



May 12, 2022

**REGISTERED MAIL**

Loyalty Foundation  


BN: 89917 2803 RR0001  
File #: 3022583

Dear 


**Subject: Notice of intention to revoke**

We are writing with respect to our letter dated May 13, 2021 (copy enclosed), in which Loyalty Foundation (the "Organization") was invited to respond to the findings of the audit conducted by the Canada Revenue Agency ("CRA") for the period from December 1, 2015, to November 30, 2018. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered your written responses dated May 25, 2021 ("initial response"), and June 23, 2021 ("second response"). Your replies have not alleviated our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity. Our concerns are explained below.

Although steps have been taken subsequent to the auditor's site visit to attempt to address the deficiencies that occurred during the audit period moving forward, they do not negate the fact that serious deficiencies occurred and are the basis for our position.

In your second response, you pose the question of whether the CRA's Charities Directorate's (the "Directorate") position is inconsistent with the publicly announced policy found at [canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidelines-applying-sanctions.html](https://canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidelines-applying-sanctions.html) (the "publication"). This publication discusses the Directorate's general approach prior to revoking a charity's registration. Although your second response references the general approach that is laid out in our publication, it does not include the fact that the publication also provides guidelines in cases of serious non-compliance. It is our position that the deficiencies that occurred during the audit period amount to serious non-compliance. The publication states that: "in serious cases of non-compliance, the Directorate is prepared to move directly to a sanction or revocation."

Also in your second response, you indicate that the Minister of Revenue has proposed to deny 's charitable donation tax credit for a \$6 million donation he made to the Organization in 2014, and that should be a factor in determining the Minister's

decision with regards to the Organization. As [REDACTED] and the Organization are separate persons as defined in the Income Tax Act<sup>1</sup>, any (re)assessment on one does not bear any weight on the potential (re)assessments of the other.

**Failure to be constituted and operated for exclusively charitable purposes**

The audit identified two non-qualified investments in the form of loans to Carrera Management Corporation ("Carrera") and to Kerfoot WFC Holdings Ltd ("WFC"). During our review, it was noted that interest had not been collected on the Carrera loan and it was collected every few years on the WFC loan. Because the interest was not regularly collected within the timeframe stated in paragraph 189(1)(b) of the Act, the uncollected interest income was made available to and benefited parties that do not deal the Organization at arm's length.

**Organization's Response**

The initial response provided indicated that all accrued interest up to April 30, 2021, on both loans have been fully collected. Moving forward, all interest due from Carrera and WFC will be collected on a quarterly basis.

The second response indicated that the loan documents were reviewed by the previous auditor during the previous audit of the Organization from 2003 to 2009. After the review, the Organization was provided a letter stating it was in full compliance with its legislative and common law requirements.

**Our Response**

Regarding the initial response, although accrued interest up to April 30, 2021, has been collected, it does not negate the fact that interest was never collected from the inception of the Carrera loan in 2011 until it was noted in our administrative fairness letter dated May 12, 2021. Likewise, the steps taken does not negate the fact that interest accrued on the WFC loan was only collected every three years.

Regarding the second response, although the loan documentation was reviewed by the previous auditor, the letter that was issued only pertained to the period of 2003 to 2009, as indicated by the subject line of the letter. As a result, the statement that the Organization was in compliance only applied to the period of 2003 to 2009.

As such, neither the steps taken, nor the argument that the loans were previously reviewed change our position that unacceptable private benefits have been conferred upon two non-arm's length parties with regard to the outstanding loan balances amounting to over \$42 million and interest receivable of over \$4 million, and the

Organization has not been operating exclusively for charitable purposes as required by the definition of a charitable foundation in subsection 149.1(1) of the Act. As a result, the

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<sup>1</sup> Unless otherwise stated, all references to a statute herein are the *Income Tax Act* (Canada). R.S.C.1985 (5<sup>th</sup> sup.), c.1, as amended (the "Act")

CRA is of the view that the Organization should be subject to the revocation of its charitable registration in the manner described in paragraph 168(1)(b) of the Act.

### **Disbursement Quota**

The audit found that the Organization did not expend any funds on charitable activities for its fiscal periods ending November 30, 2016, to November 30, 2018, with the exception of one gift to a qualified donee of \$5,000 in 2018. During the audit period of December 1, 2015, to November 30, 2018, the Organization had a combined disbursement quota shortfall of over \$5 million.

### **Organization's Response**

The Organization's response is that its disbursement quota ("DQ") in 2019 was \$1.9 million and in 2020 was \$2 million. It made qualifying expenditures during the year ending November 30, 2020, of \$3 million, thereby leaving a total DQ shortfall of \$6 million since the Organization's 2016 year end. In addition, it was stated that in the Organization's 2021 year, it has made \$250,000 of qualifying expenditures to date, and proposes to make up the shortfall noted by June 24, 2021.

The Organization has entered into a funding agreement with the Canada Soccer Association, and is committed to donating \$6 million in quarterly payments of \$250,000 with the first donation on February 28, 2021.

### **Our Response**

Although the Organization is able to "catch up" on their cumulative DQ shortfall which started from their 2016 year end, it does not negate the fact that the Organization has not been compliant since 2016. The calculated shortfalls are neither minor, nor due to calculation errors or oversights; they are due to the fact that the Organization failed to make any qualifying expenditures during its 2016 to 2018 taxation years except for the \$5,000 gift made in 2018.

Subsection 149.1(20) of the Act provides a reprieve for taxpayers as it recognizes that sometimes whether due to calculation errors or other circumstances, private foundations may end up with a disbursement quota shortfall during the year. The Act allows for shortfalls to be met by applying excesses from the previous five taxation years or its immediately subsequent taxation year. The Organization's cumulative shortfall is further exacerbated by the fact that even during our audit, which began in August of 2019, the Organization did not fully address the shortfall during its 2019 taxation year by making qualifying expenditures to have sufficient DQ excesses to draw on.

Although the Organization purports to have the capacity to make up for the cumulative DQ shortfall of \$6 million with the proposed actions to address the shortfalls that began during the Organization's 2016 year end, this does not change our position that the inactions and shortfalls identified by the audit are significant and demonstrate non-compliance of a serious nature.

### **Books and Records**

Based on our review, we were not able to reconcile the Organization's financial statements to its T3010 for 2018 in the category of accounts receivable. In addition, the audit found numerous deficiencies with the Organization's corporate records. Specifically, there were no minutes of annual general meetings or resolutions in lieu of meetings for the entire audit period, nor were there any director meeting minutes for the entire audit period.

#### **Organization's Response**

The Organization's response was that going forward, they will hold quarterly Board meetings. [REDACTED] will take minutes and ensure the decisions made are fully recorded and all significant agreements and documents are maintained in the Loyalty minute book. [REDACTED] will prepare quarterly financial statements to ensure Loyalty's accounting records are in order on a regular basis, and those financial statements will be reviewed at each meeting.

#### **Our Response**

The response addresses steps that will be taken moving forward; however, it does not address the deficiencies that occurred during the audit period. It does not change the CRA's view that the Organization failed to maintain adequate books and records in accordance with the Act, which is a sufficient reason to revoke the Organization's charitable status under the authority of paragraph 168(1)(e) of the Act.

### **Official Donation Receipts**

A review of the donation receipts and procedures found that the Organization did not meet all three of the required elements for receipts, and that it did not have a record to delegate its authority to issue official donation receipts to a third party.

#### **Organization's Response**

The Organization's response is that going forward, all donation receipts will be approved at the quarterly Board meetings, and will be signed by an authorized individual. No donation receipts will be signed by any unauthorized individual.

#### **Our Response**

The response addresses steps that will be taken moving forward; however, it does not address the deficiencies that occurred during the audit period. It does not change the CRA's position that the behaviour noted meets the criteria for revocation as described in paragraph 168(1)(d) of the Act, issuing receipts for gifts otherwise than in accordance with the Act.

### **Conclusion**

The audit by the CRA found that the Organization did not comply with the requirements set out in the Act. In particular, it was found that the Organization failed to be constituted

and operated for exclusively charitable purposes, failed to meet its disbursement quota, failed to maintain proper books and records, and failed to properly issue donation receipts. 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 May 13, 2021, and pursuant to subsections 168(1) and 149.1(4) of the Act, we hereby notify you of our intention to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(d), 168(1)(e), subsection 149.1(4), and paragraph 149.1(4)(b) 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.

<b>Business number</b>	<b>Name</b>
899172803RR0001	Loyalty Foundation Vancouver BC

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

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

However, a copy of the revocation notice, described above, will be published in the Canada Gazette after the expiration of **30 days** from the date this letter was mailed. 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.

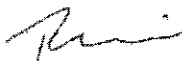
### **Consequences of revocation**

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 1-800-959-8287.

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 May 13, 2021
- Appendix A, Relevant provisions of the Act

c.c.: Greg Kerfoot



Canada Revenue  
Agency

Agence du revenu  
du Canada

PROTECTED B

May 13, 2021

Loyalty Foundation  


BN: 89917 2803 RR0001  
File #: 3022583

Dear :

**Subject: Audit of the Loyalty Foundation**

This letter results from the audit of the Loyalty Foundation (the "**Organization**") conducted by the Canada Revenue Agency (the "**CRA**"). The audit is related to the operations of the Organization for the period from December 1, 2015, to November 30, 2018.

On May 3, 2021, the Organization was advised that the CRA identified specific areas of non-compliance with the provisions of the Income Tax Act (the "**Act**") and its Regulations in the following areas.

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to be constituted and operated for exclusively charitable purposes	149.1(1), 168(1)(b), 251(1), 251(2)
2.	Disbursement Quota	149.1(1), 149.1(4)(b), 168(1)(b)
3.	Books and Records	149.1(4), 168(1)(b), 168(1)(e), 230(2)
4.	Official Donation Receipts	168(1)(d), Regulation 3501(3)

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

**Identified areas of non-compliance****Failure to be constituted and operated for exclusively charitable purposes****Legislation:*****Charitable foundation***

The Organization is registered as a private foundation, which for the purposes of the Act, is considered to be a charitable foundation. Pursuant to subsection 149.1(1) of the Act, a "charitable foundation" is defined as, "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."

***Non-qualified investment***

A non-qualified investment of a private foundation is defined in subsection 149.1(1) of the Act to include non-arm's length investments involving a debt, a share, or a right to acquire a share held by a private foundation that is issued by persons not dealing at arm's length with that private foundation.

***Tax Regarding Non-Qualified Investment***

Subsection 189(1) of the Act states:

"Where at any particular time in a taxation year a debt (other than a debt in respect of which subsection 80.4(1) applies or would apply but for subsection 80.4(3)) is owing by a taxpayer to a registered charity that is a private foundation and at that time the debt was a non-qualified investment of the foundation, the taxpayer shall pay a tax under this Part for the year equal to the amount, if any, by which

(a) the amount that would be payable as interest on that debt for the period in the year during which it was outstanding and was a non-qualified investment of the foundation if the interest were payable at such prescribed rates as are in effect from time to time during the period exceeds

(b) the amount of interest for the year paid on the debt by the taxpayer not later than 30 days after the end of the year."

***Arm's length***

The determination of whether two parties are arm's length can be found in subsection 251(1) of the Act. Paragraph 251(1)(a) of the Act states that related persons shall be deemed not to deal with each other at arm's length. Paragraph 251(1)(b) of the Act deals with a taxpayer and a personal trust, and is not relevant to this analysis. Paragraph 251(1)(c) states that in any other case, it is a question of fact whether two taxpayers are dealing with each other at arm's length.



*Related*

The definition of related persons is contained in subsection 251(2) of the Act. Under paragraph 251(2)(a) related persons are individuals connected by blood relationship, marriage or common law partnership or adoption. Under paragraph 251(2)(b) related persons are: (i) a corporation and a person who controls the corporation, if it is controlled by one person; (ii) a corporation and a person who is a member of a related group that controls the corporation; or (iii) a corporation and any person related to a person described in (i) or (ii). Under paragraph 251(2)(c) related persons are any two corporations; (iii) if one of the corporations is controlled by one person and that person is related to any member of a related group that controls the other corporation.

*Audit Findings:*

The audit identified two loans that meet the criteria to be described as non-qualified investments of the Organization:

*Carrera Management Corporation*

On November 14, 2011, the Organization loaned to Carrera Management Corporation ("Carrera") the sum of \$2,300,000, at an interest rate of 5% per annum and described it as a "demand promissory note," which meant that there were no additional terms for repayment of the principal amount. Since the inception of the loan, \$810,027 of interest receivable has been accrued up to the end of November 30, 2018. The Organization provided that the reason the loan was made was that it would generate interest at the market rate of 5% which would allow the Organization to meet its objective of preservation and safety of capital while also providing a source of funding sufficient to meet its donative goals.

Mr. Kerfoot has been the sole and thereby controlling member of the Organization, a corporation without share capital, since November 25, 2003. He is also the controlling shareholder of another corporation, [REDACTED], which held 58.33% of the common shares of Carrera on and prior to August 31, 2016. This means that Carrera and [REDACTED] are related corporations and Mr. Kerfoot is related to both [REDACTED] and the Organization. Altogether, through Mr. Kerfoot's shareholdings and his status as the sole member of the Organization, the Organization and Carrera are two related corporations and therefore do not deal with one another at arm's length pursuant to paragraph 251(1)(a) of the Act.

The accrual of interest does not constitute a payment as described in paragraph 189(1)(b) of the Act. As a result of the failure to collect interest since 2011 on the loan, in addition to receiving no principal repayments, the Organization has not been operating exclusively for charitable purposes as a non-arm's length corporation has received the benefits of a loan and has not had to make interest payments.

*Kerfoot WFC Holdings Ltd*

On January 27, 2010, the Organization initiated a loan to Kerfoot WFC Holdings Ltd ("WFC"), using a grid demand promissory note. Interest is payable at 5% per annum, and the grid table attached to the promissory note is updated each time principal is advanced

or collected to and from WFC. The Organization stated that this loan was made for the same reason as the loan to Carrera, namely the preservation and safety of capital while providing a funding source for donations.

WFC is another corporation that Mr. Kerfoot owned 100% of the outstanding shares until December 31, 2016. Subsequent to that date, additional shares of the corporation were issued, in the form of preferred shares, to [REDACTED] (99.8%) and [REDACTED] (0.2%). Mr. Kerfoot owns 100% of the shares of [REDACTED]. Regardless of which shares are voting shares, Mr. Kerfoot remains in control of WFC as a result of his shareholdings. Because of Mr. Kerfoot's shareholdings and his position of sole member of the Organization, the Organization and WFC are related per subparagraph 251(2)(b)(i) of the Act and therefore do not deal with each other at arm's length (paragraph 251(1)(a) of the Act).

As of November 30, 2018, there was an outstanding loan balance of \$42,479,461. The last time interest was collected on the loan was on July 26, 2016, which was collected for interest accrued in the Organization's 2015 year end as well as interest for its 2016 year end. The interest collected on July 26, 2016, does not fall within the 30 days of the Organization's November 30, 2015, year end as described in subsection 189(1). Interest was not collected during the Organizations 2017 and 2018 fiscal year ends. On November 30, 2018, interest receivable on the WFC loan was \$4,067,554.

Again, the accrual of interest does not constitute a payment as described in paragraph 189(1)(b) of the Act. As a result of failing to regularly collect interest on the WFC loan and accruing interest during its 2015, 2017, and 2018 year ends, the Organization has not been operating exclusively for charitable purposes as another non-arm's length corporation has received the benefits of a loan and has not had to make interest payments.

Because the Organization did not receive interest payments that were owed to it as part of the above-described arrangements, the uncollected interest income was made available to, and benefited parties that do not deal with the Organization at arm's length, namely Carrera, WFC and Mr. Kerfoot. By participating in these transactions, the Organization has demonstrated that it has not been operated exclusively for charitable purposes as required by the definition of a charitable foundation in subsection 149.1(1) of the Act. As a result, the CRA is of view that the Organization should be subject to the revocation of its charitable registration in the manner described in paragraph 168(1)(b) of the Act.

### **Disbursement Quota**

#### **Legislation:**

In order to maintain its status as a registered charity, private foundations (such as the Organization) must meet a disbursement quota. This is the minimum amount a registered charity is required to spend each year on its own charitable activities or on gifts to qualified donees. The calculation of a charity's disbursement quota is based on the value of its property not used for charitable activities or administration. If the average value of a private foundation's property not used directly in charitable activities or administration

during the 24 months before the beginning of the fiscal year exceeds \$25,000, the foundation's disbursement quota is 3.5% of the average value of that property. This average value of property is based on a specified number of periods (decided by the charity) over a 24-month span. A charity is allowed by virtue of 149.1(20) of the Act to offset any shortfalls in meeting its disbursement quota by applying any unapplied disbursement excesses from the previous 5 taxation years or its immediately subsequent taxation year.

For purposes of calculating the disbursement quota, property includes any real estate, investments or other assets that were not used directly in charitable activities or administration. In considering the application of expenditures used to meet the disbursement quota, a charity must ensure that it is expensed directly on charitable activities and/or programs. This would include such payments as salaries to persons performing duties directly related to a charitable program, but would not include amounts paid for purely administrative expenses such as fund-raising costs, legal or accounting fees and the like.

**Audit Findings:**

Our review of the Organization's expenses found that it did not expend any funds on charitable activities for its fiscal periods ending November 30, 2016, through 2019 and only made one gift during that same period to a qualified donee of \$5,000 (in 2018). During this time, the Organization held millions of dollars in assets. As a result, the Organization failed to meet its disbursement quota for its fiscal years ending November 30, 2016, 2017, and 2018. Attached to this letter is Appendix "A" which details our calculation of the Organization's disbursement quota shortfalls for each of these fiscal periods as being \$1,548,482 for the 2016 fiscal period, \$1,728,613 for 2017 and \$1,809,648 for 2018. In our view, these are significant shortfalls and demonstrate non-compliance of a serious nature. As a result, the Organization should be subject to the revocation of its charitable registration pursuant to paragraph 149.1(4)(b) and paragraph 168(1)(b).

**Books and Records**

**Legislation:**

Subsection 230(2) of the Act requires that every registered charity maintain adequate books and records, and books of account, at an address in Canada recorded with the Minister. In addition to retaining copies of donation receipts, as explicitly required by subsection 230(2), subsection 230(4) provides that "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 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 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, which have held that:

- it is the responsibility of the registered charity to prove that its charitable status should not be revoked;<sup>1</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>2</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.<sup>3</sup>

Audit Findings:

Based on our review, we were not able to reconcile the Organization's financial statements to its T3010 for 2018 in the category of accounts receivable. In addition, the audit found numerous deficiencies with the Organization's corporate records. Specifically, there were no minutes of annual general meetings or a resolutions in lieu of meetings for the entire audit period. nor were there any director meeting minutes for the entire audit period.

Minutes of meeting of directors and members are an essential part of an organization's governing documents as they contain an official record of these meetings. Documenting decisions of the board and members, along with the discussion surrounding these decisions, show that an organization is operating within its objects and are a critical tool that allow external stakeholders a view to the direction and oversight of the organization and to assess the adequacy thereof.

The Organization's lack of minutes of meetings of the board and members, or even resolutions in lieu of meetings, demonstrates a disregard to the performance of the basic duties of these positions on the part of the Organization's directors and members. Because of the absence of minutes, a tool to evaluate the Organization's direction, processes and oversight is non-existent. In addition, had these documents existed, they may have assisted in establishing that the Organization was being operated for the requisite exclusively charitable purposes to continue to meet the definition of a charitable foundation.

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<sup>1</sup> The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen, 2002 FCA 72 (FCA)

<sup>2</sup> Supra, footnote 3; The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada (2004) FCA 397

<sup>3</sup> (College Rabbiniqne de Montreal Oir Hachaim D'Tash v. Canada (Minister of the Customs and Revenue Agency, (2004) FCA 101; Act section 168(1)

It is our view that the Organization failed to maintain adequate corporate records as required by subsection 230(2) of the Act. As noted above in the legislation section, a failure to maintain adequate books and records in accordance with the Act is itself a sufficient reason to revoke the Organization's charitable status under the authority of paragraph 168(1)(e) of the Act.

### **Official Donation Receipts**

#### **Legislation:**

Income Tax Regulation ("Regulations") 3501(3) of the Act describes the required elements of an official donation receipt that is printed with a facsimile signature as follows:

"Where all official receipt forms of a registered organization are

- (a) distinctively imprinted with the name, address in Canada and registration number of the organization,
- (b) serially numbered by a printing press or numbering machine, and
- (c) kept at the place referred to in subsection 230(2) of the Act until completed as an official receipt,

the official receipts may bear a facsimile signature."

Paragraphs a, b, and c are the required elements that official receipts must have if they are to be signed with a facsimile signature.

#### **Audit Findings:**

The audit revealed that the Organization does issue its official donation receipts with a facsimile signature. These receipts are prepared using [REDACTED] from information maintained in [REDACTED]. At the time of the audit, the facsimile signature was stored electronically in the computer system of [REDACTED], the Organization's accounting representative, and receipts were issued by an employee of that firm. This practice is a contravention of the Regulations. Furthermore, there is no documentation in the minute books or any other records provided by the Organization for the audit that authorizes [REDACTED] to issue official donation receipts on behalf of the Organization. Taken altogether, not only has the Organization not met all three of the required elements for receipts (the Organization's accounting representative's place of business is not the Organization's registered address), the Organization also has no record of delegating its authority to issue official donation receipts to a third party. As a result, the CRA is of the position that this behavior meets the criteria for revocation described in paragraph 168(1)(d) of the Act, issuing receipts for gifts otherwise than in accordance with 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.

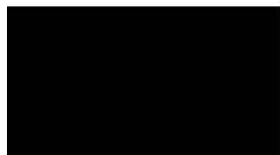
**b) Do not respond**

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 team leader, Brad Borisko, may also be reached at 250-492-9592.

Yours sincerely,



Yifeng Kok, CPA, CA  
Audit Division - Penticton  
Southern Interior Tax Services Office

Telephone: 778-363-8645  
Facsimile: 250-770-4447  
Address: C/O 9755 King George Boulevard  
Surrey BC V3T 5E1

Enclosure



## Appendix A

Loyalty Foundation

Disbursement Quota Calculations

Year	Total Assets Year 1	Total Assets Year 2	Average	Disbursement Quota	Charitable Expenses	Shortfall
2016	40,413,256	48,071,448	44,242,352	1,548,482	-	1,548,482
2017	48,071,448	50,706,438	49,388,943	1,728,613	-	1,728,613
2018	50,706,438	52,987,747	51,847,093	1,814,648	5,000	1,809,648

**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(4) Revocation of registration of private foundation**

The Minister may, in the manner described in section 168, revoke the registration of a private foundation for any reason described in subsection 168(1) or where the foundation

(a) carries on any business;

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

(b.1) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift;

(c) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;

(d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

#### **149.1(4.1) Revocation of registration of registered charity**

The Minister may, in the manner described in section 168, revoke the registration

(a) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;

(b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;

(c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;

(d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length;

(e) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever; and

(f) of a registered charity, if it accepts a gift from a foreign state, as defined in section 2 of the State Immunity Act, that is set out on the list referred to in subsection 6.1(2) of that Act.

#### **Revocation of Registration of Certain Organizations and Associations**

##### **168(1) Notice of intention to revoke registration**

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

(a) applies to the Minister in writing for revocation of its registration;

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

#### **168(2) Revocation of registration**

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

- (a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the Canada Gazette, and
- (b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the Canada Gazette,

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

#### **168(4) Objection to proposal or designation**

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

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

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

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

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

Where the Minister

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

(a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,

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

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

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

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

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

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

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

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

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

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

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

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

#### **180(1) Appeals to Federal Court of Appeal**

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

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

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

(c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),

(c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1),

(c.2) the mailing of notice to the administrator of the pooled registered pension plan under subsection 147.5(24), or

(d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan or pooled registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

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

## **Tax and Penalties in Respect of Qualified Donees**

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

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

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

### **188(1.1) Revocation tax**

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

$$A - B$$

where

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

- (a) the fair market value of a property of the charity at the end of that taxation year,
- (b) the amount of an appropriation (within the meaning assigned by subsection (2)) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or
- (c) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

B is the total of all amounts (other than the amount of an expenditure in respect of which a deduction has been made in computing income for the winding-up period under paragraph (c) of the description of A), each of which is

- (a) a debt of the charity that is outstanding at the end of that taxation year,
- (b) an expenditure made by the charity during the winding-up period on charitable activities carried on by it, or

(c) an amount in respect of a property transferred by the charity during the winding-up period and not later than the latter of one year from the end of the taxation year and the day, if any, referred to in paragraph (1.2)(c), to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

### **188(1.2) Winding-up period**

In this Part, the winding-up period of a charity is the period that begins immediately after the day on which the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) (or, if earlier, immediately after the day on which it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available), and that ends on the day that is the latest of

- (a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,
- (b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and
- (c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

### **188 (1.3) Eligible donee**

In this Part, an eligible donee in respect of a particular charity is

- (a) a registered charity
  - (i) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity,
  - (ii) that is not the subject of a suspension under subsection 188.2(1),
  - (iii) that has no unpaid liabilities under this Act or under the Excise Tax Act,
  - (iv) that has filed all information returns required by subsection 149.1(14), and
  - (v) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable; or

(b) a municipality in Canada that is approved by the Minister in respect of a transfer of property from the particular charity.

### **188(2) Shared liability – revocation tax**

A person who, after the time that is 120 days before the end of the taxation year of a charity that is deemed by subsection (1) to have ended, receives property from the charity, is jointly and severally, or solidarily, liable with the charity for the tax payable under subsection (1.1) by the charity for that taxation year for an amount not exceeding the total of all appropriations, each of which is the amount by which the fair market value of such a property at the time it was so received by the person exceeds the consideration given by the person in respect of the property.

### **188(2.1) Non-application of revocation tax**

Subsections (1) and (1.1) do not apply to a charity in respect of a notice of intention to revoke given under any of subsections 149.1(2) to (4.1) and 168(1) if the Minister abandons the intention and so notifies the charity or if

- (a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and
- (b) the charity has, before the time that the Minister has so registered the charity,
  - (i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the Excise Tax Act in respect of taxes, penalties and interest, and
  - (ii) filed all information returns required by or under this Act to be filed on or before that time.

### **188(3) Transfer of property tax**

Where, as a result of a transaction or series of transactions, property owned by a registered charity that is a charitable foundation and having a net value greater than 50% of the net asset amount of the charitable foundation immediately before the transaction or series of transactions, as the case may be, is transferred before the end of a taxation year, directly or indirectly, to one or more charitable organizations and it may reasonably be considered that the main purpose of the transfer is to effect a reduction in the disbursement quota of the foundation, the foundation shall pay a tax under this Part for the year equal to the amount by which 25% of the net value of that property determined as of the day of its transfer exceeds the total of all amounts each of which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.



**188(3.1) Non-application of subsection (3)**

Subsection (3) does not apply to a transfer that is a gift to which subsection 188.1(11) or (12) applies.

**188(4) Joint and several, or solidary, liability – tax transfer**

If property has been transferred to a charitable organization in circumstances described in subsection (3) and it may reasonably be considered that the organization acted in concert with a charitable foundation for the purpose of reducing the disbursement quota of the foundation, the organization is jointly and severally, or solidarily, liable with the foundation for the tax imposed on the foundation by that subsection in an amount not exceeding the net value of the property.

**188(5) Definitions – In this section,**

**net asset amount** of a charitable foundation at any time means the amount determined by the formula

$$A - B$$

where

**A** is the fair market value at that time of all the property owned by the foundation at that time, and

**B** is the total of all amounts each of which is the amount of a debt owing by or any other obligation of the foundation at that time;

**net value** of property owned by a charitable foundation, as of the day of its transfer, means the amount determined by the formula

$$A - B$$

where

**A** is the fair market value of the property on that day, and

**B** is the amount of any consideration given to the foundation for the transfer.

**189(6) Taxpayer to file return and pay tax**

Every taxpayer who is liable to pay tax under this Part (except a charity that is liable to pay tax under section 188(1)) for a taxation year shall, on or before the day on or before which the taxpayer is, or would be if tax were payable by the taxpayer under Part I for the year, required to file a return of income or an information return under Part I for the year,

(a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

#### **189(6.1) Revoked charity to file returns**

Every taxpayer who is liable to pay tax under subsection 188(1.1) for a taxation year shall, on or before the day that is one year from the end of the taxation year, and without notice or demand,

(a) file with the Minister

(i) a return for the taxation year, in prescribed form and containing prescribed information, and

(ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and

(b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

#### **189(6.2) Reduction of revocation tax liability**

If the Minister has, during the one-year period beginning immediately after the end of a taxation year of a person, assessed the person in respect of the person's liability for tax under subsection 188(1.1) for that taxation year, has not after that period reassessed the tax liability of the person, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of

(a) the amount, if any, by which

(i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was sent and ends at the end of the one-year period

exceeds

(ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and

(b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

**189(6.3) Reduction of liability for penalties**

If the Minister has assessed a particular person in respect of the particular person's liability for penalties under section 188.1 for a taxation year, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of all amounts, each of which is an amount, in respect of a property transferred by the particular person after the day on which the Minister first assessed that liability and before the particular time to another person that was at the time of the transfer an eligible donee described in paragraph 188(1.3)(a) in respect of the particular person, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the total of

(a) the consideration given by the other person for the transfer, and

(b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

**189(7) Minister may assess**

Without limiting the authority of the Minister to revoke the registration of a registered charity or registered Canadian amateur athletic association, the Minister may also at any time assess a taxpayer in respect of any amount that a taxpayer is liable to pay under this Part.