanisms within the organizations own structure and did not provide evidence that the organization was the guiding-mind in the principal and agent relationship. The volunteers / agents did not provide the reporting back, to the principal, of the resources spent in such a manner and frequency to allow the principal to make informed decisions about the resources and programs for which the principal was responsible. The Director explained that the Organization provided funds to the volunteers / agents to distribute at their own discretion according to the need of the families in the communities they visited.

The Director further advised that there was no involvement or meetings with the board of directors, and only informal and undocumented verbal conversations with the agents / volunteers in Israel. The Organization did not provide the CRA with any documentation related to the direction and control of its resources due to the lack of board meetings or meetings with the agents/volunteers and the resulting lack of recorded minutes.

Given the lack of information and supporting documentation, it was not possible to verify that any of the Organization's resources were devoted to conducting charitable activities as stated in the governing documents. As a result, the organization made gifts to non-qualified donees which is in contravention of the Act.

For these reasons, it appears there are grounds for revocation of the charitable status of the Organization under paragraph 149.1(2) and 168(1)(b) of the Act.

2. Failure to be constituted for exclusively charitable purposes

Legislation

To be registered as a charity under the Act, Canadian law requires that an organization's purposes be exclusively charitable, and define the scope of the activities that can be engaged in by the organization.¹⁰

Audit Findings

As outlined above, given the lack of information and supporting documentation provided to CRA during the audit, it was not possible to verify that any of the Organization's resources were used to conduct its own charitable activities or to make gifts to qualified donees. As such, the Organization was found to not be devoting its resources to activities that furthered exclusively charitable purposes. When a charity's resources are not furthering exclusively charitable purposes, the charity is no longer meeting the requirements for registration under the Act.

For this reason, it is our position there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

3. Failure to maintain adequate books and records and Issuing receipts not in accordance with the Act and/or its Regulations.

Legislation

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."

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

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;¹¹
- 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;¹² 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.¹³

Audit Findings

The audit found the following:

- There was no adequate documentation to show that internal controls were in place. There was no evidence of the segregation of duties; adequate authorization of transactions, adequate access restriction to resources and records of the Organization, and the operations of the Organization were conducted solely by Sheila Gerendasi, with no oversight by the board of directors.
- The organization did not provide any records of board meetings or formal meetings with the agents. There were also no minutes of discussions held. CRA could not determine the Organizations governance, internal controls, or any significant changes that might have happened in the audit period.
- The Organization operated outside of its stated objects by providing funding outside of Canada without amending its constitution.
- The total amount of tax-receipted donations reported on line 4500 of Form T3010 did not reconcile to the donation receipts on hand.

	<u>2016</u>	<u>2017</u>
Tax-receipted gifts – line 4500	\$76,286	\$61,044
Donation receipts submitted for audit	<u>\$45,472</u>	<u>\$57,409</u>
Difference	<u>\$30,814</u>	<u>\$ 3,635</u>

The difference was not explained by the Organization.

¹¹ See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

¹² 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.

¹³ See Prescient Foundation v MNR, 2013 FCA 120 at para 51, [2013] FCJ no 512.

- In the 2016 fiscal year 29% of the donation receipts were issued to qualified donees and in the 2017 fiscal year, 25% of the donation receipts were issued to qualified donees.
- The Organization had two separate sets of official donation receipts that were issued and they did not have any review procedures in place to ensure that all of the official donation receipts were accounted for. A complete listing of the donation receipts issued was not maintained, and the authorized individuals who had prepared the donation receipts were not subject to any review on the donation receipts that were issued.
- The official donation receipts issued did not meet the requirements of Regulation 3501 of the Act. The following required information was missing.
 - (a) The name, Canada Revenue Agency, and the website address www.cra-arc.gc.ca/charities.
 - (b) If cash and a single donation, the date or the year during which the donation was received.
 - (c) If cash and multiple donations, the dates or the year during which the donations were received.
 - (d) The place or locality where the receipt was issued.
 - (e) The date on which the receipt was issued where that date differs from the date of the donation.
 - (f) The signature of an authorized person.
- In the 2016 and 2017 fiscal years, there was a lack of source documents provided during the audit to verify the expense claims made. CRA could not conclude that the resources of the Organization were used to further the charitable activities (if any) of the Organization.

2016 – 80% of the expenses claimed were not verified.

2017 – 88% of the expenses claimed were not verified.

The Organization was found to be in contravention of section 230(2) and Regulation 5800(1) of the Act, which includes retention of all source documents.

We found that the Organization did not comply with the Corrective Measures outlined in the Compliance Agreement it signed on November 7, 2013, as maintaining proper books and records in accordance with the Act was one of the corrective measures that it agreed to follow. This demonstrates repeated serious non-compliance.

Further, it is our position that the Organization failed to comply with the Act as it applies to the issuance of official donation receipts. Specifically, the total amount of tax-receipted donations reported on line 4500 of Form T3010, for both fiscal years under audit, did not reconcile with the donation receipts on hand. The audit also showed that the Organization issued official donation receipts for gifts received from qualified donees, receipts issued did not meet the requirements of Regulation 3501, and there was no

system implemented to review and reconcile the donation receipts prepared and issued. These issues were addressed in the previous compliance agreement issued and attached hereto as Appendix A. This is also a demonstration of repeated non-compliance.

It is also our position that there are grounds to revoke the Organization's registration as a charity under paragraph 168(1)(e) of the Act, because it failed to comply with the requirements of subsection 230(2) of the Act. It should be noted that under paragraph 188.2(2)(a) a qualified donee can also have its receipting privileges suspended for this same contravention of the requirements of subsection 230(2) of the Act, however, due to the serious nature and repeated demonstration of non-compliance with respect to maintaining proper books and records, we are proposing to revoke the Organization's registered status.

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

Legislation

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.¹⁴

Audit Findings

The audit revealed that the 2016 T3010, Registered Charity Information Return, was filed late. The 2016 T3010 return was due on October 31, 2016 and was filed on January 13, 2017.

The audit also revealed that the Organization did not comply with the Corrective Measures outlined in the previous Compliance Agreement attached as Appendix A. Specifically the Organization did not comply with the requirement to file the T3010 returns within six months after fiscal year end in accordance with the Act, which was one of the corrective measures it agreed to follow. This demonstrates repeated serious non-compliance.

Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, may give notice to the charity that the Minister proposes to revoke its registration because the charity

¹⁴ Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 48-51.

fails to file a Registered Charity Information Return as and when required under the Act or a Regulation. For this reason, it appears to us that there may be grounds for revocation of the charitable status of the Organization.

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, Maria Grieco, may also be reached at 519-584-3974.

Yours sincerely,



Karen Lockridge
Audit Division
Kingston Tax Services Office

Telephone: 613 541-7440
Fax: 613 541-7161

Address: 102 – 1475 John Counter Blvd.,
Kingston ON K7M 0E6

Internet: www.cra-arc.gc.ca/tax/charities/menu-e.html

Enclosure: Appendix A, Compliance Agreement

c.c.:



Compliance Agreement

Between:

**The Monthly Fund of Emes Charitable Foundation
32 Stormont Avenue
Toronto, ON M5N 2B9
BN: 887361194RR0001**

And

Canada Revenue Agency (the CRA)

During an audit of the Organization's books and records conducted by the CRA on April 3rd, 2013, the following areas of non-compliance with the provisions of the Income Tax Act (the *Act*) and/or its *Regulations* were identified:

Identified Areas of Non-Compliance

1. Failure to Maintain Adequate Books and Records.
2. Charitable Designation
3. Charitable Objects & Activities
4. Issuing Receipts Not in Accordance with the *Act* or its Regulations.
5. Failure to File and Information Return as Required by the *Act*.
6. Activities Outside Canada

1. Failure to Maintain Adequate Books and Records

Audit Findings:

The audit revealed that the organization failed to maintain proper and complete books and records of account, including donation information and board and staff meeting minutes. Several of the electronic records were not maintained in an electronically readable format.

The books and records also showed issues with respect to the official donation receipts in that there were missing receipts, and incomplete information. This indicates a lack of internal control in that this went undetected. We were unable to determine whether all the numbers in the series of receipts were accounted for as well as the donations listings maintained were not complete.

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2. Charitable Designation

Audit Findings:

As a result of the audit, it is CRA's view that the organization is not operating as a charitable organization. The majority of the funding comes from one source. The Organization donated funds to qualified donees between 81 and 93% for 2011 and 2012 respectively. The Organization's current objects do not support the gifting to qualified donees.

3. Charitable Objects & Activities

Audit Findings:

It is CRA's view that the Organization began operating outside of its stated objects as approved by CRA upon initial registration. The Organization began to provide funding outside of Canada as well as to qualified donees without notifying the CRA of these changes.

4. Issuing Receipts Not in Accordance with the Act or its Regulations.

Audit Findings:

Receipts were missing the full name of the donor in some cases. There were also receipts issued where a unique serial number had not been recorded on the official donation receipts or the receipt itself could not be located.

The manual receipts issued from a blue carbon copy receipt book were missing the following elements:

- the statement that it is an official receipt for income tax purposes;
- the name and address in Canada of the Organization as recorded with the Minister;
- the full name and address of the donor; and,
- the name and Internet website of the Canada Revenue Agency.

The DOS based receipts were not legible so it is unclear if there were the receipts were missing any of the required elements.

There were several official donation receipts issued to other charitable organizations in error.

The Organization does not have any review procedures in place to ensure that receipts are not fraudulently being issued. A complete donation listing does not exist and the authorized individuals, designated signing authority, are not subject to any review on the donations receipts that are issued.

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5. Failure to File and Information Return as Required by the Act.

Audit Findings:

The T3010's have been consistently filed late.

6. Activities Outside Canada

Audit Findings:

There were areas where the agency agreement between the Organization and the agent in Israel was not adhered to. Part 3 of the agreement states that the funds of the Principal...shall remain segregated and apart from the funds of the Agent. However, this was not being done. A separate bank account was not maintained. Financials were provided from the Agent which identified money received from Canadian organizations but it did not identify the funds received solely by this Foundation, nor did it specify how those funds were spent. The financials provided were of the Bambi organization in its entirety and did not segregate their own expenses with those of the Principal. In addition, the organization does not keep meeting minutes and thus cannot show where the agent is acting as per the written instructions from the Canadian organization.

In regards to the monthly fund, a list of beneficiaries is not maintained. The volunteer receives the funds via money order or cheque, and signs for the funds; however, at the time of the audit, there was nothing to show how the money was actually being spent or who the beneficiaries were.

Conclusion:

The Organization wishes to rectify all identified areas of non-compliance on a voluntary basis. The CRA is prepared to provide the Organization with an opportunity to do so.

For this purpose, the parties agree that the Organization shall implement the following:

Corrective Measures:

1. The organization agrees to maintain the additional books and records listed below:
 - meeting minutes, specifically for meetings between the organization and the volunteers of the organization,
 - all email correspondence between the organization and the volunteers,
 - meeting minutes for all board meetings,
 - a list of beneficiaries, and;
 - supporting documentation to verify expenses incurred in Israel.

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The organization must maintain complete and accurate books and records at its address in Canada and in accordance with the guidelines outlined in IC 78-10R5 which can be found at www.cra-arc.gc.ca, along with all CRA's publications.

To address the internal control deficiencies with respect to the official donation receipts, the organization has agreed to create a master donation listing that will be reviewed by the accountant retained by the Organization.

2. The Organization wishes to remain a charitable organization and continue funding the projects in Israel; the Bambi fund and the monthly fund. The Organization has agreed to ensure that it is operating as a charitable organization as per 149.1(1) of the *Act*.
3. The constitution should be updated to properly reflect the Organization's current mandate. An amended constitution will be submitted to CRA 9 months from the date of signing this compliance agreement.
4. The Organization will use the same template for issuing all official donation receipts. All receipts will be provided to one authorized individual for signing. A review of all receipts issued will be completed by the accountant retained by the Organization. All official donation receipts will be issued in accordance with the *Act* and its *Regulations*.
5. For all subsequent T3010's, the organization will ensure the T3010's are filed within 6 months after fiscal year end as per the *Act*.
6. The organization will maintain ongoing direction and control over its resources and over the conduct of its charitable activities outside Canada in the following manner:
 - ensuring the Agent opens a separate bank account in order to segregate and identify funds received from the Principal;
 - ensuring that for both the Bambi program and the Monthly Fund program, a listing of beneficiaries will be maintained; and,
 - regular reporting to the Canadian organization by both the Bambi Organization and the volunteers situated in Israel will be done.

When the organization uses an Agency agreement as a method of delivering its charitable activities, the following records should also be maintained to support these agreements:

- Minutes of meetings, as well as copies of emails, and other correspondence between the organization and the agent.
- Any other materials that reflect the organization's ongoing participation and that show how the organization's funds are used.

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Date of Implementation of all Corrective Measures

The parties agree to the following implementation schedule for the **Corrective Measures**:

- The Organization shall obtain a revised Constitution and provide it to CRA within 9 months of the date of this letter.
- The Organization shall implement procedural changes to ensure it is operating as a charitable organization within 1 year of the date of this letter.
- All other corrective measures shall be implemented by April 30th, 2014.

By signing below, the parties certify that they have read, understood, and agree to the terms of this Compliance Agreement.

The Organization further acknowledges that should it fail to implement all corrective measures in accordance with the terms of this Compliance Agreement, the Minister of National Revenue (the Minister) may apply the 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.

Organization per:
Authorized Signatory with
the authority to bind the Organization

Witness

S GERENDASI DIRECTOR

Name and position of signatory
(please print)

Name of witness (please print)

MONTHLY FUND OF LOMES CHARITABLE FOUNDATION
32 STORMONT AVE.
TORONTO, ONTARIO M5N 2B9

Full name and address of Organization

Date of signing: Nov. 7, 2013

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CRA per:

Sherry Head -- Auditor

Name and position of signatory
(please print)

Date of signing: Nov 20, 2013

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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

$$A - B$$

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.