



April 28, 2022

██████ Shaya HersHKovits  
President  
CANADIAN FRIENDS OF BMTC  
35 Dell Park Avenue  
Toronto, Ontario M6B 2T5

BN: 855021762 RR0001  
File: 3033079

Dear ██████ Shaya HersHKovits:

**Subject: Notice of intention to revoke  
Canadian Friends of BMTC**

We are writing with respect to our letter dated December 9, 2020 (copy enclosed), in which Canadian Friends of BMTC (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2016 to December 31, 2017. 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*.

In response to our letter of December 9, 2020, the Organization submitted correspondence dated January 4, 2021 (copy enclosed), in which it requested voluntary revocation of its charitable status.

A registered charity may request that its charitable status be voluntarily revoked, however the granting of voluntary revocation is a discretionary process on the part of the CRA. Based on our audit findings, which demonstrate continued and repeated non-compliance with the requirements of the *Income Tax Act*, it is our opinion that voluntary revocation is not a suitable resolution, and the Organization's request has not been granted.

To date, the Organization has provided no additional information or documentation to satisfactorily address the issues raised in our letter of December 9, 2019. Our concerns with respect to the Organization's continued non-compliance with the requirements of the Act have not been alleviated. In particular, the Organization failed to implement the corrective measures stated in the compliance agreement it signed on March 31, 2011 (copy enclosed).

**Conclusion**

The 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 maintain proper books and records, failed to demonstrate direction

and control over the use of its resources, provided its charitable resources to a non-qualified donee, failed to issue donation receipts in accordance with the Act, and failed to file an Information Return as and when required by the Act. 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 December 9, 2020, and pursuant to subsection 168(1) and 149.1(2) of the Act, we hereby notify you of our intention to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

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

**Business number**  
855021762 RR0001

**Name**  
Canadian Friends of BMTC  
Toronto, Ontario

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  
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. As such, the Organization's registration will be revoked on the date of publication, unless the CRA receives an order, **within the next 30 days**, from the Federal Court of Appeal issued under paragraph 168(2)(b) of the Act extending that period.

As noted above, 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 A, attached.

### **Consequences of revocation**

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return where Registration of a Charity is revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix A. Form T2046 and the related Guide RC4424, Completing the Tax Return where Registration of a Charity is revoked, are available on our website at [canada.ca/charities-giving](http://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 December 9, 2020
- Organization representations dated January 4, 2021
- Compliance agreement dated March 31, 2011
- Appendix A, Relevant provisions of the Act

c.c.: Nachman Ribiat, Secretary-treasurer  
Canadian Friends of BMTC



December 9, 2020

██████ Shaya HersHKovits, President  
CANADIAN FRIENDS OF BMTC  
35 Dell Park Avenue  
Toronto, Ontario M6B 2T5

BN: 855021762 RR0001  
File: 3033079

Dear ██████ Shaya HersHKovits:

**Subject: Audit of Canadian Friends of BMTC**

This letter results from the audit of Canadian Friends of BMTC (Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2016 to December 31, 2017.

In the course of the audit review 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 maintain direction and control over the use of charitable resources	149.1(2), 168(1)(b)
2.	Failure to maintain adequate books and records	149.1(2), 230(2), 168(1)(b), 168(1)(e)
3.	Providing charitable resources to a non-qualified donee	149.1(2), 168(1)(b)
4.	Issuing receipts not in accordance with the Act and/or its Regulations	149.1(2), 168(1)(d), 188.1(7) or 188.1(9), Regulation 3500 and 3501(1)
5.	Failure to file an Information Return as and when required by the Act	149.1(2), 149.1(14), 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 and explain why its registered status

**Canada**

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.

### Background

The CRA advised the Organization in a letter dated September 4, 2019 that it had been selected for an audit review of fiscal periods ending December 31, 2016 through December 31, 2017. Our letter confirmed the audit review represented a follow up to our previous audit conducted in 2011 for the fiscal periods ended December 31, 2007 and December 31, 2008, wherein the Organization agreed to enter into a Compliance Agreement with the CRA (see copy attached) which obligated the Organization to implement specific corrective measures in order to fully comply with the provisions of the Income Tax Act.

The prior audit conducted resulted in identification of non-compliance concerns summarized as follows:

1. Lack of direction and control over the use of the Organization's resources
2. Devoting resources to non-charitable activities;
3. Failure to maintain adequate books and records; and
4. Failure to file an information return as and when required by the Act and/or its Regulations.
5. Issuing donation receipts not in accordance with the Act

The Organization concurred with the audit findings and agreed to undertake required corrective measures to ensure compliance with the Act and its Regulations going forward. Specifically, the Organization agreed to ensure it maintains adequate books and records to demonstrate ongoing direction and control over the use of its charitable resources at all times.

Further to our correspondence dated September 4, 2019, the Organization provided a response to our requests dated October 13, 2019, a review of which we have now completed.

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

### **Identified areas of non-compliance:**

#### **1. Failure to maintain direction and control over the use of resources**

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

"charitable organization", at any particular time, means an organization, whether or not incorporated,  
(a) all the resources of which are devoted to charitable activities carried on by the organization itself [...]

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

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

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

And

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

As re-iterated by the Court in *Lepletot v MNR*<sup>3</sup>, an organization may carry on charitable activities through an agent if the activities are conducted on behalf of the organization. However, it is not enough for an organization to fund an intermediary that carries on certain activities. The Act requires that the intermediary actually conduct those activities on the organization's behalf. Likewise, the Court in *Canadian Magen David Adom for Israel* mentions the importance of monitoring the activities when it stated that:

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

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

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

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

<sup>3</sup> *Lepletot v MNR*, 2006 FCA 128 at para 5, [2006] 3 CTC 252.

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

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

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

- a clear, complete, and detailed description of the activity that is to be conducted, how it furthers the charitable purposes of the Organization and how it is to be carried out by the project participant on the Organization's behalf, including parameters, deliverables, milestones or goals;
- provision for real and effective monitoring and supervision of the activity, and the project participant carrying on the activity, with mechanisms for someone accountable to the Organization to give instructions about, have input into, and modify the nature or scope of, the activity on an on-going basis; and
- a requirement for the Organization to receive regular, meaningful reports as the activity progresses. To be meaningful, reporting requirements must specify issues to be covered, and when they must be submitted, to ensure the Organization has the opportunity to make significant decisions in regard to the conduct of the activity on a timely and ongoing basis.

CRA Guidance CG-002 Canadian Registered Charities Carrying Out Activities Outside Canada<sup>6</sup> sets out the guidelines that we use to help us assess whether a registered Canadian charity exercises the necessary degree of effective direction and actual control, in greater detail.

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.

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. Through documented

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

<sup>6</sup> [Canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html](http://Canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html)



evidence, the charity 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.

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. 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 audit revealed, the Organization transferred resources to a non-qualified donee outside Canada, Bais Medrash Toras Chesed (New Jersey, USA) via intermediary Rabbi Nathan Stein, for the stated purpose of providing scholarships to students attending religious courses.

The Organization maintained a written agency agreement with Rabbi Nathan Stein to act on its behalf in the administration of the Organization's charitable activities ("provide scholarships for needy students"). The agency agreement was dated March 19, 2007 and defined the agent's primary role as to:

- "Distribute funds to needy students in accordance with the criteria set forth by the charity; and
- Maintain and submit to the charity records detailing each transaction including the recipient's name, the value of funds provided, and the purpose for which the funds are to be used."

The agreement further detailed the ongoing duties and responsibilities of the agent to the Organization as follows:

- "Keep any all funds received from the charity segregated from those of any other persons or entity.
- Keep copies in the applicant's file of each application for scholarships all documents, letters, schedules, etc., that the agent considered prior to making decision whether to grant scholarships.

- Keep copies of any letters authorizing the agent to spend the money entrusted with him for the granting of scholarships for needy students. The final decision on the granting of scholarships is still up to the executive committee of the charity.
- Keep an exact description of how the instructions are carried out on behalf of the charity. The agent shall record the detail of each transaction including the name and amount provided to each recipient.
- Provide to the charity complete records of all transactions and a detailed financial report every six months.
- Provide to the charity a detailed annual financial report every twelve months within three months of the charity's fiscal year end.
- Provide all the above noted documentation at any time upon request of the charity for audit and verification.

The scholarship expenditures outside Canada applicable to the audit period consisted of \$ 12,914.00 in fiscal year 2017 and \$ 35,200.00 in fiscal year 2016 (per income statements attached to the corresponding T3010 Information Return).

The Organization failed to provide a summary listing of total scholarships distributed in 2016 resulting in an inability to confirm the accurate amount applicable (only a listing of 2017 issuances in US\$ currency was provided). As outlined in our previous compliance agreement, the Organization is responsible for maintaining "full and complete financial information and documentation showing that all of its own resources are being dedicated to charitable activities".

The documentation provided to support direction and control over the charitable resources transferred consisted of the listing of disbursements in fiscal year 2017 (in non-Canadian currency), transcripts of applicable beneficiaries demonstrating attendance to Bais Medrash Toras Chessed (BMTC), annual meeting minutes consisting of a single page stating the value of total scholarships issued in each fiscal year, and student applications for financial support.

The documentation failed to demonstrate the Organization's ongoing direction and control over charitable resources. As outlined in our previous compliance agreement "the Organization will maintain ongoing direction and control over its resources and will retain, and make available to the CRA upon request, books and records substantiating compliance with this requirement."

The documentation also included copies of a letter (one issued per fiscal year) from BMTC requesting funds be provided by the Organization for the awarding of scholarships in specified amounts (\$ 40,000.00 in 2016, and \$ 30,000.00 in 2017). The request for funds letters also stated that BMTC will "evaluate the students eligibility for aid". The documentation indicated BMTC was the 'guiding-mind' in the delivery of the scholarship program.

The compliance agreement corrective measures required the Organization to demonstrate the application of detailed selection criteria in a documented review and approval process carried out by the Organization itself. Further, they required the Organization to maintain adequate books and records including:

- Evidence showing that the agency agreement submitted with application has been properly implemented;
- Copies of the full and complete financial information and documentation showing that all of its own resources are being dedicated to charitable activities;
- Copies of the agent's bank statements for the Organization's funds, along with copies of cheques;
- Statement of attendance provided by the school; and
- Receipts from students that they received the funds.

The information and documentation provided in the course of the current audit review failed to include records of financial transactions (bank statements, cancelled cheques, wire transfer reports, etc.), correspondence with the agent, financial / progress reporting from the agent, communications demonstrating monitoring and supervision by the Organization over ongoing delivery of the program, applicant income verification documentation, etc.

The Organization failed to demonstrate the implementation, review, analysis, vetting and confirmation of defined selection criteria for awarding its charitable resources to identified beneficiaries. The student applications were received from the finance office of BMTC (not the identified intermediary agent) with "adjusted gross income" defined.

As well, the Organization's stated basis for determining eligibility was based entirely upon income. In correspondence received from the Organization (dated October 13, 2019), it stated "criteria for eligibility for scholarship is based on the Free Application for Student Aid. The applications are submitted based on the most needy students with the lowest adjusted gross income being the most eligible".

After a review of documentation and information provided, it is our view that the primary role of the Organization, as it relates to the foreign entities, is limited to that of providing funds for the delivery of programs and activities carried out by non-qualified donee BMTC. There was no evidence to demonstrate the Organization provided specific instruction with respect to how activities were to be conducted on its behalf, or employed suitable selection criteria in selecting beneficiaries of charitable resources. While an agency agreement was maintained with an intermediary entity, the scholarship applications were received from BMTC directly and the documentation does not adequately demonstrate the Organization acted as the "guiding-mind" over its activities with ongoing direction and control over specific activities.

Based on the documentation provided, it does not appear that the Organization is in a position to dictate operational parameters relating to its scholarships provided to the foreign non-qualified donee entity. The records provided do not indicate that the Organization received adequate documentation to verify the financial need of applicants and did not exercise any specific direction as to how its funds are to be used to accomplish specified activities on its behalf.

The types of measures a charity may choose to adopt to demonstrate and ensure it maintains direction and control over its resources are discussed in section 7.1 of CRA guidance product

CG-002 Canadian Registered Charities Carrying Out Activities Outside Canada <sup>7</sup>. The audit revealed insufficient involvement and/or oversight on the part of the Organization in order to demonstrate direction and control of its resources:

- There was no evidence to support the Organization was involved in the planning and approval of the budget for activities undertaken. In particular, correspondence from BMTC appears to indicate the amount of scholarships to be awarded are dictated by the foreign entity to the Organization.
- The Organization did not demonstrate involvement in implementing a specified selection criteria or evaluation of financial need or academic standing. The transfer of resources identified were not reconciled to specified expenditures to which the funds were to be applied (example, tuition). The Organization therefore did not demonstrate review, consideration or approval of the expenditures to which its resources were to be applied.
- There was no evidence to indicate the Organization provided periodic instructions to the foreign intermediary entity or had involvement or input in the planning of activities carried out.
- There was no evidence to indicate specific activities were in fact carried out by the foreign intermediary entity on behalf of the Organization. Further, it was not demonstrated that financial and progress reporting was provided to the Organization by the foreign intermediary entity, as well as a lack of reconciliation of the resources of the Organization to expenditures incurred.
- Supporting documentation did not adequately demonstrate ongoing monitoring by the Organization of the progress of activities carried out by the foreign intermediary entity. Audit review noted insufficient commentary in meeting minutes, records of communication via telephone or email, budgets, financial or progress reports, and the documentation failed to indicate on-site visits by representatives of the Organization were performed. The books and records lacked sufficient documentation and / or information to support proper supervision or monitoring of the activities carried out.
- The agency agreement referenced above (dated March 19, 2007 ) stated in section 2. a) “ the agent shall keep any and all funds received from the charity segregated from those of any other persons or entity”. The books and records failed to demonstrate the requirement was fulfilled. The segregation of the Organization’s resources allows for control over the distribution of payments to identified recipients and allows for safeguarding against use of the charitable resources on activities unrelated to the Organization’s charitable purposes.

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<sup>7</sup> [Canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html](http://Canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html)

- The agency agreement referenced above (dated March 19, 2007 ) stated in section 2. e) and f) "the agent shall provide to the charity complete records of all transactions and a detailed financial report every six months", as well as "a detailed annual financial report every twelve months within three months of the charity's fiscal year end". As detailed above, no written progress or financial reporting was provided in the course of the audit to support fulfillment of the stated condition of the agreement.

The Organization's books and records failed to demonstrate regular instruction or evaluation of activities, and inadequate supporting expense reconciliations and vouchers were maintained. Per CG-002, "ongoing instruction is the process of providing any necessary additional instructions or directions to an intermediary. Records of any ongoing instructions help to show that the charity is carrying out its own charitable activities in accordance with the provisions of the Income Tax Act. Minutes of meetings or other written records of decisions are one way to show that a charity has given instructions. The CRA recommends using written instructions (for example, letters, emails, or faxes) to communicate with an intermediary whenever possible."

#### Summary:

The Organization has failed to fulfill the requirements of the compliance agreement corrective measures. The terms of the agency agreement have not been followed, specifically failure to provide ongoing financial reporting as required by section 2. of the agreement. The books and records failed to demonstrate ongoing direction and control over charitable resources with no source documents provided in relation to transfers of funds (bank statements, cheques, wire transfers, etc.), no written acknowledgement of the receipt and application of funds (from the agent and / or applicable student), no confirmation the charitable resources were applied to tuition (only transcripts confirming attendance), and no income verification information to substantiate the "adjusted gross income" calculated by the BMTC finance office.

Based on the documentation and information reviewed it does not appear that the Organization has maintained effective control and direction over the use of its funds, in contrast to the compliance corrective measures agreed to by the Organization following completion of a previous CRA audit review. Accordingly, it is our position that the Organization has failed to meet the requirement of subsection 149.1(1) of the Act that it devote substantially all its resources to charitable activities carried on by the Organization itself. For this reason, it appears there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

## **2. Failure to maintain adequate books and records**

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,<sup>8</sup>
- 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,<sup>9</sup> 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.<sup>10</sup>

#### Audit Findings:

In the course of the audit review the Organization’s books and records failed to demonstrate that its resources were used in furtherance of its own activities supporting its charitable purposes in a manner consistent with common law.

The Organization’s books and records failed to support its involvement in the planning, review, approval and monitoring of activities undertaken outside Canada or the application of a developed selection criteria. The transfers of charitable resources were not demonstrated by

<sup>8</sup> See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

<sup>9</sup> See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at para 39, [2002] 2 CTC 93.

<sup>10</sup> See Prescient Foundation v MNR, 2013 FCA 120 at para 51, [2013] FCJ no 512.

source documentation and were not reconciled to specified expenditures for programs / activities to which the funds were to be applied.

The Organization did not maintain financial or progress reports supported with documentary evidence such as financial statements, invoices, acknowledgement receipts, records of communication, minutes of meetings and any like information that demonstrate the Organization's ongoing direction and control over foreign activities or which substantiate how the Organization's funds were used.

The Organization did not maintain copies of source documents (i.e. expense vouchers) to support the specific application of resources transferred and expenditures incurred relating to the carrying out of the Organization's own activities.

In addition, the Organization failed to provide summary listings of donation receipts issued in the audit period as requested resulting in an inability to reconcile and verify total amounts reported on Line 4500 of the T3010 Information Returns.

#### Summary:

Failure to obtain and maintain adequate documentary evidence resulted in the Organization's failure to provide support for expenditure amounts reported in the T3010 Information Returns filed in the audit period, and not being able to substantiate that it is devoting all of its resources to its own charitable activities as required by the Act. This non-compliance is in contrast to the compliance corrective measures agreed to by the Organization following completion of a previous CRA audit review. Accordingly, it appears that the Organization may not be exercising due care with respect to the accuracy of its books and records in support of its financial position disclosed or in support of its charitable purposes abroad.

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

### **3. Providing charitable resources to a non-qualified donee**

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

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

- a registered charity (including a registered national arts service organization);
- a registered Canadian amateur athletic association;
- a listed housing corporation resident in Canada constituted exclusively to provide low-cost housing for the aged;
- a listed Canadian municipality;
- a listed municipal or public body performing a function of government in Canada;
- a listed university outside Canada that is prescribed to be a university, the student body of which ordinarily includes students from Canada;
- a listed charitable organization outside Canada to which Her Majesty in right of Canada has made a gift;
- Her Majesty in right of Canada or a province; and
- the United Nations and its agencies.

As the Act specifically states what constitutes a qualified donee, entities not expressly stated in this list are not considered qualified donees.

The audit revealed, several transfers of charitable resources to non-qualified donees, for which inadequate documentation and information was provided to confirm the furtherance of charitable purposes for which the Organization was registered.

As outlined above in section one and two, the Organization provided gifts to a non-qualified donee, Bais Medrash Toras Chesed, in the amount of \$ 12,914.00 in fiscal year 2017 and \$ 35,200.00 in fiscal year 2016.

#### Summary:

In contrast to the compliance corrective measures agreed to by the Organization following completion of a previous CRA audit review, the Organization has continued to provide its charitable resources to non-qualified donees in the current audit period. Accordingly, it is our position that the Organization has failed to meet the requirements of subsection 149.1(1) of the Act that it devote substantially all its resources to charitable activities carried on by the Organization itself. For these reasons it appears there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

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

Pursuant to subsection 118.1(2) of the Act, 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 duplicate<sup>11</sup> 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 review conducted identified concerns relating to issuances of and procedures applicable to the official donation receipts. In particular, deficiencies noted were as follows:

##### i) Information disclosures

The duplicate donation receipts provided by the Organization were found to generally include required information disclosures outlined in Regulation 3501(1) of the Act with the following exceptions:

- The name and address of the donor (Regulation 3501(1)(g))  
Receipt # [REDACTED] (2016) failed to include the full name of the donor and receipt # [REDACTED] (2016) failed to include the address of the donor.

##### ii) Internal controls / segregation of duties

In fiscal period ending December 31, 2017, donation receipt # [REDACTED] was issued to listed director [REDACTED] who signed his own donation receipt as an authorized representative. The lack of adequate internal controls and segregation of duties may result in the conferral of undue benefits.

##### iii) Summary listing

The Organization failed to provide a summary listing of all donation receipts issued in the audit period as requested. The Organization is required to ensure a donation receipt summary listing is maintained to allow reconciliation by serial numbering in sequential order which may provide confirmation of the completeness and accuracy of Line 4500 amounts reported.

#### 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

<sup>11</sup> 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.

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.

## **5. Failure to file an Information Return as and when required by the Act**

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.” For a registered charity, the prescribed form and the prescribed information includes:

- Form T3010, Registered Charity Information Return;
- Form TF725, Registered Charity Basic Information Sheet;
- Form T1235, Directors/Trustees and Like Officials Worksheet;
- Form T1236, Qualified donees worksheet/Amounts provided to Other Organizations - if applicable; and
- the financial statements.

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.<sup>12</sup>

### Audit Findings:

The audit review identified the following errors and:

The financial statements attached to the T3010 Information Return for fiscal period ending December 31, 2016 indicated total expenditures of \$ 35,785.00; however, line 4950 and 5100 of Section D reported total expenditures in the amount of \$ 29,093.00. The variance of \$ 6,692.00 remains unreconciled.

In both fiscal years of the audit period, the Organization failed to identify its method of financial reporting (i.e. cash or accrual accounting method) on line 4020 of Section D.

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<sup>12</sup> Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 48-51.

In both fiscal years of the audit period, the information provided in Form T1235 submitted with the T3010 Information Returns was found to be incomplete and inaccurate. Required telephone contact information was not provided for all three listed directors.

Summary:

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

**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,

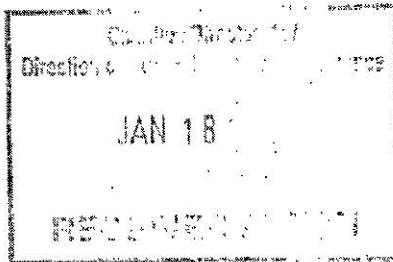


Ted Dubien  
Assisted Compliance Section  
Charities Directorate, Canada Revenue Agency  
320 Queen Street, Tower A, Place de Ville  
Ottawa ON K1A 0L5

Telephone: (613) 305-0442  
Facsimile: (613) 541-7161

Enc. Compliance agreement (signed March 31, 2011) applicable to CRA audit of fiscal periods ending December 31, 2007 and 2008.

c.c.: Nachman Ribiat, secretary - treasurer  
Canadian Friends of BMTC



CANADIAN FRIENDS OF BMTC



January 4, 2021

Mr. Ted Dubien  
Assisted Compliance Section  
Charities Directorate, Canada Revenue Agency  
320 Queen Street, Tower A, Place de Ville  
Ottawa ON K1A 0L5

Mr. Ted Dubien


Re: BN 855021762 RR 0001

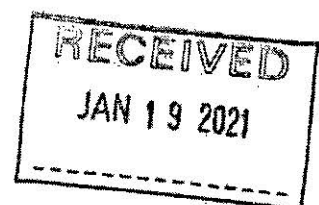
We have received your letter dated December 4, 2020.  
We have studied the letter carefully and we wish to advise you that we would like to voluntarily close the charity. The bank account was closed on December 31, 2020.  
We will be filing returns for 2019 and 2020.

Yours truly,



CF of BMTC

Per:  Nachman Ribiat



## **Compliance Agreement**

Between:

**Canadian Friends of BMTC (the Organization)**  
35 Dell Park Ave,  
Toronto ON M6B 2T5  
855021762 RR0001

And

**Canada Revenue Agency (the CRA)**

During an audit of the Organization's books and records conducted by the CRA on June 15, 2010, the following areas of non-compliance with the provisions of the *Income Tax Act* (the Act) and/or its *Regulations* were identified:

### **Areas of Non-Compliance**

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

The Organization was registered with the main objects of providing scholarships to deserving students to enable them to follow religious courses being given at Bais Medrash Toras Chessed in Lakewood, New Jersey, U.S.A.

When not conducting its own activities outside of Canada, the Organization must ensure that it is exercising adequate direction and control over its resources and over the conduct of its charitable activities by implementing certain safeguards. In this case, a written agency agreement is required to ensure that the Organization's resources are being used for their intended purpose(s) and that the documentation has been carried out as per the agreement.

The Organization had provided a signed agency agreement upon registering as a charitable organization, but did not implement it. The Organization sent funds directly to Rabbi Nathan Stein, [REDACTED] of Bais Medrash Toras Chessed (a secondary school), based on the availability of funds. No confirmation was provided to substantiate that the resources were used for tuition fees approved by the Organization for students attending Bais Medrash Toras Chessed. In addition, no documents outlining that the funds were segregated from the funds of the agent and/or school, no statements outlining received funds to date versus distributed as scholarships to approved applicants, no interim and year-end financial reports nor statements of attendance from the school were provided to document the use of resources on the Organization's charitable activities. By not abiding by the terms of the agency agreement, the Organization did not

demonstrate adequate control and direction over its resources and conduct of its charitable activities.

## 2. Devoting resources to non-charitable activities

Paragraph 149.1(1)(a) of the Act requires all of an organization's resources to be devoted to charitable activities carried on by the organization itself.

As stated in 1. above, the Organization sent funds directly to Rabbi Nathan Stein, [REDACTED] of Bais Medrash Toras Chessed, based on the availability of funds. There was no confirmation that the resources were used for tuition fees that had been approved by the Organization for students attending Bais Medrash Toras Chessed. In addition, no statements outlining funds received to date versus distributed as scholarships to approved applicants, and no statements of attendance from the school were provided to document the use of resources on the Organization's charitable activities.

The provided documents indicate the following criteria were established for obtaining a scholarship:

- a scholarship application has to be completed and approved;
- the age of the students in the program is 15-19;
- an applicant must have a certain basic training in Jewish subjects including bible, Mishna, Talmud prayer, Jewish history, ethics, Jewish religious law and Jewish holidays;
- the amount of scholarship is based on scholarship formula and scholarships will vary from \$1,750 to a maximum of \$3,000;
- the amount of scholarship will depend on applicant's total income or student's parents' total income when a student is still living at parents home; and
- the scholarship will be funded toward tuition only.

The criteria established for scholarships failed to take into consideration the following:

- establishing procedures to follow up students who receive scholarships but do not return funds if they subsequently drop out of school and tuition is refunded;
- the scholarship formula failed to indicate whether a scholarship is for one school semester or for two semesters;
- requesting documents to substantiate "professional judgment" in allowing "unusual expenses" when determining income in approving scholarships; and
- no consideration was provided for financial assistance received from federal student aid and other scholarships received.

However, the Organization did not adhere to the criteria for awarding scholarships. For example:

- 1) [REDACTED]'s application for a scholarship of \$2,735 was approved on September 27, 2007, but the applicant received the scholarship on January 3, 2008.
- 2) [REDACTED] was awarded a \$3,235 scholarship on July 1, 2008, which was in excess of \$3,000 set as maximum in the scholarship formula. In addition, the father's actual income of \$42,659 was reduced to \$18,076 deducted for "unusual expenses", without supporting documentation for the unusual expenses noted in the application.
- 3) [REDACTED] was awarded a scholarship of \$524.50 based on adjusted gross income of \$34,355 on July 26, 2007. The awarded scholarship amount was well below the set minimum of \$1,750 and family gross income was above the range from \$0 to \$11,500 as established in the scholarship formula.
- 4) The actual total family income was not considered when applying scholarship formula but adjusted gross income that was based on professional judgment which considered unsupported unusual expenses.

### 3. Failure to maintain adequate books and records

Section 230(2) of the Act states that 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 information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under the Act, a duplicate of each receipt containing prescribed information for a donation received by it; and 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 the Act.

Our audit revealed that transactions were not properly recorded in the books and records of the Organization, as follows:

- The Organization is not using a double-entry bookkeeping system for recording transactions.
- The Organization failed to maintain detailed records for funds received from other charities and individual donees. There was lack of donor name in the deposit book for cheque deposits and/or a list of donor name for cash deposits in addition to a ledger including donor's name, BN/registration number, date and amount received.
- The amount recorded as scholarship expenses does not reconcile with the withdrawn funds sent to Bais Medrash Toras Chesen (BMTc). During the fiscal year ending December 31, 2007, a total amount of C\$43,000 (or US\$41,830) was sent to the agent at BMTc but only C\$27,251 (or



US\$26,510) was applied toward tuition fees. During the fiscal year ending December 31, 2008, total amount of Cdn\$50,000 (or US\$45,107) was sent to agent at BMTC but only Cdn\$43,964 (or US\$39,662) was applied toward tuition fees.

#### 4. Failure to file an information return as and when required by the Act and/or its Regulations

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file a Registered Charity Information Return with the applicable schedules.

It is the responsibility of the Organization to ensure that the information that is provided in its return, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirement to file an Information Return if it fails to exercise due care with respect to ensuring the accuracy thereof.

The following errors and omissions were found in the review of the T3010 information returns for the years under audit:

- a) Scholarship expenses reported on line 4910 of the T3010s were overstated by \$14,579 and \$3,851 for the fiscal periods ending December 31, 2007 and 2008 respectively. The overstated amounts were addition errors and payments to the agent that were undistributed toward tuition fees.
- b) Receipted donations reported on line 4500 of the T3010s were overstated by \$25,059 and \$24,165 for the fiscal periods ending December 31, 2007 and 2008 respectively. The overstated amounts are not receipted gifts, as reported.
- c) Unreported other gifts on line 4530 of the T3010s were understated by \$26,201 and \$22,217 for the fiscal periods ending December 31, 2007 and 2008 respectively.
- d) The Organization failed to file T3010 returns by the June 30 due date of each fiscal year. For example 2008 T3010A return was received on October 13, 2009.

#### 5. Issuing receipts not in accordance with the Act

The law provides various requirements with respect to the issuing of official donation receipts by registered charities. These requirements are contained in Regulations 3500 and 3501 of the Act and are described in some detail in Interpretation Bulletin IT-110R3 *Gifts and Official Donation Receipts*.

Our review of the provided official donation receipts revealed that the Organization was not completely in compliance with Regulation 3501 of the Act and IT-110R3 because the Organization did not maintain a list of issued official donation receipts.

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:

### **Corrective Measures**

#### **1. Operating Outside Canada**

The Organization will ensure that it is exercising adequate direction and control over its resources and over the conduct of its charitable activities by implementing all of the terms contained in the agency agreement. The agent will safeguard all funds entrusted to him and provide all of the necessary documentation and reporting to account for all of the charitable activities conducted on behalf of the Organization.

The Organization will maintain ongoing direction and control over its resources and over the conduct of its charitable activities outside Canada, and will retain, and make available to the CRA upon request, books and records substantiating compliance with this requirement. To this end, the Organization will enter into a structured arrangement with any intermediary (an individual that is not its employee or volunteer, or an organization that is not a "qualified donee" under the Act) through which it carried out its charitable activities/programs.

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

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

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

## 2. Devoting resources to non-charitable activities

The Organization should direct and control the distribution of scholarships to students attending a foreign school or university itself or through an agent. In the future the Organization will keep documentation to substantiate how it directed and controlled any agent who administers scholarships to students attending a foreign school or university. The documentation substantiating the direction and control over the Organization's resources should include:

- Correspondence between the Organization and the agent showing that the Organization authorized, controlled and monitored its activities outside Canada;
- Evidence showing that the agency agreement submitted with application has been properly implemented;
- Copies of the full and complete financial information and documentation showing that all of its own resources are being dedicated to charitable activities;
- Copies of the agent's bank statements for the Organization's funds, along with copies of cheques;
- Statement of attendance provided by the school; and
- Receipts from students that they received the funds.

Where the Organization chooses to administer scholarships to students attending a foreign school or university through an agent, the following criteria are necessary to maintain full control and accountability:

- The selection criteria for scholarship should be set down by the Canadian Organization and it should be the Canadian Organization that reviews the applications and decides who will receive the scholarships.
- There should be assurance that the student actually attended the school for which they received the scholarship by a statement of attendance provided by the school or similar documentation.
- Documentation should be provided by the student to confirm that he/she received the scholarship funds.
- Approval should be obtained by the agent prior to the undertaking of such programs as the translation of books and purchase of equipment.
- Receipts should be provided for all expenses and confirmation of receipt of funds for intended purposes.

It is CRA's view that this type of reporting mechanism is necessary for the Organization 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 Organization's other records and books or account at the address recorded with CRA.

### 3. Failure to maintain adequate books and records

The Organization will maintain proper books and records in accordance with subsection 230(2) of the Act and Regulation 5800(1) of the Act, which includes the retention of all the source documents. The books and records should include the following:

- The Organization will record all of the transactions correctly using generally accepted accounting principles for revenue and expenses.
- The Organization will maintain detailed records of received funds including the name of other charities, the BN/registration number and correspondence from other charities gifting funds to the Organization.
- The amounts received from the donors will be reconciled with the issued official donation receipts and amounts received from other charities.
- The amount recorded as scholarship expenses will be reconciled with the withdrawn funds sent to Bais Medrash Toras Cheslen secondary school and distributed funds towards the tuition fees of approved students.

### 4. Failure to file an information return as and when required by the Act and/or its Regulations

The Organization will file its future T3010 returns by the due date, and amend the T3010s filed for the fiscal years ending December 31, 2007 and December 31, 2008, as follows:

- The scholarship expenses on line 4910 will be decreased by \$14,579 and \$3,851 for the fiscal periods ending December 31, 2007 and 2008 respectively. In the future, only awarded scholarships will be reported on line 4910.
- Receipted donations on line 4500 will be decreased by \$25,059 and \$24,165 for the fiscal periods ending December 31, 2007 and 2008 respectively. In the future, only receipted gifts will be reported on line 4500.
- Other gifts on line 4530 will be increased by \$26,201 and \$22,217 for the fiscal periods ending December 31, 2007 and 2008 respectively. In the future, non-receipted gifts from individuals and companies will be reported on line 4530.

### 5. Issuing receipts not in accordance with the Act

Regulation 3501 of the ITA requires that each official receipt that a charity issues to acknowledge a donation must contain at least the following:

- a 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 charity's registration number assigned by the Minister to the organization;
- the serial number of the receipt;
- the place or locality where the receipt was issued;
- where the donation is a cash donation, the day on which or the year during which the donation was received;
- where the donation is a gift of property other than cash, the actual date of receipt, a brief description of the property, and the name and address of the appraiser of the property if an appraisal is done;
- the day on which the receipt was issued when it differs from the date of the donation;
- the name and the address of the donor including, in the case of an individual, his first name and initial;
- amount of a cash donation;
- where the donation is a gift of property other than cash, the amount that is the fair market value of the property at the time that the gift was made;
- the signature of a responsible individual who has been authorized by the other recipient of the gift to acknowledge donations; and
- the name and Internet website of the Canada Revenue Agency.

Each such receipt must be prepared at least in duplicate (since charities are required to keep on file a copy of every official receipt issued), must be signed by an authorized person, and must bear its own serial number. For further information consult the current version of IT-297R2, *Gifts in Kind to Charity and Others* and/or requirements of Reg. 3501 of the ITA.


#### **Date of Implementation of all Corrective Measures**


The Organization shall implement all corrective measures and shall supply to the CRA a signed copy of the structured arrangement(s) relating to its current activities, on or before May 31, 2011.

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

 YENAYA HESLOVITS PRESIDENT  
Name and position of signatory  
(please print)

  
Name of witness (please print)

CANADIAN FRIENDS OF BMTC  
35 DELL PARK AVE  
TORONTO ONTARIO M6B 2T5

Full name and address of Organization

Date of signing: MARCH 31 2011

  
CRA per:

BARBARA BASEK, AUDITOR  
Name and position of signatory  
(please print)

Date of signing: March 31 2011

## 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
  - (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), (c) 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.