



April 28, 2022

REGISTERED MAIL

Samual Gruber
President
Canadian Friends of BNEI Shimon Yisroel of Shopron
5462 Hutchison
Montreal, Quebec H2V 4B3

BN: 890558877 RR0001
File #: 0796847

Dear Samual Gruber:

Subject: Notice of intention to revoke
Canadian Friends of BNEI Shimon Yisroel of Shopron

We are writing with respect to our letter dated March 13, 2019 (copy enclosed), in which Canadian Friends of BNEI Shimon Yisroel of Shopron (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, 2016. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act, and/or why it should not have its receipting privileges and qualified donee status suspended in accordance with section 188.2 of the Income Tax Act.

The Organization requested, via correspondence dated January 29, 2020 (copy enclosed), voluntary revocation of its charitable status.

The CRA provided a response to this request on February 10, 2020 (copy enclosed), in which we stated “notwithstanding your letter dated January 29, 2020, in which you requested voluntary revocation of the Organization’s charitable status, the Organization must instead proceed with the audit and submit all requested information and documentation outlined in our letter dated March 13, 2019, within 30 days of the date of this letter”.

A registered charity may request that its charitable status be voluntarily revoked; however, granting a request for voluntary revocation is a discretionary process on the part of the CRA. Based on our audit findings, it was our opinion that voluntary revocation was not a suitable resolution, and the Organization’s request was not granted at that time.

To date, the Organization has provided no additional information or documentation to satisfactorily address all of the issues raised in our letter of March 13, 2019. Our concerns with respect to the Organization’s repeated non-compliance with the requirements of the Act have not been alleviated. Furthermore, the Organization failed to implement the

corrective measures stated in the compliance agreement it signed on January 28, 2010 (see copy enclosed).

Conclusion

The latest audit by the CRA found that the Organization remains non-compliant with the requirements of 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 the Organization's resources, provided resources to a non-qualified donee, failed to demonstrate resources were devoted to advancement of charitable purposes, and issued donation receipts not in accordance with 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 March 13, 2019, 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)(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
890558877RR0001

Name
Canadian Friends of BNEI Shimon
Yisroel of Shopron
Montreal, Quebec

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**;
- 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 March 13, 2019
- Organization representations dated January 29, 2020
- CRA letter dated February 10, 2020
- Compliance agreement dated January 28, 2010
- Appendix A, Relevant provisions of the Act

c.c.: 

March 13, 2019

BN: 89055 8877 RR0001
File #: 0796847

Dear [REDACTED]

Subject: Audit of Canadian Friends of BNEI Shimon Yisroel of Shopron

This letter results from the audit of the Canadian Friends of BNEI Shimon Yisroel of Shopron (the 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, 2016.

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 adequate books and records	149.1(2), 230(2), 168(1)(b), 168(1)(e), 188.2(2)(a)
2.	Lack of direction and control over the use of the Organization's resources/Failure to carry out its own charitable activities	149.1(2), 168(1)(b)
3.	Made a disbursement by way of a gift, other than a gift made to a donee that is a qualified donee at the time of the gift	149.1(2)(c)(ii), 168(1)(b)
4.	Failure to devote resources to a charitable purpose	149.1(2), 168(1)(b)
5.	Issuing receipts not in accordance with the Act	149.1(2), 168(1)(d), Regulation 3500 and 3501

General legal principles

In order to maintain charitable registration under the Act, Canadian law requires that an organization demonstrate that it is constituted exclusively for charitable purposes (or objects) and that it devotes its resources to charitable activities carried on by the

organization itself in furtherance thereof.¹ To be exclusively charitable, a purpose must fall within one or more of the following four categories (also known as “heads”) of charity² and deliver a public benefit:

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

The public benefit requirement involves a two-part test:

- The first part of the test requires the delivery of a **benefit** that is recognizable and capable of being proved, and socially useful. To be recognizable and capable of being proved, a benefit must generally be tangible or objectively measurable. Benefits that are not tangible or objectively measurable must be shown to be valuable or approved by the common understanding of enlightened opinion for the time being.³ In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved and of the activities that will be conducted to further the purpose, and reasonably achievable in the circumstances.⁴ An assumed prospect or possibility of gain that is vague, indescribable or uncertain, or incapable of proof, cannot be said to provide a charitable benefit.⁵
- The second part of the test requires the benefit be directed to the **public** or a sufficient section of the public. This means a registered charity cannot:
 - have an eligible beneficiary group that is negligible in size, or restricted based on criteria that are not justified based on the charitable purpose(s); or

¹ See subsection 149.1(1) of the Act, which requires that a charitable organization devote all of its resources to “charitable activities carried on by the organization itself” except to the extent that an activity falls within the specific exemptions of subsections 149.1(6.1) or (6.2) of the Act relating to political activities, and Vancouver Society of Immigrant and Visible Minority Women v MNR, [1999] 1 SCR 10 at paras 155-159 [Vancouver Society]. A registered charity may also devote resources to activities that, while not charitable in and of themselves, are necessary to accomplish their charitable objectives (such as expenditures on fundraising and administration). However, any resources so devoted must be within acceptable legal parameters and the associated activities must not become ends in and of themselves.

² The Act does not define charity or what is charitable. The exception is subsection 149.1(1) which defines charitable purposes/objects as including “the disbursement of funds to qualified donees”. The CRA must therefore rely on the common law definition, which sets out four broad categories of charity. The four broad charitable purpose/object categories, also known as the four heads of charity, were outlined by Lord Macnaghten in Commissioners for Special Purposes of the Income Tax v Pemsel, [1891] AC 531 (PC) [Pemsel]. The classification approach was explicitly approved of by the Supreme Court of Canada in Guaranty Trust Co of Canada v MNR, [1967] SCR 133, and confirmed in Vancouver Society, *supra* note 4.

³ See generally Vancouver Society, *supra* note 4 at para 41, Gonthier J, dissenting; Gilmour v Coats et al, [1949] 1 All ER 848 [Gilmour]; National Anti-Vivisection Society v IRC, [1947] 2 All ER 217 at 224 (HL), Wright LJ [National Anti-Vivisection Society].

⁴ See for example In re Grove-Grady, [1929] 1 Ch 557 at 573-574; Plowden v Lawrence, [1929] 1 Ch 557 at 588, Russell LJ; National Anti-Vivisection, *supra* note 6 at 49, Wright LJ; IRC v Oldham Training and Enterprise Council, [1996] BTC 539 [Oldham]; Pemsel, *supra* note 5 at 583.

⁵ See National Anti-Vivisection Society, *supra* note 6 at 49, Wright LJ; In re Shaw decd, [1957] 1 WLR 729; Gilmour, *supra* note 6, Simonds LJ at 446-447.

- provide an unacceptable private benefit. Typically, a private benefit is a benefit provided to a person or organization that is not a charitable beneficiary, or to a charitable beneficiary that exceeds the bounds of charity. A private benefit will usually be acceptable if it is incidental, meaning it is necessary, reasonable, and not disproportionate to the resulting public benefit.⁶

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

- for its own charitable activities - undertaken by the charity itself under its continued supervision, direction and control; and
- for gifting to “qualified donees” as defined in the Act.⁷

A charity’s own charitable activities may be carried out by its directors, employees or volunteers, or through intermediaries (a person or non-qualified donee that is separate from the charity, but that the charity works with or through, such as an agent, contractor or partner). If acting through an intermediary, the charity must establish that the activity to be conducted will further its charitable purposes, and that it maintains continued direction and control over the activity and over the use of the resources it provides to the intermediary to carry out the activity on its behalf.⁸

Although there is no legal requirement to do so, and the same result might be achieved through other arrangements or means, entering into a written agreement can be an effective way to help meet the own activities test. However, the existence of an agreement is not enough to prove that a charity meets the own activities test. The charity must be able to show that the terms establish a real, ongoing, active relationship with the intermediary,⁹ and are actually implemented. A charity must record all steps taken to exercise direction and control as part of its books and records, to allow the CRA to verify that the charity’s funds have been spent on its own activities. While the nature and extent of the required direction and control may vary based on the particular activity and circumstances, the absence of appropriate direction and control indicates that an organization is resourcing a non-qualified donee in contravention of the Act.

The CRA must be satisfied that an organization’s activities directly further charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information. Accordingly, the current audit encompassed an enquiry into all aspects of the Organization’s operations. The fact that some of the areas of non-compliance identified in this letter may, or may not, have been evaluated in

⁶ For more information about public benefit, see CRA Policy Statement CPS-024, Guidelines for Registering a Charity: Meeting the Public Benefit Test.

⁷ A “qualified donee” means a donee described in subsection 149.1(1) of the Act.

⁸ For more information, see CRA Guidance CG-002, Canadian Registered Charities Carrying out Activities outside Canada and Guidance CG-004, Using an Intermediary to Carry Out Activities Within Canada.

⁹ See notably Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 30, [2002] FCJ no 315 [Canadian Committee for the Tel Aviv Foundation].

preceding audits does not preclude the need for compliance with existing legal requirements. Furthermore, the CRA may take a position that differs from that reached previously based on reconsideration of the pertinent facts and law.¹⁰

History

The Organization was registered effective January 1, 1988, with the following purpose, found in its Trust document, signed October 6, 1987:

To give scholarships to indigent students carrying out post-secondary education in Yeshiva BNEI Shimon Yisroel of Shopron in Brooklyn, NY.

The Organization was previously audited for the fiscal periods ending December 31, 2007, and December 31, 2008. The previous audit resulted in a Compliance Agreement which was signed January 28, 2010, by Samuel Gruber, who was, and is currently, an active board member of the Organization. As well, the signing was witnessed by [REDACTED], who was, and is currently, an authorized representative of the Organization.

One of the main areas of non-compliance identified during the previous audit was:

The Organization granted scholarships to allow needy students to attend “the school”. Contrary to CRA guidelines, the Organization was unable to produce documents and supporting vouchers to evidence its meeting its relief of poverty criteria.

Upon signing of the Compliance Agreement the Organization agreed to implement all corrective measures by March 1, 2010. Specifically, the Organization agreed to maintain ongoing direction and control over its resources and over the conduct of its charitable activities outside of Canada, and to retain, and make available to the CRA upon request, books and records substantiating compliance with this requirement. To this end, the Organization was to 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 carries out its charitable activities/program.

This letter describes the areas of non-compliance identified by the CRA, during the course of the current audit, relating to the legislative and common law requirements that apply to registered charities, and offers the Organization an opportunity to respond and present additional information. The Organization must comply with the law; if it does not, its registered status may be revoked in the manner described in section 168 of the Act.

This letter also describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements applicable to registered charities, and

¹⁰ See for example Canadian Magen David Adom for Israel v MNR, 2002 FCA 323 at para 69, [2002] FCJ no 1260, Sharlow JA.

which may be subject to sanctions under the Act. The Organization will also be provided with the opportunity to make representations or present additional information as to why a sanction should not be applied.

Registered charities must comply with the law, failing which penalties and/or suspensions may be applicable pursuant to sections 188.1 and/or 188.2 of the Act. These include suspension of the Organization's authority to issue official receipts and suspension of its status as a "qualified donee". While the purpose of a sanction is to provide an alternative to revocation, notice may still be given of our intention to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

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

Previous audit findings

The Organization was audited for the years ending December 31, 2007 and 2008. The audit resulted in a compliance agreement which was signed January 28, 2010. The identified area of non-compliance was that the Organization had not been issuing scholarships for the relief of poverty as it had been registered to do. The Organization was also educated for missing elements on its official donation receipts. The compliance agreements required the Organization to maintain ongoing direction and control over its resources and over the conduct of its activities outside of Canada, and to retain, and make available to the CRA upon request, books and records substantiating compliance with this requirement. To this end, the Organization was to 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 carries out its charitable activities/program.

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

Identified areas of non-compliance

1. Failure to maintain adequate books and records

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

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

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

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

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

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

- i. it is the responsibility of the registered charity to prove that its charitable status should not be revoked;¹¹
- ii. a registered charity must maintain, and make available to the CRA at the time of an audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto;¹² and
- iii. the failure to maintain proper books, records, and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization’s charitable status in the case of material or repeated non-compliance.¹³

The audit revealed that the Organization failed to maintain adequate books and records. Specifically, the Organization could not provide us with meeting minutes substantiating the decisions for the payments of scholarships to deserving students. As a result, there was no documentation provided to verify that there was a deciding board that resided with the Organization in order to make decisions on the use of the Organization’s resources for charitable activities (scholarships).

The Organization provided us with deposit slips from the Organization to Cong Binyan Chaim –a non-profit organization, but was missing one slip. Further, there were no supporting documents (bank statements) provided to substantiate that the funds sent to the non-profit organization were then given to the school for payment of scholarships.

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

¹² Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at para 39, [2002] 2 CTC 93. Furthermore, failing to comply with the requirements of section 230 of the Act by refusing to make documents available can lead to a fine and imprisonment, in addition to the penalty otherwise provided. See subsection 238(1) of the Act.

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

As noted during the previous audit, as part of the books and records, the Organization should have an agency agreement in place with the school in the US. The audit determined that the Organization failed to comply with this requirement.

Further, in our letter dated January 9, 2018, we requested specific information regarding the scholarships recipients for the period under review, however the Organization could not provide us with specific information regarding the beneficiaries, as follows:

- We requested the names and the address of each scholarship recipient, the Organization provided us with a listing, and every letter sent to students that received scholarships. However, the listing only included the students' last name and not full name and address – it was hard, if not impossible, to determine by the listing if one person received multiple scholarships.
- We requested details on the value of scholarships granted to each recipient. Upon receipt of the listing, we noted that there were no details as to the reasoning behind the amounts given to each recipients, some received more than others.
- We requested the dates the scholarships were issued to the recipients. The listing included check marks to show that the funds were transferred but no actual date of transfer, and no supporting documents to show there was a transfer.
- We requested documentation that demonstrates proof of payment to the above mentioned recipients. The Organization provided us with some US Individual Income Tax Returns filed by recipients of the scholarships, but no actual proof of payment was provided (i.e. bank statements).

Lastly, we requested a listing of all official receipts issued by the Organization during the fiscal period under review and noted the following discrepancies:

- The listing is not in sequential order, for example, receipt [REDACTED] was not in sequential order on the listing.
- The listing does not account for the receipt numbers from [REDACTED] to [REDACTED].
- The Organization included a receipt listing for gifts received from other registered charities - however no receipt number. It was unclear from that listing if the Organization issued receipts to other qualified donees or not.

Suspension proposed

It is our position the Organization has failed to comply with the Act by failing to maintain adequate books and records. Due to its lack of adequate books and records, it is our opinion that the Organization has not properly demonstrated that it was conducting charitable activities and fulfilling a charitable purpose. As such, the Organization has not met the requirements of charitable registration. For this reason, there may be grounds to suspend the Organization's authority to issue official receipts under paragraph 188.2(2)(a) of the Act which states that:

188.2(2) – Notice of Suspension – General

The Minister may give notice by registered mail to a person referred to in any of paragraphs (a) to (c) of the definition *qualified donee* in subsection 149.1(1) that the authority of the person to issue an official receipt referred to in Part XXXV of the Income Tax Regulations is suspended for one year from the day that is seven days after the day on which the notice is mailed

- (a) if the person contravenes any of sections 230 to 231.5;

Important Note Regarding Existing Compliance Agreement

Please note that the compliance agreement that was drafted and agreed upon during our prior audit remains active and that the terms, conditions and compliance measures of the agreement are still in effect and must be adhered to.

Other non-compliance issues not subject to penalty or suspension

2. Lack of direction and control over the use of the Organization's resources/Failure to carry out its own charitable activities

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.¹⁴

And

¹⁴ Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 30, [2002] 2 CTC 93.

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.¹⁵

As re-iterated by the Court in *Lepletot v MNR*¹⁶, 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.¹⁷

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

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

To this end, the Organization is required to establish that it maintains continued direction and control over the substantive charitable activities that are ostensibly being carried out on its behalf. In this regard, the existence of an arrangement with an intermediary, written or otherwise, is not enough to prove that a charity meets the own activities test. The Organization must be able to show that the terms of any arrangement establish a real, ongoing, active relationship with the intermediary,¹⁸ 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

¹⁵ Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 40, [2002] 2 CTC 93.

¹⁶ *Lepletot v MNR*, 2006 FCA 128 at para 5, [2006] 3 CTC 252.

¹⁷ *Canadian Magen David Adom for Israel v MNR*, 2002 FCA 323 at para 66, [2002] FCJ no 1260.

¹⁸ See notably Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 40, [2002] 2 CTC 93.

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.

Audit findings:

The audit revealed that \$541,830 was sent to the US organization – Cong Binyan Chaim – which is a non-profit organization, therefore a non-qualified donee. As a result, we have determined the Organization failed to maintain direction and control over these resources.

First, the Organization states that it sends money overseas for the payment of tuition fees for deserving students, however, as mentioned above, the audit revealed that the deposits were made to Cong Binyan Chaim, a US non-profit organization rather than to the educational institution. No bank statements or supporting documents were provided to verify that funds were transferred from the non-profit to the educational institute. We acknowledge, however, receipt of the letter from the Yeshiva BNEI Shimon Yisroel of Shopron (educational institute) stating: "This is to confirm that all donations received from Canadian Friends of BNEI Shimon Yisroel of Shopron are deposited in Binyan Chaim Cong (a shopron organization). Funds are used to issue scholarships to deserving students." Nonetheless, without supporting documentary evidence that the funds were sent to the educational institution, we are unable to verify that the funds were used for the payment of scholarships (charitable activities).

Second, even though the Organization provided us with the names of the members of the selection committee, and the draft agency agreement, provided with the Organization's representations dated July 20, 2018, states at item 2.c) "... The final decision on the granting of scholarships is still up to the scholarship committee." no supporting documents (i.e. board meeting minutes) were provided at the time of audit to substantiate that the final decision rested with the board of the Organization. Further, as mentioned in the quote above "...Funds are used to issue scholarships to deserving students." It purports that the decision is made by the institution and not the Organization, as to whom receives the scholarships, therefore making the granting of scholarships the activity of the school and not the one of the Organization.

Third, we noted that the Organization provided us with a draft agency agreement, dated July 10, 1988, and failed to comply with the corrective measures agreed to in the Compliance Agreement (CA) signed on January 28, 2010. The Organization signed the CA at the conclusion of a prior audit and per section 2, agreed to “enter into a structured arrangement, in the form attached, 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 carries out its charitable activities /programs”. Furthermore, the CA states that “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.” We acknowledge, the receipt of the recent draft agency agreement, sent with the Organization’s representations dated July 20, 2018. However, upon review of the draft we noted it was missing key elements in establishing that the Organization maintains direction and control over its resources.

As mentioned above, 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, and are actually implemented. During the audit it appeared that the Organization was merely sending money to the US organization without direction and control, therefore the Organization was not carrying out its “own activities”. Further, we reviewed the draft agreement submitted with the Organization’s representations dated July 20, 2018, and determined that it was missing these elements:

- the exact legal names and addresses of all parties
- a clear, complete, and detailed description of the activities the intermediary will carry out, and an explanation of how the activities further the charity’s purposes
- where each activity will be carried on (for example, address, town, or city)
- all time frames and deadlines
- a provision for transferring funds in instalments based on satisfactory performance and for withdrawing or withholding funds or other resources if required (funding includes transferring resources)
- start date and end date provisions

Failing to meet the requirements of subsection 149.1(1) of the Act, by which the Organization must devote substantially all its resources to charitable activities carried on under its own direction and control, or as gifts to qualified donees, may result in revocation of the its charitable status under paragraph 168(1)(b) of the Act. Although we are not considering revocation for this non-compliance issue at this time, please note that continued non-compliance in this regard may result in the Organization being subject revocation of its registered status.

3. Made a disbursement by way of a gift, other than a gift made to a donee that is a qualified donee at the time of the gift

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

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

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

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

As mentioned above, during the audit the Organization failed to provide evidentiary documents to establish that it was carrying out its “own activities”, therefore we have determined that the transfers in the amount of \$541,830 to the US organization – Cong Binyan Chaim – a non-profit organization, were gifts to a non-qualified donee. The Organization failed to provide proof that the payments were then transferred from the non-profit to the school for the payment of tuition fees for deserving students, or for any charitable activity carried out on its behalf.

Failing to meet the requirements of subsection 149.1(1) of the Act, by which the Organization must devote substantially all its resources to charitable activities carried on under its own direction and control, or as gifts to qualified donees, may result in revocation of the its charitable status under paragraph 168(1)(b) of the Act. Although we are not considering revocation for this non-compliance issue at this time, please note that continued non-compliance in this regard may result in the Organization being subject revocation of its registered status.

4. Failure to devote resources to a charitable purpose

As previously mentioned, the Act permits a registered charity to carry out its charitable purposes in only two ways. First, it can fund other organizations, which are qualified donees, second, it can carry on its own charitable activities.

Additionally, we advise that a charitable organization as defined by section 149.1(1) of the Act is one that “all the resources of which are devoted to charitable activities carried on by the organization itself.” These requirements do not preclude the allocation of resources to reasonable management and administrative expenses. To be deemed as reasonable, a registered charity’s management and administrative expenses must be ancillary and incidental to the charitable expenses incurred in support of its exclusively charitable purposes.

The audit revealed that the Organization failed to devote substantially all of its resources to charitable activities. Specifically, as mentioned above, we could not verify that the transfers in the amount of \$ 541,830, sent to Cong Binyan Chaim, were sent to an educational institution to pay for scholarships awarded to deserving students, therefore it is our view that no charitable activity was carried out by the Organization.

Further, in its representations dated July 20, 2018, the Organization provided us with student T4 slips as proof of tuition payment received. However, upon review of the T4 slips provided, we noted that no tuition fees were claimed by the students. Therefore, we are unable to verify that the students truly attended an educational institution and that the costs of their tuition were covered by the Organization.

Without substantiating documents or proof that payments were made by the Organization to an educational institution for the benefit of deserving students, selected by a selection committee, under the direction and control of the Organization, we are under the impression that no charitable activity occurred, or was carried out by the Organization itself or through an intermediary. Without board meeting minutes to substantiate that the decision of the beneficiaries were made by the Organization, it is our understanding that the selection was done by the school itself. As per the letter from the Yeshiva BNEI Shimon Yisroel of Shopron (school) stating: “This is to confirm that all donations received from Canadian Friends of BNEI Shimon Yisroel of Shopron are deposited in Binyan Chaim Cong (a shopron organization). Funds are used to issue scholarships to deserving students.” it appears the decision was made by the school and not the Organization itself.

Failing to meet the requirements of subsection 149.1(1) of the Act, by which the Organization must devote substantially all its resources to charitable activities carried on under its own direction and control, or as gifts to qualified donees, may result in revocation of its charitable status under paragraph 168(1)(b) of the Act. Although we are not considering revocation for this non-compliance issue at this time, please note that continued non-compliance in this regard may result in the Organization being subject to revocation of its registered status.

5. Issuing receipts not in accordance with the Act

Official donation receipts should not be issued to other registered charities to acknowledge gifts nor should other registered charities insist on receiving official donation receipts. Official donation receipts that bear a charity's registration number and other information required by the Act are for tax deduction or credit purposes only.

Contents

Regulation 3501 of the Act states that every official receipt issued by a registered organization shall contain a statement that it is an official receipt for income tax purposes and shall show clearly in such a manner that it cannot readily be altered.

The audit revealed that the official receipts issued by the Organization during the fiscal period ended December 31, 2016, were missing the following elements:

- 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 receipts included the name "Canadian Friends of Yeshiva BNEI Shimon Yisroel D'Shopron", whereas the name registered with us is "Canadian Friends of BNEI Shimon Yisroel of Shopron";
- the place or locality where the receipt was issued;
- the date on which the receipt was issued; and
- the name and Internet web site of the Canada Revenue Agency.

Important: the Organization has until March 31, 2019, to change the CRA web site address to canada.ca/charities-giving.

Failing to meet the requirements of sections 3500 and 3501 of the Regulations about issuing receipts only when allowed and ensuring all the required information is present, is both a sanctionable offence under subsection 188.1(7) of the Act, and a revocable offense under paragraph 168(1)(d) of the Act. Although we are not considering either applying a financial sanction or revocation for this non-compliance issue at this time, please note that continued non-compliance in this regard may result in the Organization being subject to sanction or revocation of its registered status.

The Organization's options:

a) Respond

Should you choose to make representations regarding this proposal, please provide your written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter. After considering the representations submitted by the Organization, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include:

- no compliance action necessary;
- the issuance of an educational letter;
- resolving these issues through the implementation of a Compliance Agreement;
- the application of penalties and/or suspensions provided for in sections 188.1 and/or 188.2 of the Act; or
- giving notice of its intention 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.

b) Do not respond

You may choose not to respond. In that case, the Director General of the Charities Directorate may proceed with the application of penalties and/or suspensions described in sections 188.1 and/or 188.2 of the Act or give notice of its intention 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.

If you appoint a third party to represent you in this matter, please send us a written authorization naming the individual and explicitly authorizing that individual to discuss your file with us.

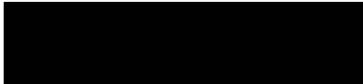
If you have any questions or require further information or clarification, please do not hesitate to contact me at the numbers indicated below. Michael Speakman, Manager, may also be reached at 613-670-0812.

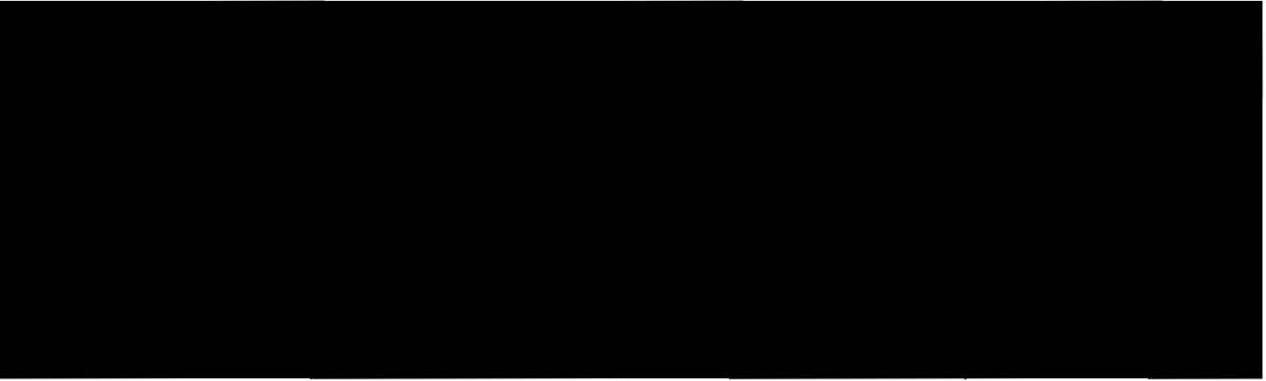
Yours sincerely,

Shanee Césard
Assisted Compliance
Compliance Division

Telephone: 613-670-0509
Facsimile: 613-946-6484
Address: Charities Directorate
Canada Revenue Agency
Ottawa ON K1A 0L5

c.c.: Samuel Gruber





January 29,2020

Charities Directorate
Canada Revenue Agency
Ottawa ON
K1A 0L5

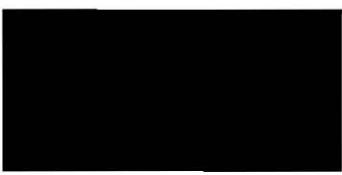
Attn: Shanee Césard

Re: Canadian Friends of Bnei Shimon Yisroel of Shopron
BN: 8905 8877 RR 0001
File#: 0796847

Dear Ms. Shanee Césard,

You sent our client a letter on March 13,2019.
I have discussed the letter with our client. They wish to voluntarily close the charity.
The charity will file a return for 2019.

Yours truly,



cc:

Ibrahim - 613-670-0492 auditor,CRA (please inform him)



BN: 89055 8877 RR 0001

File #: 0796847

February 10, 2020

SUBJECT: Audit of Canadian Friends of BNEI Shimon Yisroel of Shopron

Dear [REDACTED]:

This letter is further to our telephone conversation on February 5, 2020, during which you agreed to provide a response to the administrative fairness letter issued by the Canada Revenue Agency (the CRA) to Canadian Friends of BNEI Shimon Yisroel of Shopron dated March 13, 2019 (copy enclosed).

Notwithstanding your letter dated January 29, 2020, in which you requested voluntary revocation of the Organization's charitable status, the Organization must instead proceed with the audit and submit **all** requested information and documentation outlined in our letter dated March 13, 2019, within **30 days of the date of this letter** to the address below. Failure to respond within the required timeframe could potentially result in the revocation of the Organization's registered status. Also, be advised that additional information may be requested during the course of the audit.

The Income Tax Act requires, under subsection 230(2), that registered charities maintain adequate books and records of account at a single address in Canada that is registered with the CRA. This provision is necessary to enable a charity to accurately provide the CRA with the information required by the Act as well as to enable the CRA to verify the accuracy of reported information through an audit and to determine whether there are any grounds for revocation of the Organization's registration.

Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to a registered charity that she proposes to revoke its registration if it fails to comply with or contravenes section 230 of the Act dealing with books and records.

2

If you have any questions or require further information or clarification, please contact me at 613-670-0492.

Yours sincerely,

Ibrahim Konaré
Assisted Compliance Section
Compliance Division
Charities Directorate
Canada Revenue Agency
Suite 1306
Tower A, Place de Ville
320 Queen Street
Ottawa ON K1A 0L5

Enclosure

- A copy of our letter dated March 13, 2019

Compliance Agreement

Between:

CANADIAN FRIENDS OF BNEI SHIMON YISROEL OF SHOPRON
5462 Hutchison Street, Montréal (Québec), (the "Charity")
890558877RR0001RR0001

And

Canada Revenue Agency (the CRA)

During an audit of the Organization's books and records conducted by the CRA on September 15, 2009, 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. The Charity grants scholarships to allow needy students to attend the (the "school"). Contrary to the CRA guidelines, the Charity has been unable to produce documents and supporting vouchers to evidence its meeting its relief of poverty criteria.

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

The Charity has selected two new criteria to grant student's scholarships to attend the (the "school"). These criteria, related to learning advancement, are:

1. Students excelling in their studies, who maintain an average of 75% and over, would be eligible for scholarship funding up to \$3,000 for a student enrolled in secondary level and up to \$4,000 for a student enrolled in collegiate level. The Charity will review all report cards of students who maintain an average of 75% and over, and will disburse scholarship monies by dividing it equally among eligible candidates within the maximum of each category. The bursary is given with the condition that if a student should choose to interrupt his school year or otherwise leave the school for any reason other than illness, he will repay any monies received as a scholarship towards his tuition for the unused portion of the year in which he terminated his studies. Copies of the proof of repayment will be available at the Charity' office.

If there are any surplus funds after the above distribution, the Charity will continue with the following:

2. Students unable to maintain a passing grade of 60% or higher, will be Eligible to receive a scholarship towards any extra tuition billed by the school to the student's family to retain the student in the "Resource room". The Charity will review all report cards of students who maintain an average of less than 60% and will disburse scholarship monies by selecting first the candidates who have the average closest to 60%. Funds will be distributed to candidates on a descending basis until all the funds have been distributed. The said scholarships will go towards the costs incurred in the Resource room, including: tutors, special education teachers, learning tools and/or textbooks and/or audio-visual equipment required to help the child succeed in his studies. The purpose of keeping the child in the Resource room would be to provide the child with all the adequate tools he needs, with the goal to mainstream him as quickly as possible, back into his regular classroom. In this case, the Charity would require a copy of the billing of extra tuition demanded of the said student.

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, in the form attached, 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 carries 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.

Date of Implementation of all Corrective Measures

The Organization shall implement all corrective measures, on or before **March 1, 2010.**

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 **Witness** / /
the authority to bind the Organization

S. Grob Dr
Name and position of signatory
(please print)

Name of witness (please print)

CAN. FLIGHTS OF DAE SHIMON YISRAEL OF SHOELON
Full name and address of Organization

Date of signing: Am 22 2010

CRA per:

LUCIE TRUDEAU VERIFICATRICE

Name and position of signatory
(please print)

Date of signing: February 4th, 2010

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

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(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;

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- (b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;
- (c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;
- (d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length;
- (e) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever; and
- (f) of a registered charity, if it accepts a gift from a foreign state, as defined in section 2 of the State Immunity Act, that is set out on the list referred to in subsection 6.1(2) of that Act.

Revocation of Registration of Certain Organizations and Associations

168 (1) Notice of intention to revoke registration

The Minister may, by registered mail, give notice to a person described in any of paragraphs (a) to (c) of the definition "qualified donee" in subsection 149.1(1) that the Minister proposes to revoke its registration if the person

- (a) applies to the Minister in writing for revocation of its registration;
- (b) ceases to comply with the requirements of this Act for its registration;
- (c) in the case of a registered charity or registered Canadian amateur athletic association, fails to file an information return as and when required under this Act or a regulation;
- (d) issues a receipt for a gift otherwise than in accordance with this Act and the regulations or that contains false information;
- (e) fails to comply with or contravenes any of sections 230 to 231.5; or
- (f) in the case of a registered Canadian amateur athletic association, accepts a gift the granting of which was expressly or implicitly conditional on the association making a gift to another person, club, society or association.

168 (2) Revocation of Registration

Where the Minister gives notice under subsection 168(1) to a registered charity or to a registered Canadian amateur athletic association,

(a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the Canada Gazette, and

(b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the Canada Gazette,

and on that publication of a copy of the notice, the registration of the charity or association is revoked.

168 (4) Objection to proposal or designation

A person may, on or before the day that is 90 days after the day on which the notice was mailed, serve on the Minister a written notice of objection in the manner authorized by the Minister, setting out the reasons for the objection and all the relevant facts, and the provisions of subsections 165(1), (1.1) and (3) to (7) and sections 166, 166.1 and 166.2 apply, with any modifications that the circumstances require, as if the notice were a notice of assessment made under section 152, if

(a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);

(b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or

(c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

172 (3) Appeal from refusal to register, revocation of registration, etc.

Where the Minister

(a) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.2) and (22) and 168(1) by the Minister, to a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for registration as a registered Canadian amateur athletic association, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

(a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90

days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,

(a.2) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.3), (22) and 168(1) by the Minister, to a person that is a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1) that is or was registered by the Minister as a qualified donee or is an applicant for such registration, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

(b) refuses to accept for registration for the purposes of this Act any retirement savings plan,

(c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan;

(d) [Repealed, 2011, c. 24, s. 54]

(e) refuses to accept for registration for the purposes of this Act an education savings plan,

(e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,

(f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,

(f.1) refuses to accept an amendment to a registered pension plan,

(g) refuses to accept for registration for the purposes of this Act any retirement income fund,

(h) refuses to accept for registration for the purposes of this Act any pooled pension plan or gives notice under subsection 147.5(24) to the administrator of a pooled registered pension plan that the Minister proposes to revoke its registration, or

(i) refuses to accept an amendment to a pooled registered pension plan,

the person described in paragraph (a), (a.1) or (a.2), the applicant in a case described in paragraph (b), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), the promoter in a case described in paragraph (e.1), the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), or the administrator of the plan in a case described in paragraph (h) or (i), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

180 (1) Appeals to Federal Court of Appeal

An appeal to the Federal Court of Appeal pursuant to subsection 172(3) may be instituted by filing a notice of appeal in the Court within 30 days from

(a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),

(b) [Repealed, 2011, c. 24, s. 55]

- (c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),
- (c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1),
- (c.2) the mailing of notice to the administrator of the pooled registered pension plan under subsection 147.5(24), or
- (d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan or pooled registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

as the case may be, or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiration of those 30 days, fix or allow.

Tax and Penalties in Respect of Qualified Donees

188 (1) Deemed year-end on notice of revocation

If on a particular day the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) or it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available,

- (a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;
- (b) a new taxation year of the charity is deemed to begin immediately after that day; and
- (c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

188 (1.1) Revocation tax

A charity referred to in subsection (1) is liable to a tax, for its taxation year that is deemed to have ended, equal to the amount determined by the formula

A - B

where

A is the total of all amounts, each of which is

- (a) the fair market value of a property of the charity at the end of that taxation year,
- (b) the amount of an appropriation (within the meaning assigned by subsection (2)) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or

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(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

$$\mathbf{A - B}$$

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

$$\mathbf{A - B}$$

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
 - (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.