



December 1, 2021

REGISTERED MAIL

Eric J. Macklin
Chairman
Nancy-Griffon Fund
53 Brookwood Dr.
Barrie ON L4N 0Z1

BN: 11905 0938 RR0001
File #: 0567198

Dear Eric J. Macklin:

**Subject: Notice of intention to revoke
Nancy-Griffon Fund**

We are writing with respect to our letter dated September 2, 2020 (copy enclosed), in which Nancy-Griffon Fund (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, 2015 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.

As of this date, we have not received any response to our letter.

Conclusion

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization failed to: maintain and provide adequate books and records, devote resources to charitable activities/purposes, be constituted for exclusively charitable purposes, and file an information return as required by the Act and/or its Regulations.

For these reasons, it is our position that the Organization no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated September 2, 2020, and pursuant to subsections 168(1) and 149.1(4) of the Act¹, 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:

¹ In our letter of September 2, 2020, we erroneously quoted subsection 149.1(3).

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), and 168(1)(e), subsection 149.1(4) and paragraph 149.1(4)(b.1) of the Act, of our intention to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration will be effective on the date of publication of this notice in the Canada Gazette.

| Business number | Name |
|------------------------|---------------------------------|
| 119050938RR0001 | Nancy-Griffon Fund Barrie ON |

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

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

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

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

Consequences of revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return Where Registration of a Charity is Revoked. 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 September 2, 2020
- Appendix A

c.c.: Lorie Huffmeyer, Director



September 2, 2020

Eric J. Macklin
Chairman
Nancy-Griffon Fund
53 Brookwood Dr.
Barrie ON L4N 0Z1

BN: 11905 0938 RR0001
File #: 0567198

Dear Eric J. Macklin:

Subject: Audit of Nancy-Griffon Fund

This letter results from the audit of the Nancy-Griffon Fund (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2015 to December 31, 2016.

In our previous letter dated August 22, 2019, we advised the Organization that it must submit particular information within 30 days of the date of the letter, and that failure to respond within the required timeframe could potentially result in the revocation of the Organization's registered status. The CRA has 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 and provide adequate books and records | 149.1(4), 230(2), 168(1)(b), 168(1)(e) |
| 2. | Failure to devote resources to charitable activities/purposes | 149.1(4), 168(1)(b) |
| 3. | Failure to be constituted for exclusively charitable Purposes | 149.1(3) 168(1)(b) |
| 4. | Failure to file an information return as required by the Act and/or its Regulations | 149.1(4), 149.1(14) 168(1)(c) |
| 5. | Issuing receipts not in accordance with the Act | Regulation 3501 |

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements that apply to registered charities, and offers the Organization an opportunity to respond and present additional information.

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.

The CRA Compliance program

Audits are conducted by the CRA in order to verify the accuracy of information registered charities report on Form T3010, Registered Charity Information Return. With an office audit, it is often necessary to contact the charity to get more information about the charity's activities. Audits help us maintain public confidence in the fairness and integrity of the registration system and are a key part of the compliance program.

Identified areas of non-compliance

1. Failure to maintain and provide adequate books and records

Pursuant to paragraph 230(2)(a) 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;

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; 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 end of the last taxation year to which the records and books of account relate."

With respect to the legislative requirement that registered charities maintain books and records, several judicial determinations have held that:

- i. it is the responsibility of the registered charity to prove that its charitable status should not be revoked;¹
- 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;² and

¹ See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

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

- 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.³

Audit findings [1]

Although the Organization has been completing and submitting Form T3010, which is a condition for being registered as a charity under the Act, the Organization has failed to provide the books and records necessary to conduct our audit for fiscal period ended December 31, 2016.

In our letter dated September 29, 2017 (copy enclosed), we requested information to conduct our audit for the Organization's fiscal period ended December 31, 2016. You submitted information dated October 6, 2017. After reviewing the information, we deemed it incomplete, as it did not include a detailed breakdown of the expenses and supporting documents, per our request on page 3 of our letter. Therefore, we requested additional information to clarify any ambiguity concerning the Organization's practices in general (see enclosed a copy of our letter dated August 22, 2019).

Specifically, on page 3 of the August 22, 2019 letter we repeated our request for the breakdown and supporting documents, as well as details specific to the practices of the Organization's fundraising activities, to determine whether they are acceptable. We could not decipher what exactly the Organization's fundraising practices are, nor how much is spent on actual fundraising activities (it was also unclear in the financial statements). This is because, while we have asked for a description of the ways in which the Organization conducts its fundraising activities (during and prior to the audit), the Organization has been providing descriptions of the ways in which the Organization is not conducting its fundraising activities.

During our telephone conversation on August 30, 2019, you expressed that you categorically refuse to provide us with the information requested in our letter dated August 22, 2019.

Without the Organization's cooperation in the audit, we are unable to conclude that the Organization has maintained books and records required by subsection 230(2) of the Act.

³ See *Prescient Foundation v MNR*, 2013 FCA 120 at para 51. [2013] FCJ no 512; *Humane Society of Canada for the Protection of Animals and the Environment v. Minister of National Revenue*, 2015 FCA 178 at paras 76-79; *Jaamiah Al Uloom Al Islamiyyah Ontario v. Canada (National Revenue)*, 2016 FCA 49 at para 15; *Opportunities for the Disabled Foundation v. Canada (National Revenue)*, 2016 FCA 94 at paras 37-39; and *Ark Angel Foundation v. Canada (National Revenue)*, 2019 FCA 21 at para 43.

Under paragraph 168(1)(e) of the Act, the registration of a charity may be revoked if it fails to comply with or contravenes subsection 230(2) of the Act with respect to books and records. It is our position that the present case, wherein books and records have not been supplied upon request, consists of material non-compliance that is grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act.

2. Failure to devote resources to charitable activities/purposes

All charitable organizations registered under the Act are required by law to devote their resources (funds, personnel, property) to exclusively charitable purposes and activities. Although a charity can use some of its resources for fundraising to support the charitable activities that further its charitable purposes, it is the CRA's position that fundraising is not a charitable purpose in itself, nor is it a charitable activity that directly furthers a charitable purpose.

A charitable activity is one that directly furthers a charitable purpose - which requires a clear relationship and link between the activity and the purpose it purports to further. The Act permits private foundations to either make gifts to other organizations that are qualified donees or to carry on their own activities. In the case of making a gift, paragraph 149.1(4)(b.1) provides that a private foundation may be revoked if it makes a gift other than to a qualified donee or in the course of charitable activities carried on by it.⁴ In summary, a private foundation may carry on its own charitable activities, it may make gifts to qualified donees or, it may make a gift in the course of charitable activities carried on by it.

Fundraising

The CRA accepts that as a registered charity, you may incur costs in efforts to raise funds for your charitable work. However, these expenses should be reasonable. Fundraising is not a charitable activity. Registered charities can raise funds to support their charitable purposes, but:

- if the fundraising activity becomes the primary emphasis of the charity, then it is not operating for exclusively charitable purposes
- if a substantial portion of the charity's revenue is devoted to the fundraising activity, it is not considered to be devoting its resources to charitable activities

Although the Act does not allow a private foundation to carry out fundraising activities that amount to carrying on a business, a private foundation can carry out some occasional business-like transactions if they are not operated regularly or continually (for example, an annual garage sale). In making our determination, we consider whether the fundraising event:

⁴ This provision is retroactive to December 20, 2002, and covers the period under audit.
<http://www.fin.gc.ca/drlég-apl/nwmni-an:vm-1012n-05-eng.asp>, see Clause 308.

- has a clear **start** and **end** point ("carrying on a business" suggests continual operations)
- occurs so regularly and frequently that it amounts to carrying on a business

Disbursement quota

The disbursement quota is the minimum amount a registered charity is required to spend each year on its own charitable activities, or on gifts to qualified donees (for example, other registered charities).

Prior to Budget 2010, registered charities designated as foundations were subject to disbursement requirements for both 80% and 3.5%. As a result of Budget 2010, the 80% disbursement requirement was repealed, leaving only the 3.5% disbursement requirement. This is, and was prior to Budget 2010, applicable to the average value of a registered charity's property when the property **not** used directly in charitable activities or administration during the 24 months before the beginning of the fiscal year exceeds \$25,000.

Audit findings [2]

Fundraising

As explained in our letter dated August 22, 2019, the Organization's current purposes in its Letters Patent issued by the Minister of Consumer and Commercial Relations of Ontario on September 5, 1979, are the following:

- To raise funds for the construction and reconstruction of historical craft.
- To construct and reconstruct historical craft.
- To maintain and operate historical craft.

However, the Organization reported the following activities at Section C2 : Programs and general information, of Form T3010 for the fiscal period under audit:

- Program 1. Raising funds for the cure for paediatric cancer.
- Program 2. Raising funds for the HMS Nancy Project – currently on hold.
- Program 3. Raising funds for reforestation projects – currently on hold.

In our letter dated August 22, 2019, we asked specific questions concerning the Organization's fundraising practices. On pages 3 and 4 of that letter, we explained in detail the history of communications that have taken place between the Organization and the CRA from January 25, 2012 to August 30, 2012. Those communications were in relation to the Organization's initial request (January 25, 2012) to fundraise for The Macklin Medical Mission, specifically for micro-nuclear laser oncology and the funding of a new medical center dedicated to [REDACTED], a non-qualified donee.

As explained on page 4 of our letter dated August 22, 2019, the CRA's agent interpreted the telephone call you had with them as such that the Organization's intent was to gift to qualified donees. Therefore, the last communication from the CRA was in the form of a letter dated August 30, 2012, instructing the Organization to add the following purpose to its Letters Patent in order to resolve the request: "To receive and maintain a fund or funds and to apply all or part of the principal and income therefrom, from time to time, to charitable organizations that are also registered charities under the Income Tax Act."⁵. The letter further clarified which organizations were considered qualified donees under the Act, and advised the Organization that the Act does not allow for gifting to non-qualified donees.

In response to that letter dated August 30, 2012, the Organization sent a letter dated September 2, 2012, to its Member of Parliament, to which the CRA was cc'd. The letter consisted of a reiteration of its initial request of January 25, 2012; the Organization wished to support the activities of the non-qualified donee, The Macklin Medical Mission.

As previously advised by the CRA, a registered charity is allowed to carry out its charitable purposes both inside and outside Canada in **only** two ways: by carrying on its own charitable activities, and by gifting to qualified donees⁶. A registered charity must maintain direction and control over its activities (whether carried out by the charity, or by an agent or contractor on its behalf) and must not engage in activities that directly or indirectly support or oppose a political party or candidate for public office or unrelated business activities.

As mentioned above, without representations from the Organization, we are unable to substantiate that the expenses reported on the Form T3010 were in fact for charitable activities.

The Organization reported \$12,580 on line 5000 (total charitable expenses); however, when we requested a breakdown of that amount in both our letters dated September 29, 2017, and August 22, 2019, the Organization did not provide us with documents to **substantiate** that the expenses were in furtherance of a charitable purpose.

In addition, the Organization did not provide us with a detailed statement of activities, which was originally requested in 2012, and again during the course of this audit in our letters mentioned above. We asked this information in an attempt to obtain an understanding of the Organization's modus operandi.

⁵ The Ontario Public Guardian and Trustee does not recognize the term "qualified donees".

⁶ <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/charities-giving-glossary.html#qualifieddonee>

Disbursement quota

In the Organization's representations of October 6, 2017 (paragraph 4 of the cover letter), you explained that the Organization is "(...) well ahead of its spending requirement." Incidentally, Note 10 of page 7 of the Organization's financial statements describes the 80% calculation. For clarification purposes, the 80% disbursement quota was revised as a result of Budget 2010. Please see enclosed our document titled "Disbursement quota calculation".

As explained above, although the Organization reported \$12,580 on line 5000 (total charitable expenses), we were not provided with the requested breakdown of that amount in both our letters dated September 29, 2017, and August 22, 2019, which could have **substantiated** that the expenses were to further a charitable purpose.

Given the lack of information and supporting documentation, it was not possible to verify that any of the Organization's resources were devoted to conducting charitable activities such as, carrying on its own charitable activities or gifting to qualified donees. Therefore, it was also not possible to verify that the Organization did indeed meet its disbursement quota.

For this reason, it appears there are grounds for the revocation of the charitable status of the Organization under paragraphs 149.1(1), 149.1(3) and 168(1)(b) of the Act.

3. Failure to be constituted for exclusively charitable purposes

To be registered as a charity under the Act, Canadian law requires that an organization's purposes be exclusively charitable, and define the scope of the activities that can be engaged in by the organization.⁷

Audit findings [3]

As outlined above, given the overall lack of information and supporting documentation, it was not possible to verify that any of the Organization's resources were used to conduct its own charitable activities or to gift to qualified donees and thereby working to further a charitable purpose. As such, the Organization is not complying with the Act as it has not shown that it is devoting its resources to activities that further exclusively charitable purposes. When a charity's resources are not furthering exclusively charitable purposes, the charity is no longer meeting the requirements for registration under the Act. For this reason, it is our position there are grounds for revocation of the charitable status of the Organization under paragraph 168(1b) of the Act.

⁷ See *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at para 158; *Travel Just v Canada Revenue Agency*, 2006 FCA 343 at para 8, (2007) 11 CTC 294.

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

Subsection 149.1(14) of the Act requires that every registered charity file an information return in the prescribed form, containing the prescribed information, without notice or demand, within six months of its fiscal year end. For a registered charity, the prescribed form and the prescribed information include:

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

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

Audit findings [4]

The audit revealed that the Organization did not accurately complete its information return for the fiscal period under audit, in that items reported were incorrectly identified. Specifically:

➤ Financial information

First, the Organization completed both Section D, Financial Information, and Schedule 6, Detailed Financial Information. Schedule 6 must be completed if any one of the following applies:

- a) The charity's total revenue from all sources exceeds \$100,000.
- b) The amount of all property (e.g. investments, rental properties) **not used in charitable programs** exceeds \$25,000.
- c) The charity currently has permission to accumulate funds in the fiscal period.

Property includes any real estate, investments, or other assets that were **not** used directly in charitable activities or administration. This may include, for example, cash in bank accounts, inventory, stocks, bonds, mutual funds, GICs, land, and buildings.

As the Organization's assets not used directly in charitable programs exceed \$25,000, Schedule 6 should have been completed.

Second, the Organization reported an amount of \$14,600 on line 4500 (amount for which official donation receipts were issued). In our letter dated August 22, 2019, we requested copies of official donation receipts and a listing of such, to support the amount reported on line 4500.

During our telephone conversation of August 30, 2019, you explained that the Organization did not issue receipts and that the amount of \$14,600 reported on line 4500 was false ("I just threw it on any line"). When asked what the \$14,600 represented, you proceeded to provide an explanation of the Organization's history, and speaking about other charities and how they operate, which did not answer our question.

The Organization reported \$14,600 in its financial statements as "Cash donations". If these funds were funds received from another registered charity, the amount should have been reported on line 4510 (amount received from other charities). Line 4500 should be reserved for donations the Organization received, for which the Organization itself issued official donation receipts for.

➤ T1235, Directors/Trustees and Like Officials Worksheet

Although the Organization did not submit this form, it submitted its own version (which is acceptable). The list of directors states that the directors are all at arm's length; however, three of the directors are related by name, and one of the other directors has the same address as one of the other three.

The term "at arm's length" describes a relationship where persons act independently of each other or who are not related. The term "not at arm's length" means persons acting in concert without separate interests or who are related.

Related persons are individuals who are related to each other by blood, marriage or common law partnership, or adoption. Examples of blood relatives include grandparents, parents, brothers, sisters, and children. Examples of persons related by spousal relationship include the grandparents of a spouse, the parents of a spouse, the brothers and sisters of a spouse, the spouse of a child, and the spouse of a grandchild.

Generally, in determining arm's length relationships, common law partners are treated in the same way as legally married spouses. Adopted children are treated in the same way as blood-related children.

Related persons also include individuals or groups and the corporations in which they have a controlling interest. Persons related to these individuals or groups are also considered related to those corporations.

For more information on arm's length, see Income Tax Folio S1-F5-C1, Related persons and dealing at arm's length, available on our website.

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

5. Issuing receipts not in accordance with the Act

Section 3501 of the Income Tax Regulation state 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 following elements:

- the name and address in Canada of the organization as recorded with the Minister;
- the registration number assigned by the Minister to the organization;
- the serial number of the receipt;
- the place or locality where the receipt was issued;
- where the gift is a cash gift, the date on which or the year during which the gift was received;
- where the gift is of property other than cash
 - the date on which the gift was received,
 - a brief description of the property, and
 - the name and address of the appraiser of the property if an appraisal is done;
- the date on which the receipt was issued;
- the name and address of the donor including, in the case of an individual, the individual's first name, last name and initial;
- the amount that is
 - the amount of a cash gift, or
 - if the gift is of property other than cash, the amount that is the fair market value of the property at the time that the gift is made;
- a description of the advantage, if any, in respect of the gift and the amount of that advantage;
- the eligible amount of the gift;
- the signature of a responsible individual who has been authorized by the organization to acknowledge gifts; and
- the name and Internet web site of the Canada Revenue Agency.

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

Audit findings [5]

Although the fiscal period ended for this audit is December 31, 2016, the Organization submitted representations on October 6, 2017, in which it presented a copy of a receipt for fiscal period ended December 31, 2017. We reviewed the document provided as a “template” used by the Organization for issuing receipts for income tax purposes. We further have determined that the document is not an official donation receipt for income tax purposes, but rather, an acknowledgement letter. This receipt did not fully comply with the requirements of Section 3501 of the Income Tax Regulation.

Specifically, if the Organization uses the document it provided us as an official donation receipt, it is missing the following information:

- the registration number assigned by the Minister to the organization;
- the place or locality where the receipt was issued;
- where the gift is a cash gift, the date on which or the year during which the gift was received;
- the name and Internet web site of the Canada Revenue Agency.

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 indicated below. My manager, Julie McCaffrey, may also be reached at 613-670-0509.

Yours sincerely,



Tanya Barbeau
Assisted Compliance Section
Compliance Division
Charities Directorate
Canada Revenue Agency
Ottawa ON K1A 0L5

Enclosures:

- Correspondence dated September 29, 2017
- CRA letter dated August 22, 2019
- Disbursement quota calculation

c.c.: Lorie Huffmeyer, Director



Qualified Donees

149.1 (1) Definitions

charitable foundation means a corporation or trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof, and that is not a charitable organization

charitable organization, at any particular time, means an organization, whether or not incorporated,

(a) constituted and operated exclusively for charitable purposes,

(a.1) all the resources of which are devoted to charitable activities carried on by the organization itself,

(b) no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof,

(c) more than 50% of the directors, trustees, officers or like officials of which deal at arm's length with each other and with

(i) each of the other directors, trustees, officers and like officials of the organization,

(ii) each person described by subparagraph (d)(i) or (ii), and

(iii) each member of a group of persons (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)) who do not deal with each other at arm's length, if the group would, if it were a person, be a person described by subparagraph (d)(i), and

(d) that is not, at the particular time, and would not at the particular time be, if the organization were a corporation, controlled directly or indirectly in any manner whatever

(i) by a person (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)),

(A) who immediately after the particular time, has contributed to the organization amounts that are, in total, greater than 50% of the capital of the organization immediately after the particular time, and

(B) who immediately after the person's last contribution at or before the particular time, had contributed to the organization amounts that were, in total, greater than 50% of the capital of the organization immediately after the making of that last contribution, or

(ii) by a person, or by a group of persons that do not deal at arm's length with each other, if the person or any member of the group does not deal at arm's length with a person described in subparagraph (i)

qualified donee, at any time, means a person that is

(a) registered by the Minister and that is

a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i) that has applied for registration,

(ii) a municipality in Canada,

a municipal or public body performing a function of government in Canada that has applied for registration,

(iv) a university outside Canada, the student body of which ordinarily includes students from Canada, that has applied for registration, or

(v) a foreign charity that has applied to the Minister for registration under subsection (26),

(b) a registered charity,

(c) a registered Canadian amateur athletic association, or

(d) Her Majesty in right of Canada or a province, the United Nations or an agency of the United Nations

149.1 (2) Revocation of registration of charitable organization

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

(a) carries on a business that is not a related business of that charity;

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

(c) makes a disbursement by way of a gift, other than a gift made

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

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

149.1 (3) Revocation of registration of public foundation

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

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
 - (b.1) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) since June 1, 1950, acquired control of any corporation;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or
- (e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the Minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection 149.1(4), to revoke its registration as a private foundation.

149.1 (4) Revocation of registration of private foundation

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

- (a) carries on any business;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
 - (b.1) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

149.1 (4.1) Revocation of registration of registered charity

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

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

Revocation of Registration of Certain Organizations and Associations

168 (1) Notice of intention to revoke registration

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

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

(f) in the case of a registered Canadian amateur athletic association, accepts a gift the granting of which was expressly or implicitly conditional on the association making a gift to another person, club, society or association.

168 (2) Revocation of Registration

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

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

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

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

168 (4) Objection to proposal or designation

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

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

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

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

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

Where the Minister

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

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

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

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

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

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

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

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

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

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

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

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

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

the person described in paragraph (a), (a.1) or (a.2), the applicant in a case described in paragraph (b), (e) or (g), a trustee under the plan or an employer of employees who are

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

180 (1) Appeals to Federal Court of Appeal

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

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

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

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

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

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

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

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

Tax and Penalties in Respect of Qualified Donees

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

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

(a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;

(b) a new taxation year of the charity is deemed to begin immediately after that day; and

(c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

188 (1.1) Revocation tax

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

$$A - B$$

where

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

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

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

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

188 (1.2) Winding-up period

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

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

188 (1.3) Eligible donee

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

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

188 (2) Shared liability – revocation tax

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

188 (2.1) Non-application of revocation tax

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

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

188 (3) Transfer of property tax

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

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

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

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

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

188 (5) Definitions – In this section,

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

$$A - B$$

where

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

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

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

$$A - B$$

where

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

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

189 (6) Taxpayer to file return and pay tax

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

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

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

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

189 (6.1) Revoked charity to file returns

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

(a) file with the Minister

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

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

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

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

189 (6.2) Reduction of revocation tax liability

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

(a) the amount, if any, by which

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

exceeds

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

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

189 (6.3) Reduction of liability for penalties

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

- (a) the consideration given by the other person for the transfer, and
- (b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

189 (7) Minister may assess

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