



March 24, 2022

Graham Gibb
Director
Ashreigny Charitable Foundation
1387 Sandalwood Drive
Peterborough ON K9K 1X7

BN: 81276 8257 RR0001
File #: 3043757

Dear Graham Gibb:

**Subject: Notice of intention to revoke
Ashreigny Charitable Foundation**

The Canada Revenue Agency (CRA) understands the significant personal and economic impact of COVID-19 on Canadians. The CRA is aiming to be responsive and to operate in a way that balances these realities with its duty to administer Canada's tax laws and the obligations of all Canadians to comply with tax laws.

We are writing with respect to our letter dated February 24, 2021 (copy enclosed), in which Ashreigny Charitable Foundation (the Organization) was invited to respond to the findings of the audit conducted by the CRA for the periods from February 1, 2015 to January 31, 2018. 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.

The Organization's response acknowledged the non-compliance issues identified by the audit and included representations with respect to the identified areas of non-compliance, as well as documentation in support of the valuation of private corporation shares acquired from [REDACTED] during the audit period.

We have reviewed and considered your written responses, including the documentation submitted in support of the Organization's purchase of [REDACTED] shares, however, our concerns regarding the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our positions are fully detailed in Appendix A, attached.

Conclusion

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization failed to devote resources to charitable purposes, failed to maintain adequate books and records, and failed to issue receipts not 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 February 24, 2021, and pursuant to subsection 168(1) and 149.1(4) 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)(d), 168(1)(e), and subsection 149.1(4) 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 will be effective on the date of publication of this notice in the Canada Gazette.

Business number	Name
81276 8257 RR0001	Ashreigny Charitable Foundation Peterborough ON

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 Intake Centre
Canada Revenue Agency
Post Office Box 2006, Station Main
Newmarket ON L3Y 0E9

However, a copy of the revocation notice, described above, will be published in the Canada Gazette after the expiration of **30 days** from the date this letter was mailed. Even though the Organization may file a notice of objection with the CRA Appeals Branch within the 90 day time frame, in order to temporarily suspend the revocation process, the Organization must obtain an order from the Federal Court of Appeal.

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

Consequences of revocation

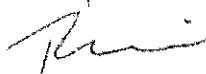
As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;

- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return where Registration of a Charity is revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix B. Form T2046 and the related Guide RC4424, Completing the Tax Return where Registration of a Charity is revoked, are available on our website at canada.ca/charities-giving;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Organization may be subject to obligations and entitlements under the Excise Tax Act that apply to 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 February 24, 2021
- Appendix A
- Appendix B, Relevant provisions of the Act

c.c.: John G Rooney
Edmonton AB



Canada Revenue
Agency

Agence du revenu
du Canada

February 24, 2021



BN: 81276 8257 RR0001
File: 3043757

Dear [REDACTED]:

Subject: Audit of Ashreigny Charitable Foundation

This letter results from the audit of Ashreigny Charitable Foundation (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the periods from February 1, 2015 to January 31, 2018.

In the course of the audit, the CRA identified specific areas of non-compliance with the provisions of the Income Tax Act and its Regulations (Act) in the following areas:

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to devote resources to charitable purposes	149.1(1), 149.1(3), 168(1)(b)
2.	Failure to maintain adequate books and records	149.1(3), 168(1)(b), 168(1)(e), 230(2), 230(4)
3.	Issuing receipts not in accordance with the Act and/or its Regulations	149.1(3), 168(1)(d), Regulations 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 and explain why its registered status should not be revoked. 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.

Canada

Background

Correspondence was initially issued to the Organization by the CRA (dated July 26, 2018), confirming our selection of the Organization for audit of fiscal periods ending January 31, 2016 to January 31, 2017 (see copy enclosed). The correspondence outlined our concerns relating to the status of an identified ineligible individual (as defined in subsection 149.1(1) of the Act) listed as an active director / trustee or like official in the Organization's Form T3010, Registered Charity Information Return, and failure to devote resources to a charitable purpose. In response to the correspondence issued a response was submitted by the Organization (dated September 26, 2018) demonstrating acceptance of the ineligible individual's resignation as a director and stating an intention to make gifts to qualified donees in its fiscal period ending January 31, 2019 in the amount of \$1,000.

Subsequent to the Organization's response, the CRA extended the audit period by letter to include fiscal period ending January 31, 2018. Additional requests for information and documentation were issued to the Organization dated November 15, 2018 and December 17, 2018 (see copies enclosed). The Organization submitted written responses to our requests dated November 29, 2018 and January 3, 2019 respectively. We have now completed our review of the information and documentation provided.

The balance of this letter describes the identified areas of non-compliance in further detail.

Identified areas of non-compliance

1. Failure to devote resources to charitable purposes

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

- for its own charitable activities - undertaken by the charity itself under its continued supervision, direction and control; and
- for gifting to "qualified donees" as defined in the Act.¹

A charitable activity is one that directly furthers a charitable purpose - which requires a clear relationship and link between the activity and the purpose it purports to further. The Organization was originally registered as a public foundation with formal re-designation to a private foundation completed effective February 1, 2020. The Act permits public foundations to either make gifts to other organizations that are qualified donees or to carry on their own activities.

¹ A "qualified donee" means a donee described in subsection 149.1(1) of the Act, or in CRA's Guidance document titled CG-010, Qualified donees, available on the CRA website.

Fiduciary Duty

By virtue of their unique role, and as a means of “encouraging activities which are of special benefit to the community”², registered charities receive privileged treatment under the Act. In addition to the income tax exemption that is also granted to non-profit organizations, registered charities are further afforded the advantage of being able to issue official donation receipts whereby individual donors are eligible to receive tax credits for contributions they make to registered charities.

As a result, the Canadian public contributes to every registered charity by virtue of the loss of tax revenue resulting from the income tax incentives that encourage charitable giving. The CRA therefore has a fundamental interest in ensuring that monies raised from the public are used to fulfil their intended purposes.

An organization registered under the Act is required to be bona fide, meaning that it must be established and operated to confer a tangible or objectively measurable benefit upon the public. Further, the courts have placed extensive responsibility, known as fiduciary duties, on the directors of charities.

As stated in CRA publication Registered Charities Newsletter (No. 21 – 2005):

“...regardless of the province or territory in which they operate, directors of charities should not be passive. They have a fiduciary responsibility to ensure that a charity is being operated in the public interest. They have a duty of diligence that requires them to be knowledgeable about the workings of the charity and ensure that the charity and its assets are cared for properly.”³

Further, Registered Charities Newsletter (No. 22 – 2005), defines fiduciary duty responsibilities as:

“...a duty to act for someone else’s benefit exclusively. It is the highest standard of duty implied by law (e.g. trustee, guardian). For charities, this means to accept and hold a public trust to maintain, preserve and develop the organization’s resources to be used for charitable purposes, to ensure that the organization’s activities remain charitable, and to manage the organization for the benefit of the public.”⁴

Generally, there is an expectation that directors and officers will ensure that the organization achieves its purposes, complies with the laws that apply to the organization, and operates in a fiscally prudent, effective and efficient manner.

² Vancouver Society, *ibid.* note 2, para.170

³ See Canada.ca/en/revenue-agency/services/forms-publications/publications/charitiesnews-21/archived-registered-charities-newsletter-no-21-winter-2005.html

⁴ See Canada.ca/en/revenue-agency/services/forms-publications/publications/charitiesnews-22/archived-registered-charities-newsletter-no-22-spring-2005.html

Investment of Charitable Resources

A registered charity may invest its surplus funds or assets for purposes of generating additional revenues to be used for its otherwise charitable activities. However, charity law dictates that a charity's assets must be managed so as to obtain the best return within the bounds of prudent investment principles. While a charity may invest in a for-profit business, its directors / trustees need to satisfy themselves both that the investment represents a prudent use of the charity's assets and that no unacceptable or undue private benefit is conferred on the taxable corporation.

Directors and trustees must handle the charity's property with the care, skill and diligence that a prudent person would use. They must treat the charity's property the way a careful person would treat their own property and must always protect the charity's property from undue risk of loss.

The heightened duty of care of charities' directors is outlined in the Canada Not-for-profit Corporations Act, subsection 148(1), which states:

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

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

In evaluating the efforts of directors / trustees of a registered charity to fulfill fiduciary duties and practice reasonable and prudent use of charitable resources, several factors are considered, including in part:

- General economic conditions
- The possible effect of inflation or deflation
- The expected tax consequences of investment decisions or strategies
- The expected total return from income and appreciation of capital
- Need for liquidity, regularity of income and preservation or appreciation of capital
- An asset's relationship or value to the purposes of the charity

Generally, every charity which engages in investment activities should maintain an investment plan or policy that takes into account a reasonable assessment of risk and return.

Audit Findings:

The audit revealed that the Organization has not complied with subsection 149.1(1) of the Act, based on our review of Form T3010 and the financial statements. The Organization has not conducted any charitable activities during the fiscal periods under audit. As such, it is our position that the Organization has failed to operate exclusively for charitable purposes. The directors of the Organization failed to demonstrate fulfillment of fiduciary responsibilities to ensure that it was operated in the public interest, and managed for the benefit of the public.

Further, the audit raised serious concerns relating to the Organization's investment activities including failure to demonstrate that it has been diligent in managing its resources. The Organization invested all of its assets into long-term investments in the fiscal period ending January 31, 2018. In the 2018 fiscal period, the Organization reported donations received from [REDACTED] (a director of the Organization) in the amount of \$ 26,250 and [REDACTED] in the amount of \$ 26,250. The combined total donation proceeds of \$ 52,500 reported were fully converted into long-term investment assets.

In correspondence dated November 15, 2018, the CRA requested the Organization to provide additional information and documentation relating to its official donations receipts, long-term investment assets, and planned gifting to qualified donees.

In response, the Organization provided a copy of two official donation receipts issued in the amount of \$ 26,250 each totaling \$ 52,500 along with a copy of the two cheques received. While a copy of two cheques were provided, no documentation was provided to verify that the cheques were ever cashed by the Organization.

In order to complete our audit, the CRA requested additional information and documentation in a letter dated December 17, 2018. The Organization's representative provided a written response, dated January 3, 2019, in which it stated "Our client had advised that the Foundation did not have a bank account as at January 31, 2018." In the absence of a bank account, the Organization was unable to demonstrate a transfer of property from the donors to the charity occurred. Further, the Organization was unable to demonstrate it completed a purchase of the shares reported as investment assets.

The Organization provided an "agreement for the sale and purchase of shares" identifying the purchase of 1,500 Class "A" shares of [REDACTED] from Western Mercantile Financial Corporation by the Organization coupled with a "declaration of trust" confirming the shares are held by Western Mercantile Financial Corporation in trust for the Organization.

The Organization failed to provide information concerning the intended duration of its investments, the rate of return expected, share certificates or share register demonstrating transfers occurred, and most importantly, the basis for valuation confirming the reasonability of the stated rate of \$35 per share.

No information has been shared with, or obtained by, the CRA that indicates how the decision to invest the Organization's funds was reached, including whether the decision was reached in fiscally prudent manner. The Organization provided no meeting minutes, investment policy or other secondary documentation to demonstrate consideration of investment criteria, whether the financial integrity of the company for which it was provided shares was conducted, or whether the investments were in fact being actively monitored on a regular basis to take into account the potential losses or gains of charitable resources. There is no indication the Organization stands to realize gains from the charitable resources invested.

Further, the official donation receipts issued, the "agreement for the sale and purchase of shares" document, and the "declaration of trust" document were signed by director R.I. Tennant solely demonstrating a lack of segregation and internal controls. R.I. Tennant provided signature on behalf of the vendor (Western Mercantile Financial Corporation) as well as on behalf of the purchaser (the Organization) in the "agreement for the sale and purchase of shares". The long-term investment transaction occurred at non-arm's length as R.I. Tennant represented both the organizations during the transaction.

In correspondence of July 26, 2018, issued to the Organization, the CRA expressed concerns with respect to an identified ineligible individual listed in Form T1235 of Form T3010. When an ineligible individual is found to be in a position to manage and/or control the operations of a registered charitable organization, a greater documentary burden is created for the charity to demonstrate that it maintained adequate internal controls and decision-making processes (including review, vetting and approval) to ensure the safeguarding of its charitable resources.

Notwithstanding the demonstrated resignation of the ineligible individual effective October 15, 2018, the additional directors of the Organization retain the fiscal responsibilities described above and are not absolved of ensuring sufficient due diligence is followed to safeguard charitable resources and to carry out charitable purposes for which it was registered.

Summary:

It is our determination there are grounds for revocation of the Organization's registration for failing to be "operated exclusively for charitable purposes" pursuant to the definition of charitable foundation in paragraph 149.1(1) of the Act.

Under paragraph 168(1)(b) of the Act, the registration of a charity may be revoked if it ceases to comply with the requirements of the Act for its registration. 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)(b) of the Act.

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 books of account shall retain:

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

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

- it is the responsibility of the registered charity to prove that its charitable status should not be revoked,⁵
- 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,⁶ and
- the failure to maintain proper books, records and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status in the case of material or repeated non-compliance.⁷

Audit Findings:

The audit revealed the Organization failed to satisfy the requirements of paragraph 230(2)(a) of the Act as documentation in support of information reported was found to be incomplete and / or inadequate. The documentation provided did not allow for the verification of accuracy, completeness, existence, and reasonability of the asset amounts reported, primarily in relation to the transfer of the [REDACTED] corporate shares (i.e. share certificates, registry) and information substantiating the value of the shares acquired. The Organization's books and records did not provide sufficient information to demonstrate sufficient internal controls were maintained by the Organization.

Internal Controls

The board of directors (Board) of an organization is responsible for establishing and maintaining an adequate internal control structure that minimizes the risks associated with any misstatement in the financial reporting of the organization, safeguards the organization's assets, and prevents or detects error and fraud.

⁵ See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

⁶ See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at para 39, [2002] 2 CTC 93.

⁷ See Prescient Foundation v MNR, 2013 FCA 120 at para 51, [2013] FCTJ no 512.

The Board must ensure that sufficient internal controls exist around the accounting system, the maintenance of the accounting records, the selection and application of internal policies and procedures, and the segregation of duties.

The books and records provided during the audit did not include supporting documentation demonstrating sufficient internal controls were maintained by the Organization.

The Organization failed to demonstrate internal evaluations, consideration and approval protocols in the application of charitable resources. The Organization also failed to maintain documentation of the review, vetting, and verification policies and procedures undertaken by representatives of the Organization in the approval and authorization of its investment decisions, financial record keeping and reporting.

The books and records failed to demonstrate adequate segregation of duties and access restrictions established to the resources of the Organization. R.L. Tennant was the sole individual who signed the "agreement for the sale and purchase of shares", and "declaration of trust" in relation to the long-term investment reported.

Investment of Charitable Resources

As noted above, the Organization failed to provide documentation and information requested. The acquisition of corporate shares (1,500 Class "A" shares of [REDACTED]) was not supported by share certificates or a share register demonstrating a transfer of shares actually occurred nor was documentation provided to support the valuation of the \$35 per share rate applicable.

The Organization failed to provide information detailing the considerations, evaluations and approvals carried out by the Board in the utilization of its charitable resources for non-charitable purposes. The Organization failed to provide information concerning the intended duration and expected return of the long-term investment (corporate shares).

In addition to a lack of books and records to demonstrate a transfer of shares occurred, the shares reported in the fiscal period ending January 31, 2018 were not valued and/or facilitated by an independent third party. The inadequate books and records maintained by the Organization raised serious concerns regarding the lack of internal controls applied by the directors of the Organization, as well as potential conferral of undue and/or private benefits.

Documentary support was specifically required to support the value of shares. The shares of the applicable company ([REDACTED]) were distributed on September 9, 2016, at a rate of \$6 per share⁸, however the shares purchased by the Organization as at August 25, 2017, were at a rate of \$35 per share. This significant increase provides an additional burden to substantiate the valuation applied for the transaction.

⁸ See [REDACTED] (Form 45-106F1 Report of Exempt Distribution)

In addition to the question of whether an actual gift of property occurred, and whether the investment in recognition of corporate shares represents a prudent use of the Organization's charitable resources, the expectation of due diligence to satisfy the fiduciary duties of the representatives governing the operations of the registered charity cannot be met in the absence of adequate documentation to demonstrate fair market value.

The Organization's By-law number 14.5 states "the Board on behalf of the Corporation may acquire, ... shares in and securities of other corporations, ... for the further attainment of the Corporation's objects". By-law number 14.7 states "The Corporation may invest and deal with the monies of the Corporation not immediately required ... In investing the funds of the Corporation, the Board ... may make investments which in its opinion are prudent. In determining whether an investment is prudent, the Board may consider the extent to which an investment furthers objects and funding of the Corporation as well as public good and social benefit in addition to issues of pure economic return".

With respect to the statements concerning investment activities outlined in the Organization's governing documents, it is required to maintain adequate books and records to demonstrate the described considerations were fulfilled.

The Organization has demonstrated a failure to satisfy the requirements of subsection 230(2) of the Act with respect to documentation demonstrating a reasonable and prudent evaluation of the use of charitable resources for the intended purpose of furthering charitable purposes of the Organization. As the acquisition required the totality of all assets held by the Organization (cash), no resources remained available to further charitable purposes, the investment activity failed to satisfy the requirements of the Organization's governing documents under which it was granted charitable registration.

In addition, the Organization failed to maintain adequate books and records with respect to donations received by cheque in the 2018 fiscal period. In its correspondence dated January 3, 2019, the Organization stated the following "Our client had advised that the Foundation did not have a bank account as at January 31, 2018". In the absence of a bank account, the Organization was unable to demonstrate the means by which it processed the donations received totalling \$52,500.

As such, the Organization failed to demonstrate the applicable donation receipts issued in the 2018 fiscal period represent recognition of eligible gifts. In the absence of documentation confirming a transfer of property occurred between the donor and the charity, the reported transaction lacks the required transfer of property element as outlined in the CRA definition of an eligible gift⁹.

⁹ See What is a Gift (www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/receiving-gifts/what-a-gift)

Summary:

The Organization did not maintain or provide adequate documentary evidence to support the amounts reported in Form T3010 for the periods under audit. As such, we are unable to substantiate that the Organization is devoting its resources to charitable activities as required by the Act and common law. Accordingly, it appears that the Organization may not be exercising due care with respect to the completeness and accuracy of its books and records to substantiate the use of its charitable resources, or in support of adequate internal governance to safeguard its charitable resources. It is our position the Organization has failed to demonstrate that it maintains adequate books and records as required.

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. Issuing donation receipts not in accordance with the Act and/or its Regulations

A registered charity can issue tax receipts for income tax purposes for donations that legally qualify as gifts. The Act requires the registered charity to ensure the information on its official donation receipts is accurate.

Paragraph 230(2)(b) of the Act provides that every registered charity shall "keep records and books of account [...] at an address in Canada recorded with the Minister [...] [including] a duplicate¹⁰ of each receipt containing prescribed information for a donation received by it"

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.

Audit Findings:

The audit revealed that the Organization issued official donations receipts for amounts that had not been transferred to them. In the Organization's response dated November 29, 2018, it was indicated that the Organization received donations in cheque format for which it issued official donation receipts to [REDACTED] and [REDACTED] in the amount \$ 26,250 respectively, totaling \$ 52,500. The Organization's representations also stated that it did not maintain a bank account, therefore it appears that the Organization could not have received the property and the requirements of an 'eligible gift' were not met.

¹⁰ The definitions found in general language dictionaries and in law dictionaries are sufficiently broad to include a "duplicate of a receipt" in almost any form.

Summary:

As a result of the concerns identified above, it is our position that the Organization has issued receipts otherwise than in accordance with the Act. Under paragraph 168(1)(d) of the Act, the Minister may, by registered mail, give notice to an Organization that the Minister proposes to revoke its registration because the Organization issues a receipt for a gift otherwise than in accordance with the Act and the Regulations or that contains false information.

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, we 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, we 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 below. My manager, Julie McCaffrey, may also be reached at 613-850-7091.

Yours sincerely,



Fereshta Hedjran
Assisted Compliance Section
Charities Directorate, Canada Revenue Agency

Telephone: 343-551-3503
Toll Free: 1-800-267-2384
Facsimile: 613-941-0186
Address: Suite 1306
Tower A, Place de Ville
320 Queen Street
Ottawa ON K1A 0L5

Enclosures:

- CRA letter dated July 26, 2018
- CRA letter dated November 15, 2018
- CRA letter dated December 17, 2018

c.c.: Sandy Khan



John G Rooney



APPENDIX A

Ashreigny Charitable Foundation

Audit of Ashreigny Charitable Foundation (the Organization) for the period from February 1, 2015 to January 31, 2018

Comments on the Organization's Representations of March 25, 2021

The audit conducted by the Canada Revenue Agency (CRA) identified that the Organization:

1. Failed to devote resources to charitable purposes
2. Failed to maintain adequate books and records
3. Issued receipts not in accordance with the Act and/or its Regulations

We have reviewed the Organization's submission dated March 25, 2021, and we maintain our position that the non-compliance issues identified during our audit represent a serious breach of the requirements of the Income Tax Act. The Organization has failed to provide additional documentation or reasonable explanations to address many of the areas of non-compliance identified during the audit. As such, it remains our opinion that the Organization's registration as a charity should be revoked.

Below please find:

- i. A summary of the issues raised in our letter of February 24, 2021;
- ii. A summary of responses provided by the Organization in its March 25, 2021 representation; and
- iii. The CRA's response with respect to each issue.

1. Failure to devote resources to charitable purposes

It is our position that the Organization failed to fulfil its fiduciary duties as a trustee of public funds in that it placed its charitable resources at undue risk, and failed to devote its resources to exclusively charitable activities in furtherance of its charitable purposes.

The Organization's representation:

The Organization stated the following: "The Foundation has devoted its resources to charitable purposes. The Foundation's purchase on August 25, 2017 of 1,500 [REDACTED] shares at \$35.00 per share for a total purchase price of \$52,500.00 was an appropriate investment. The evidence confirms that the 1,500 [REDACTED] shares were properly purchased for \$52,500.00 and that their fair market value on August 25, 2017 was \$52,500.00."

The representations submitted included a description of the 'exponential growth rate' potential of the [REDACTED] investment and comparable valuations for transactions of [REDACTED] shares to other investors.

CRA's response:

The Organization devoted all of its resources to investments during the fiscal periods under audit, representing a concurrent non-charitable purpose. The Organization failed to demonstrate that it has been diligent in managing its resources. The directors of the Organization failed to demonstrate fulfillment of fiduciary responsibilities to ensure that it was operated in the public interest, and managed for the benefit of the public. The Organization failed to conduct any charitable activities during the fiscal periods under audit and therefore it failed to operate exclusively for charitable purposes.

The Organization provided an 'agreement for the sale and purchase of shares' between itself and Western Mercantile Financial Corporation (of which Robert Tennant is the sole director) to facilitate the purchase of shares. At the time of the purchase, Robert Tennant was also a director of the Organization, and as a result represented both parties to the transaction, as the 'agreement for the sale and purchase of shares' was signed, on behalf of both parties, solely by Robert Tennant. Consequently, it remains our position that the transaction did not occur at arm's length. Further, the Organization provided a 'declaration of trust' signed solely by Robert Tennant, stating the shares purchased by the Organization were to be held in trust by Western Mercantile Financial Corporation.

As noted, the acquisition and retention of the investment assets were conducted with a non-arm's length representative of the Organization. Transactions and arrangements between a charity and one of its directors creates a greater documentary burden for the charity to demonstrate that it maintained adequate internal controls and decision-making processes (including review, vetting, and approval) to ensure the safeguarding of its charitable resources. If a charity enters into an arrangement or sole source contract with a non-arm's length representative without first independently verifying that it is paying no more than fair market value, there may be a more than incidental private benefit resulting from the arrangement.

To support the valuation of \$35.00 per share for the purchase of shares from Western Mercantile Financial Corporation, the Organization provided a series of six comparable purchases of shares from [REDACTED] by third parties made between August 3, 2017 and March 14, 2018. Of the six comparable transactions, only one occurred prior to August 25, 2017, when the Organization made its purchase. In addition, the one comparable third party entity identified was found to have a non-arm's length relationship with the Organization via shared directors. As a result, the documentation provided in support of the applicable share value does not represent independent third party appraisals obtained by the Organization to support that the valuation was either fair or reliable.

The Organization's statement that the [REDACTED] shares are "legitimate exponential growth shares based on the [REDACTED] Board of Directors exponential growth value calculations", reinforces the lack of both an independent review and analysis conducted, and internal decision making criteria.

The Organization has failed to adequately demonstrate how the decision to invest its funds was reached, including whether the decision was reached in a fiscally prudent manner. The Organization failed to provide meeting minutes or other internal communications, or an investment policy to demonstrate the consideration of investment criteria. Additionally, the Organization failed to provide documentation demonstrating the investments were in fact being actively monitored on a regular basis to take into account potential losses or gains of charitable resources.

Consequently, our concerns have not been alleviated with respect to the Organization's failure to comply with the requirements outlined in subsection 149.1(1) of the Act, in that the Organization was not constituted and operated exclusively for charitable purposes. As a result, we hereby intend to revoke the registration of the Organization under subsection 149.1(3) of the Act.

2. Failure to maintain adequate books and records

The Organization failed to exercise due care with respect to the completeness and accuracy of its books and records. Consequently it was unable to substantiate the use of its charitable resources, or to demonstrate adequate internal governance to safeguard its charitable resources. It is our position that the Organization has failed to demonstrate that it maintains adequate books and records as required.

The Organization's representation:

The Organization stated "although your comments in your letter dated February 24, 2021 about internal controls and segregation of duties may apply to large foundations, they are inapplicable in this case". Further, the Organization's response stated "...under the [REDACTED] articles of incorporation, the [REDACTED] board of directors have to authorize any transfer of [REDACTED] shares. The [REDACTED] board's policy was not to transfer any shares sold by [REDACTED] shareholders to others. Consequently, if [REDACTED] shareholders sold any [REDACTED] shares, they would have to hold them in trust for others."

CRA's response:

The Organization's books and records failed to demonstrate an adequate internal segregation of duties with respect to the disbursement of its resources, specifically in that it acquired shares from Western Mercantile Financial Corporation, of which Robert Tennant, an individual not at arm's length from the Organization, is the sole director. The Organization failed to provide any information or documentation detailing the considerations, evaluations, and approvals conducted prior to using its charitable resources for non-charitable purposes, as well as the intended duration and expected return on the charitable resources it used to make investments.

The Organization failed to provide any documentation to support the stated "policy" of [REDACTED] with respect to the described share transfer limitations. Our February 24, 2021, letter outlined the documentation necessary for the Organization to demonstrate how it had evaluated and assessed the potential investment assets in order to ensure its charitable resources were being used in a reasonable and prudent manner. In this regard, the Organization failed to provide any documentation demonstrating the review, vetting, and verification policies and procedures it undertook prior to the approval and authorization of its investment decisions. It remains our position that the [REDACTED] shares purchased from a non-arm's length individual were not supported by an independent appraisal demonstrating a reasonable and fair valuation to support the donation receipt issued.

Further, the Organization failed to provide adequate information and documentation with respect to the official donation receipts issued in 2017, to effectively demonstrate that a transfer of property from each of the donors to the Organization actually took place.

Consequently, our concerns have not been alleviated with respect to the Organization's failure to maintain adequate books and records in relation to its internal controls, its purchase of corporate shares via a non-arm's length intermediary entity, and its official donation receipts. It remains our position that the Organization failed to comply with the requirements outlined in subsection 230(2) of the Act and as a result, we hereby intend to revoke the registration of the Organization under subsection 149.1(3) of the Act.

3. Issuing receipts not in accordance with the Act and/or its Regulations

The Organization issued a donation receipt otherwise than in accordance with the Act, in that it failed to obtain adequate documentation to support the receipted value of a gift in kind, failed to demonstrate a transfer of property occurred, and failed to ensure that adequate internal controls and segregations of duties were employed in its donation receipting practices.

The Organization's representation:

The Organization stated the following: "The new information and documentation provided to you now confirm that the Charitable Donation receipts of \$52,500.00 were properly issued."

The Organization had previously provided representations, dated November 29, 2018, which included copies of two official donation receipts issued, both on August 25, 2017, in the amount of \$26,250 each totaling \$52,500 along with copies of two bank drafts.

CRA's response:

The Organization did not provide adequate information and documentation with respect to the official donation receipts issued in 2017. The payments recognized with official donation receipts were comprised of bank drafts payable to a third party entity ([REDACTED]).

As a result, the Organization failed to demonstrate a transfer of property occurred between the donor and the charity. The reported donations lack the required transfer of property element as outlined in the CRA definition of an eligible gift.¹

Consequently, our concerns have not been alleviated with respect to the Organization's donation receipting practices. It remains our position that the Organization failed to issue receipts in accordance with the Act and/or its Regulations and as a result, we hereby intend to revoke the registration of the Organization under subsection 168(1)(d) of the Act.

¹ See What is a Gift (Canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/receiving-gifts/what-a-gift)

APPENDIX B

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

(i) 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,

(iii) 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,

(b.1) a registered journalism organization,

(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.